

LEGISLATIVE COUNCIL BRIEF
COURTS (REMOTE HEARING) BILL

INTRODUCTION

At the meeting of the Executive Council on 18 November 2024, the Council **ADVISED** and the Chief Executive **ORDERED** that the Courts (Remote Hearing) Bill (“the Bill”) at Annex A should be introduced into the Legislative Council (“LegCo”).

JUSTIFICATIONS

Need for legislative amendments

2. In response to rising expectations from court users and the community in recent years, the Judiciary has been taking pro-active measures in making greater use of technology in court operations, both in handling court business and in communications between the courts and court users. Remote hearings is one of the Judiciary’s key initiatives on the use of technology. It is also part of the Judiciary’s on-going efforts in enhancing the efficiency of court operations. Remote hearings would also enable the courts to better tackle unforeseen and complicated situations such as pandemics.

3. At present, owing to legal impediments ¹, most criminal

¹ To name a few examples –

- (a) section 49(1) of the Criminal Procedure Ordinance (Cap. 221) requires that, “[t]he accused person shall be placed at the bar unfettered and not in prison clothes...”;
- (b) section 81B(5) of the Magistrates Ordinance (Cap. 227) stipulates that, “[a]n accused who is committed for sentence shall as soon as practicable be brought before the Court of First Instance for sentence ...”;
- (c) section 4(3) of the Probation of Offenders Ordinance (Cap. 298) states that, “[w]here a court proposes to amend a probation order under this section, otherwise than on the application of the probationer, it shall summon him to appear before the court...”; and
- (d) section 77A(7) of the District Court Ordinance (Cap. 336) requires that “...the judge shall appoint a date on which the accused person shall appear before a magistrate.”.

cases² cannot be heard remotely. For instance, the existing law generally requires the defendant to be physically present at different stages such as arraignment and trial. For civil proceedings, where remote hearings may prima facie be permitted under the current law³, there are no express provisions setting out how matters are to be handled in a remote mode.

4. The Bill seeks to provide for the application for, and the operation and effect of, remote hearings for court proceedings in Hong Kong. It will provide a clear legal basis for judges and judicial officers (“JJOs”) to order remote hearings at various levels of courts and tribunals where appropriate, having regard to all relevant factors, as well as the dual requirements of open justice and fair hearing.

Application and use of remote hearings

5. The prevailing policy of the Judiciary on court hearings is that, unless the Court directs otherwise and the law so permits, physical hearing is the default mode of hearings, meaning that the JJOs, the parties or their legal representatives, the witnesses, and all other relevant parties must be physically present in proceedings conducted in the courtroom. The Court will direct the use of remote hearings only if it is fair and just to do so, having regard to a host of relevant considerations. It is a case management decision of the Court in the exercise of its existing case management powers.

6. “Remote hearing” refers to a proceeding ordered by the Court (including any JJO) (whether on its motion or on application by any party to the proceeding) to be conducted through a remote medium. Remote mediums include live audio link (e.g. telephone), live audio-visual link (e.g. video-conferencing facilities), and any other real time communication facility as designated by the Chief Justice.

7. The use of remote hearings does not necessarily mean that the entire proceeding must be conducted remotely. It may be confined to

² Notwithstanding that most criminal cases cannot be heard remotely under the existing law, rule 78 of the Hong Kong Court of Final Appeal Rules (Cap. 484 sub. leg. A) provides that in any matter not provided for in these Rules, the practice and procedure in the Court of Final Appeal shall be such as may be decided by the Chief Justice who may, if he thinks fit, be guided by the practice and procedure of the High Court. Hence, the Chief Justice may direct that a criminal proceeding in the Court of Final Appeal be heard remotely by exercising his power under Cap. 484 sub. leg. A. Since 2020, about 15 criminal cases in the Court of Final Appeal have been conducted by remote hearings.

³ Unlike criminal proceedings, there appears to be no express statutory provisions which require the physical presence of parties at hearings of civil proceedings.

part(s) of the hearing process, for example the taking of evidence from one or more witnesses (whether within or outside the jurisdiction), or that only some of the concerned parties are participating remotely.

8. The Judiciary has been conducting remote hearings for civil proceedings at different levels of courts and tribunals where appropriate since 2020. Four guidance notes have been issued to set out the relevant arrangements. Since 2020, over 2 000 remote hearings have been conducted at various levels of courts and tribunals, and the experience has been positive.

Factors to be considered in directing remote hearings

9. With the interests of justice as the general guiding principle, the Judiciary proposes that the Court must consider a list of factors (if applicable) as set out in clause 9 of the Bill before making a remote hearing order. These include –

- (a) the views of the parties;
- (b) the ability of the parties to engage with and follow the proceeding (if conducted through a remote medium);
- (c) the maintenance of the rights of the parties;
- (d) whether the privileged communication between the parties and their respective legal representatives may be affected;
- (e) the potential impact of the order on the assessment of the credibility of witnesses and the reliability of the evidence presented;
- (f) whether the right to a fair trial can be effectively maintained; and
- (g) the quality and security of the remote hearing facilities and their availability to the parties.

10. The making of a remote hearing order under the Bill is considered a case management decision of the Court. The Court may make a remote hearing order for a proceeding, either on its own motion, or on application by any party to the proceeding. If a remote hearing

order is made on the Court's own motion, the Court may invite parties to the proceeding to make submissions regarding the mode of conducting the proceeding and take into account parties' views before making the order. If the Court does not invite parties to make submissions prior to the making of the remote hearing order, or if any of the parties to the proceeding is dissatisfied with the remote hearing order, the party may make representation to set aside or vary the Court's order within a period as specified by the Court. After considering the representations (if any), the Court may affirm, vary or revoke the order as it thinks fit, and will notify the parties of its decision. Furthermore, upon a material change in circumstances of the case and if the Court is satisfied that it is in the interests of justice to vary or revoke a remote hearing order, the Court may, on its own motion or on application by any party to a proceeding, vary or revoke the order.

11. As part of the Judiciary's on-going efforts to make wider use of technology in court operations both for enhancing efficiency and access to justice for court users, the Judiciary is prepared to conduct remote hearings more often where circumstances allow, following the enactment of the Bill. Further down the road, the Judiciary may consider according priority to adopting remote hearing mode over physical hearings for certain specific types of proceedings (such as 3-minute hearings), provided that effective administration of justice will not be compromised, and each remote hearing order complies with the relevant requirements set out in the Bill. In this regard, the Judiciary proposes to provide the Chief Justice with the general power to designate certain types of proceedings (except for excluded proceedings) as the type of proceedings to be conducted through a remote medium.

Exceptions to the use of remote hearings

(a) National security proceedings ("NS proceedings")

12. The Judiciary notes the Government's concern about potential risks to national security if remote hearing is conducted in an NS proceeding⁴. To provide a stronger safeguard for administration of justice in NS proceedings, the Judiciary is of the view that remote hearing should **not** be conducted in **any** NS proceeding (i.e. both criminal and

⁴ In this connection, the Judiciary notes the advice of the Government in relation to the risks of national security in the related context of witnesses giving evidence outside Hong Kong by way of a live television link in the deliberations of the Bills Committee on the Safeguarding National Security Bill (see paragraph 225 of the Report of the Bills Committee on Safeguarding National Security Bill).

civil). We propose to expressly set out in the Bill (under clause 5) that no NS proceeding can be conducted through a remote medium under the law or otherwise. We also propose to provide transitional arrangements to ensure that for an existing proceeding that is an NS proceeding, the proceeding cannot be conducted remotely upon the enactment of the Bill. Any permission given or order made for remote hearing of an existing NS proceeding before the enactment of the Bill is to be regarded as having never been given or made. The effect is that any prior evidence obtained in such proceedings is to be expunged.

(b) Criminal trials and hearings before the Juvenile Court

13. The Judiciary considers that there are limitations, in terms of principle and practice, in adopting remote hearings for all criminal proceedings. First, in some cases and specific stages of criminal proceedings other than trials, where the physical presence of the defendant in court is of paramount significance, remote hearings will only be ordered in exceptional circumstances as directed by the Court. Secondly, for the same reason, the Judiciary does not propose to adopt remote hearings for criminal trials (as set out under Schedule 1), except those parts in which evidence is given by a witness (other than a vulnerable witness) as directed under a remote hearing order. The Bill hence seeks to allow the Court to order remote hearings for different types of other criminal proceedings at different court levels, such as bail applications/reviews, pre-trial reviews, and call-over/mention hearings if it is in the interests of justice to do so.

14. The Judiciary also proposes not to adopt remote hearings for proceedings before the Juvenile Court (as set out under Schedule 1). One of the main purposes of the Juvenile Offenders Ordinance (Cap. 226) is to ensure that juvenile delinquents, in view of their age, should be tried separately from adult offenders and in a court setting which suits their age. Having regard to the delicate and developing intellectual, mental and psychological faculties of juvenile offenders, we consider that proceedings before the Juvenile Court should continue to require the physical attendance of parties.

(c) Vulnerable witnesses

15. Part IIIA of the Criminal Procedure Ordinance (Cap. 221) specifies special procedures for vulnerable witnesses (such as a child, a mentally incapacitated person, a witness in fear, or a complainant for a

specified sexual offence) to testify by way of a live television link in a separate room located in the same court premises as the courtroom. The special procedures serve to protect vulnerable witnesses from the embarrassment or stress of being exposed to public sight and reduce the trauma they may face when giving evidence during the trial. In order to preserve the safeguards for vulnerable witnesses under Cap. 221, the Judiciary considers that the Bill should not apply to vulnerable witnesses. In this regard, we propose to expressly provide that the relevant provisions under Cap. 221 will not be affected by the Bill and carve out a vulnerable witness from the definition of participant in a court proceeding.

(d) Specific stages of a criminal proceeding or under special circumstances

16. Apart from the exceptions as mentioned in paragraphs 12 to 15 above, to ensure that the interests of justice would not be compromised by the physical absence of the defendant, the Judiciary will, as a matter of policy, continue to require a defendant to be physically present in court –

- i. at the time of the defendant’s plea, verdict and sentence unless the JJO directs otherwise, having considered the relevant factors; and
- ii. for the defendant’s first appearance before a Magistrate, as the Magistrate should have the opportunity to see the defendant physically in court, particularly when there may be complaints about alleged improper treatment by the law enforcement agencies during the defendant’s remand, and when hearing for the first time any bail application of the defendant.

17. There are other circumstances which may also render remote hearing of criminal proceedings inappropriate unless in exceptional circumstances as directed by the Court. They include –

- i. where the personal safety of the defendant (and/or party) and the nature of the evidence adduced render remote hearing inappropriate (*Sivan* proceedings⁵ is an example); and

⁵ In these proceedings, the assistance offered to the authority by a defendant is disclosed and assessed for its usefulness. It is not appropriate to conduct remote hearing for these proceedings because of the very sensitive information involved. Such hearings are invariably unlisted hearings and are held in chambers not open to the public without any automatic recording on the courtroom’s built-in recording system. Instead, there will be manual recording on a USB drive.

- ii. where the nature of the allegations made by the defendant renders it difficult for the defendant to give evidence freely if remote hearing is adopted.

18. While live audio links have been used in remote hearing of civil proceedings, the Judiciary supports the views received during public consultation that live audio links are not appropriate and should not be adopted for criminal proceedings. As the defendant's liberty is at stake, the Court would ensure the defendant is not subject to any pressure or influence in relation to the proceeding.

Open justice

19. The Judiciary considers that the Bill should provide safeguards for open justice. If a proceeding is caused to be broadcasted under clause 24 of the Bill, the Judiciary Administrator will arrange the broadcast to be accessible by the public, for example, in an open courtroom. To cater for the need of open justice in different circumstances, the broadcast may also be made accessible through such other means as the Court considers appropriate.

Offences and penalties

20. The lack of a physical setting may render remote hearing more susceptible to unauthorised recording and publishing of court proceedings. This is particularly so having regard to the rapid developments of digital technology in recording and broadcasting on social media platform. The Judiciary considers it necessary to criminalise such conduct which may prejudice or interfere with the court proceedings. It can also send a clear message to the general public that the fairness and integrity of court proceedings must be preserved in a remote setting just as in a physical one. To enhance the deterrent effect and to maintain parity between physical and remote hearings, the Judiciary proposes the introduction of new offences to criminalise unauthorised recording and publishing of both physical and remote hearings, as well as the broadcast of such hearings.

21. In determining the level of penalty, the Judiciary considers that the mischief which the proposed new offences seek to address entails

more severe consequences than that of the existing offences⁶. The reason is that the unauthorised instantaneous transmission of recordings etc. could occur during, for example, a trial, and could disrupt or interrupt court proceedings. The prohibited act may also cause serious security concerns or psychological unease among participants to the hearing (particularly for an on-going hearing), including legal representatives and witnesses, thereby leading to concerns of their personal safety. This will very likely prejudice or interfere with the due administration of justice. Moreover, if recorded or transmitted images or sound are misused, it would constitute a serious blow to the integrity of the judicial system.

22. Having regard to the higher culpability of the proposed new offences, it is proposed that anyone who commits the offence of unauthorised recording and/or publication of court hearings and their broadcasts is liable –

- (a) on summary conviction, to a fine at level 5 and to imprisonment for 2 years; or
- (b) on conviction on indictment, to a fine at level 6 and to imprisonment for 5 years.

23. Taking into account the severe consequences caused by unauthorised publishing of court hearings and making reference to section 159AAD of the Crimes Ordinance (Cap. 200) which concerns the publication of images originating from commission of the relevant recording offences, the Judiciary also proposes to include recklessness as one of the alternative criminal intents (i.e. *mens rea*)⁷ of the offence on unauthorised publication of authorised or unauthorised recording of court hearings.

Related and consequential amendments

24. It is necessary to make related and consequential amendments to the existing legislation to ensure compatibility and consistency. The major related and consequential amendments are summarised at **Annex B**.

B

⁶ Examples of the existing offences include section 7 of the Summary Offences Ordinance (Cap. 228); section 87A of the Magistrates Ordinance (Cap. 227); and section 9P of the Criminal Procedure Ordinance (Cap. 221).

⁷ The other alternative criminal intent is knowledge.

Implementation plan

25. As mentioned in paragraph 8 above, the Judiciary has been conducting remote hearings for civil proceedings at various levels of courts and tribunals where appropriate since 2020. For criminal proceedings, in order to allow sufficient time for stakeholders to prepare for and gradually adjust to the mode of remote hearing, the Judiciary expects that remote hearings will start to be conducted in criminal proceedings as appropriate in about six months after the enactment of the Bill.

26. The Judiciary acknowledges the need to provide more assistance and support for litigants in person (“LIPs”) participating in remote hearings. It is the Judiciary’s plan to request LIPs to provide information regarding their access to electronic devices, confidence levels on technology, computer literacy, ability to receive, view and print documents etc., before the Court orders a remote hearing. After a remote hearing has been ordered, the Court will also provide bilingual guidelines for LIPs and arrange connection tests. The guidelines seek to assist LIPs in connecting to a remote hearing, and to remind LIPs of some important requirements and conduct expected from participants during the hearing. If LIPs have difficulty in finding a suitable remote location, the Court may direct them to participate from designated rooms equipped with appropriate video-conferencing facilities in the Judiciary.

THE BILL

27. The main provisions of the Bill are set out as follows –

- (a) **Part 1 – Clauses 1 to 5:** These clauses provide for the short title of, interpretation for, and application of the Bill, the provisions not affected by the Bill, and specify that no NS proceeding may be conducted remotely;
- (b) **Part 2 – Clauses 6 to 9:** These clauses provide for the making of a remote hearing order, including factors to be considered by the Court, and the variation or revocation of a remote hearing order;
- (c) **Part 3 – Clauses 10 to 21:** These clauses are operative provisions such that a remote hearing may be deemed to have satisfied the legal requirements with respect to physical

hearing/attendance in all relevant aspects, such as the power of JJOs, attendance of participants at a remote hearing, transmission of documents and presentation of objects, as well as the signing of or writing on documents;

- (d) **Part 4 – Clauses 22 to 24:** These clauses provide for public access to remote hearings to satisfy the requirement of open justice;
- (e) **Part 5 – Clauses 25 to 29:** These clauses provide for the new offences of recording and publishing protected sessions and protected subjects, the offence of recording and publishing the broadcast of remote and physical hearings, evidence by certificate for permission of the Court, and defence regarding reasonable excuse;
- (f) **Part 6 – Clauses 30 to 33:** These clauses provide for the powers of the Chief Justice to amend the Schedules, and to make rules or give directions, as well as the issuance of administrative instructions by the Judiciary Administrator;
- (g) **Part 7 – Clauses 34 to 36:** These clauses provide for the transitional arrangements for existing proceedings;
- (h) **Part 8 – Clauses 37 to 58:** These clauses provide for the related amendments as set out in paragraph 24 above;
- (i) **Part 9 – Clauses 59 to 74:** These clauses provide for the consequential amendments as set out in paragraph 24 above;
- (j) **Schedule 1 – Excluded Proceedings:** This Schedule contains the list of proceedings to be excluded from the use of remote hearing; and
- (k) **Schedule 2 – Court Premises:** This Schedule contains the list of court premises in which a JJO may conduct a remote hearing.

C The existing provisions being amended are at Annex C.

OTHER OPTIONS

28. There is no other option to implement the proposal other than to introduce the Bill to provide a clear legal basis for JJOs to order remote hearings where appropriate and provide express provisions on how matters are to be handled in a remote mode.

LEGISLATIVE TIMETABLE

29. The legislative timetable will be –

Publication in the Gazette	22 November 2024
First Reading and commencement of Second Reading debate in LegCo	4 December 2024
Resumption of Second Reading debate, committee stage and Third Reading	To be notified

IMPLICATIONS OF THE PROPOSAL

30. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It has no productivity, family, gender, financial and civil service implications, and no sustainability implications. The Bill is binding on the Government.

31. On economic implications, the proposal lays the legal framework for the use of remote hearings in court proceedings, which would enhance the efficiency of court operations and enable the Court to better tackle unforeseen situations where physical presence may not be possible (such as lock-downs in a pandemic). For participants such as parties, legal practitioners and witnesses in court proceedings, the use of remote hearings also saves some time and cost as they may not need to commute to the court buildings in some circumstances.

32. On environmental implications, with the use of remote hearings, participants such as parties, legal practitioners and witnesses in court proceedings do not need to commute to court buildings. Participants who are physically out of town may also participate in a remote hearing without having to travel back to Hong Kong. Less transportation needs

will help reduce carbon emissions as well as air and noise pollution, which would benefit the environment.

PUBLIC CONSULTATION

33. The Judiciary conducted two rounds of consultation regarding the proposed legislative amendments. In February 2021, the Judiciary consulted key stakeholders, including legal professional bodies and relevant government departments, on the broad principles and policies regarding legislative amendments on remote hearings. Taking into account key stakeholders' comments, the Judiciary formulated the legislative proposals and conducted a three-month public consultation on the draft Bill and operational arrangements for the conduct of remote hearing in June 2022. In general, public response to the use of remote hearings for civil and criminal proceedings in court, and the proposed legislative exercise to set out in greater details how matters are handled in a remote mode has been positive. Key stakeholders including the Hong Kong Bar Association, the Law Society of Hong Kong and law enforcement agencies agree and support that the increased use of technology would enable more flexible means of disposing court proceedings, thereby enhancing the Court's efficiency and enabling the Court to better tackle unforeseen circumstances. Taking into account the views received, the Judiciary has reviewed the policy and legislative proposals on remote hearing, and revised the Bill as appropriate.

34. The LegCo Panel on Administration of Justice and Legal Services was also consulted on the Bill on 3 May 2023. The Panel expressed general support for the introduction of the Bill to LegCo. The Panel and legal profession also remarked that greater caution should be exercised in determining whether remote hearings were appropriate for criminal proceedings. As such, remote hearings should not be adopted for criminal trials (especially those relating to high-profile and controversial cases) as there could be risks which might jeopardise the fairness of a trial if it were conducted remotely, such as the possibility of a witness being manipulated by another party off-screen while giving evidence remotely. Taking into account these concerns, the Judiciary has hence provided for exceptions to the use of remote hearings in criminal trials and NS proceedings to guard against potential abuse which would compromise on the due administration of justice.

PUBLICITY

35. A press release will be issued when the Bill is published in the Gazette. A spokesperson will be available to answer media and public enquiries.

ENQUIRIES

36. Any enquiries on this brief should be directed to Mr Steve Tse, Assistant Director of Administration, at 2810 3946 or Miss Sandra Lam, Assistant Judiciary Administrator (Planning and Development), at 2867 5201.

**Administration Wing
Chief Secretary for Administration's Office**

Judiciary Administration

20 November 2024

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A BILL

To

Provide for the application for, and the operation and effect of, remote hearings; to provide for fair disposal of, and public access to, remote hearings; to provide for offences to protect the integrity of proceedings; to provide for offences relating to the prohibition of recording on court premises; and to provide for related matters.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title

This Ordinance may be cited as the Courts (Remote Hearing) Ordinance.

2. Interpretation

In this Ordinance—

Cap. 221 (《第 221 章》) means the Criminal Procedure Ordinance (Cap. 221);

court (法院)—

(a) means—

- (i) the Court of Final Appeal;
- (ii) the Court of Appeal;
- (iii) the Court of First Instance;

- (iv) the Competition Tribunal;
- (v) the District Court;
- (vi) a Magistrates' Court (including the Juvenile Court);
- (vii) the court of committal as defined by section 2(1) of the Fugitive Offenders Ordinance (Cap. 503);
- (viii) the Lands Tribunal;
- (ix) the Labour Tribunal;
- (x) the Small Claims Tribunal;
- (xi) the Obscene Articles Tribunal; or
- (xii) the Coroner's Court; and

(b) includes a JJO;

excluded proceeding (獲豁免法律程序) means a proceeding set out in Schedule 1;

JJO (法官或司法人員)—

- (a) means a judicial officer as defined by section 2 of the Judicial Officers Recommendation Commission Ordinance (Cap. 92); and
- (b) includes—
 - (i) a person who is appointed as a deputy or temporary judicial officer—
 - (A) to perform the duties of a judicial office as defined by that section; or
 - (B) to act otherwise in the office of a judicial office so defined; and
 - (ii) a person who is appointed to a specified Tribunal to perform adjudicating functions;

legal representative (法律代表) includes—

- (a) a legal officer as defined by section 2 of the Legal Officers Ordinance (Cap. 87);
- (b) a solicitor or a barrister as defined by section 2(1) of the Legal Practitioners Ordinance (Cap. 159);
- (c) an official prosecutor who is appointed under section 13 of the Magistrates Ordinance (Cap. 227); and
- (d) any other person who has a right of audience before the court under—
 - (i) an Ordinance; or
 - (ii) a practice direction issued by the court;

live audio link (語音直播聯繫), in relation to a proceeding, means facilities that enable real time audio communication among the JJOs and the participants during the proceeding;

live audio-visual link (音視直播聯繫), in relation to a proceeding, means facilities that enable real time audio and visual communication among the JJOs and the participants during the proceeding;

NS proceeding (國安法律程序) means a proceeding of a case concerning national security (within the meaning of section 3(2) of the Safeguarding National Security Ordinance (6 of 2024));

participant (參與者), in relation to a proceeding—

- (a) means a person who, in that proceeding, is—
 - (i) a party;
 - (ii) an authorized representative of a party;
 - (iii) a legal representative of a party;
 - (iv) a witness (other than a vulnerable witness); or
 - (v) an officer or individual who—

- (A) is appointed to advise, or is involved in advising, on any matter in relation to the proceeding;
 - (B) is appointed to assist, or is involved in assisting, the JJO presiding at the proceeding; or
 - (C) is appointed to assist, or is involved in otherwise facilitating, the conduct of the proceeding; and
- (b) includes any other person who is allowed by the court to be involved in that proceeding;

party (訴訟方), in relation to a proceeding, means—

- (a) the person who initiates the proceeding;
- (b) the person against whom the proceeding is initiated; or
- (c) any other person who is entitled to be heard in the proceeding;

physical hearing (實體聆訊) means a proceeding that is not subject to a remote hearing order;

proceeding (法律程序) means a proceeding before a court, and includes part of such a proceeding;

remote hearing (遙距聆訊) means a proceeding that is subject to a remote hearing order;

remote hearing order (遙距聆訊令) means an order made under section 6(1) or (4) and (if applicable) varied under section 8(1);

remote medium (遙距媒介) includes—

- (a) a live audio link;
- (b) a live audio-visual link; and

- (c) any other real time communication facility as the Chief Justice may designate by rules made, or in a direction given, under section 32;

specified Tribunal (指明審裁處) means—

- (a) the Competition Tribunal;
- (b) the Lands Tribunal;
- (c) the Labour Tribunal;
- (d) the Small Claims Tribunal; or
- (e) the Obscene Articles Tribunal;

vulnerable witness (易受傷害證人) means a person who—

- (a) would be permitted under section 79B(2) or (3) of Cap. 221 to give evidence or be examined by way of a live television link; or
- (b) would be permitted under section 79B(4) or (4A) of Cap. 221 to give evidence by way of a live television link.

3. Application to Government

This Ordinance applies to the Government.

4. Provisions not affected by this Ordinance

Nothing in this Ordinance affects the operation of—

- (a) Part IIIA of Cap. 221; or
- (b) section 23 of the Fugitive Offenders Ordinance (Cap. 503).

5. NS proceeding not to be conducted remotely

No NS proceeding may be conducted through a remote medium under this Ordinance, under the law or otherwise.

Part 2

Remote Hearing Order

6. Court may make remote hearing order

- (1) The court may, on its own motion or on application by any party to a proceeding, make an order for the proceeding to be conducted through a remote medium.
- (2) Subsection (1) does not apply to an excluded proceeding.
- (3) The court may, in an order under subsection (1), specify—
 - (a) in relation to the proceeding—
 - (i) the remote medium to be used for the proceeding;
 - (ii) the date and time for the hearing of the proceeding; and
 - (iii) the place or virtual space, or both, for the hearing of the proceeding;
 - (b) in relation to the participants of the proceeding—
 - (i) the participants who are to attend the proceeding through a remote medium (*remote participants*); and
 - (ii) the place (whether in or outside Hong Kong) from which the remote participants are to attend the proceeding; and
 - (c) any other conditions that the court considers expedient for the conduct of the proceeding.
- (4) The court may, on its own motion or on application by any party to an excluded proceeding, make an order for those parts of the excluded proceedings as specified in subsection (5) to be conducted through a remote medium.

- (5) For the purposes of subsection (4), the court may make an order for a witness (other than a vulnerable witness) to the excluded proceeding to give evidence or be examined through a remote medium.
- (6) An order may only be made under subsection (1) or (4) if the court, after considering the factors under section 9, is satisfied that, in the circumstances of the case, it is in the interests of justice to make the order.

7. Court may invite submissions

- (1) The court may, before making a remote hearing order for a proceeding under section 6, invite the parties to the proceeding to make submissions.
- (2) If the court does not invite the parties to make submissions under subsection (1) before making a remote hearing order, any party to the proceeding who is dissatisfied with the order may apply to the court within a period as specified by the court to vary or revoke the order.
- (3) After hearing an application under subsection (2), the court may affirm, vary or revoke the order, and may impose any condition that the court considers appropriate.
- (4) The court must inform the parties to the proceeding of a decision under subsection (3).

8. Court may vary or revoke remote hearing order

- (1) The court may, on its own motion or on application by any party to a proceeding, vary or revoke a remote hearing order for the proceeding.
- (2) An order may only be varied or revoked under subsection (1) if the court, after considering the factors under section 9, is satisfied that, in the circumstances of the case, it is in the interests of justice to vary or revoke the order.

- (3) This section applies if there has been a material change of circumstances since—
 - (a) the making of a remote hearing order under section 6 and (if applicable) the variation of the order under section 7; or
 - (b) the variation of a remote hearing order under this section.

9. Factors to be considered

In deciding whether to make, affirm, vary or revoke a remote hearing order for a proceeding under section 6, 7 or 8, the court must consider the following factors (if applicable)—

- (a) the nature, complexity and urgency of the proceeding;
- (b) the nature of the evidence intended to be adduced;
- (c) the views of the parties;
- (d) the ability of the parties to engage with and follow the proceeding (if conducted through a remote medium);
- (e) the personal or special circumstances of the parties, including any physical, visual or auditory impairment, cognitive difference and mental or psychological health issue;
- (f) the maintenance of the rights of the parties;
- (g) whether the parties are legally represented;
- (h) whether the privileged communication between the parties and their respective legal representatives may be affected;
- (i) whether the parties and the parties' legal representatives can conduct their case effectively;
- (j) the measures to be taken to ensure that evidence is given freely without coercion or other influence;

- (k) the potential impact of the order on the assessment of the credibility of witnesses and the reliability of the evidence presented;
 - (l) whether the use of the remote medium is likely to promote fair and efficient disposal of the proceeding;
 - (m) whether the right to a fair trial can be effectively maintained;
 - (n) the quality and security of the remote hearing facilities and their availability to the parties;
 - (o) whether there is any public order, security, public health or emergency concern that makes it undesirable or impracticable for the parties to attend the proceeding in person;
 - (p) any other relevant considerations.
-

Part 3

Operation of Remote Hearing

Division 1—Judges and Judicial Officers

10. **Sitting by JJOs**

Where a JJO conducts a remote hearing under this Ordinance, the JJO is deemed, for all effects and purposes, to have satisfied the requirement under any law to be physically present at the proceeding.

11. **Location of JJOs in remote hearing**

A JJO may conduct a remote hearing in—

- (a) a court premises specified in Schedule 2; or
- (b) any other place as directed by the Chief Justice.

12. **Powers of JJOs**

A JJO conducting a remote hearing under this Ordinance has all the powers that the JJO would have if the remote hearing were a physical hearing, and the participants attended the proceeding in person.

Division 2—Participants

13. **Attendance at remote hearing**

Unless otherwise required by law, or an order or direction of the court, a participant may attend a remote hearing at a place within or outside Hong Kong.

14. **Consequences of failure to attend remote hearing**

A participant who fails to attend a remote hearing on the date and time, and at the place or virtual space, in compliance with a remote

hearing order is subject to the same consequences as if the remote hearing were a physical hearing.

15. Attendance at remote hearing deemed to be physical presence

A participant who attends a remote hearing through a remote medium in compliance with a remote hearing order is deemed, for all effects and purposes, to have satisfied the requirement under any law, or an order or direction of the court, to be physically present at the proceeding.

16. Law in force in Hong Kong applies to participants outside Hong Kong

The law in force in Hong Kong relating to evidence, procedure, contempt of court and perjury applies to a participant who attends a remote hearing in compliance with a remote hearing order at a place outside Hong Kong.

17. Administration of oaths and affirmations

An oath to be sworn or an affirmation to be made by a participant in a remote hearing may be administered—

- (a) by way of a live audio-visual link, as nearly as practicable in the same way as oaths or affirmations are physically administered in a court; or
- (b) by a person authorized by the court, acting at the direction of and on behalf of the court, at the place where the participant is to attend the proceeding.

Division 3—Transmission of Documents, Presentation of Objects, etc. in Remote Hearing

18. Interpretation and application

- (1) In this Division—

document (文件) means anything in and on which information of any description is recorded;

object (物品) means anything other than a document, which may be in tangible or intangible form;

send (送交), in relation to a document, includes file, lodge, produce, give, notify, serve, deliver, submit, furnish and any other expression that signifies or suggests conveying the document.

- (2) Nothing in this Division affects the operation of—
 - (a) the Electronic Transactions Ordinance (Cap. 553); or
 - (b) the Court Proceedings (Electronic Technology) Ordinance (Cap. 638).

19. Transmission of documents

- (1) A document in relation to a remote hearing may be transmitted electronically as directed by the court.
- (2) Where a document is transmitted in compliance with a direction under subsection (1), the transmission is deemed, for all effects and purposes, to have satisfied the requirement under any law to send such a document for the purposes of a physical hearing.

20. Presentation of objects

An object in relation to a remote hearing may be presented electronically as directed by the court.

21. Signing or writing on documents

- (1) If a participant to a remote hearing is required to sign or write on a document under any law, or an order or direction of the court, the court may, for the purposes of the requirement, request that the participant sign or write on the document in a way as directed by the court.

- (2) Where a document is signed or written on in compliance with a request under subsection (1), the signature or writing is deemed, for all effects and purposes, to have satisfied the requirement to sign or write on the document for the purposes of a physical hearing.
- (3) In this section—
write (填寫), in relation to a document, includes draw, shade, colour, circle, cross out, underline, highlight, annotate and any other expression that signifies or suggests marking on the document.
-

Part 4

Public Access to Open Proceeding

22. Meaning of *open proceeding*

In this Part—

open proceeding (公開法律程序) means a remote hearing that is not to be held in private.

23. Direction for public access

The court must, in relation to an open proceeding, give direction to allow access to the proceeding by the public unless the court, for any of the reasons stated in Article 10 of the Hong Kong Bill of Rights set out in Part II of the Hong Kong Bill of Rights Ordinance (Cap. 383), otherwise directs.

24. Broadcast of open proceeding

- (1) The court may cause an open proceeding to be broadcast.
 - (2) A broadcast of an open proceeding must be accessible by the public—
 - (a) in a place, and in a manner, as specified by the Judiciary Administrator; or
 - (b) through such other means as the court considers appropriate.
-

Part 5**Offences and Penalties****25. Interpretation for Part 5**

In this Part—

image (影像) means—

- (a) a portrait, drawing or sketch;
- (b) a photograph, video recording or film; or
- (c) a static or moving visual record;

publish (發布) includes send, transmit, distribute, circulate, upload, reproduce, make available and disseminate;

record (記錄)—

- (a) means—
 - (i) any act of creating or generating an image; or
 - (ii) any act of creating or generating an audio record; and
- (b) includes any act of making an audio record, a visual record or an audio-visual record, that is transmitted in real time with or without retention or storage in—
 - (i) a physical form; or
 - (ii) an electronic form from which the record is capable of being reproduced with or without the aid of any device.

26. Offences of recording and publishing protected sessions and protected subjects

- (1) A person commits an offence if the person, without permission of the court, intentionally records either or both of the following—
 - (a) a protected session of a proceeding;
 - (b) a protected subject in relation to a proceeding.
- (2) A person commits an offence if—
 - (a) the person, without permission of the court, intentionally publishes an unauthorized proceeding recording or a reproduction of an unauthorized proceeding recording; and
 - (b) the person knows that, or is reckless as to whether, the recording concerned is an unauthorized proceeding recording.
- (3) A person commits an offence if—
 - (a) the person, without permission of the court, intentionally publishes an authorized proceeding recording or a reproduction of an authorized proceeding recording; and
 - (b) the person knows that the person has no permission of the court to publish the recording or reproduction (as the case may be), or is reckless as to whether the person has the permission of the court to publish the recording or reproduction (as the case may be).
- (4) A person who commits an offence under this section is liable—
 - (a) on summary conviction—to a fine at level 5 and to imprisonment for 2 years; or
 - (b) on conviction on indictment—to a fine at level 6 and to imprisonment for 5 years.
- (5) In this section—

authorized proceeding recording (獲授權法律程序紀錄) means a proceeding recording made with permission of the court;

courtroom (法庭) means a place in a court building where a proceeding is being conducted, regardless of the mode of hearing for the proceeding;

proceeding recording (法律程序紀錄) means a recording of either or both of the following—

- (a) a protected session of a proceeding;
- (b) a protected subject in relation to a proceeding;

protected session (受保護時段)—

- (a) in relation to a proceeding that is conducted through a remote medium specified for the proceeding, means the proceeding and includes the following periods—
 - (i) the period before the start of the proceeding when any of the specified persons is already connected to the remote medium;
 - (ii) any breaks during the proceeding as ordered by the court; and
 - (iii) the period after the end of the proceeding when any of the specified persons is still connected to the remote medium; and
- (b) in relation to a proceeding that is conducted in a courtroom, means the proceeding and includes the following periods—
 - (i) the period before the start of the proceeding when any of the specified persons is present in the courtroom;
 - (ii) any breaks during the proceeding as ordered by the court; and

- (iii) the period after the end of the proceeding when any of the specified persons is still present in the courtroom;

protected subject (保護對象), in relation to a proceeding, means—

- (a) the courtroom in which the proceeding is conducted; or
- (b) any person appearing in the courtroom;

specified person (指明人士), in relation to a proceeding, means a JJO, a juror or a participant in respect of that proceeding;

unauthorized proceeding recording (未經授權法律程序紀錄) means a proceeding recording made without permission of the court.

27. Offences of recording and publishing broadcast

- (1) A person commits an offence if the person, without permission of the court, intentionally records a broadcast under section 24 or a broadcast of a physical hearing.
- (2) A person commits an offence if—
 - (a) the person, without permission of the court, intentionally publishes an unauthorized broadcast recording or a reproduction of an unauthorized broadcast recording; and
 - (b) the person knows that, or is reckless as to whether, the recording concerned is an unauthorized broadcast recording.
- (3) A person commits an offence if—
 - (a) the person, without permission of the court, intentionally publishes an authorized broadcast recording or a reproduction of an authorized broadcast recording; and

- (b) the person knows that the person has no permission of the court to publish the recording or reproduction (as the case may be), or is reckless as to whether the person has the permission of the court to publish the recording or reproduction (as the case may be).
- (4) A person who commits an offence under this section is liable—
- (a) on summary conviction—to a fine at level 5 and to imprisonment for 2 years; or
- (b) on conviction on indictment—to a fine at level 6 and to imprisonment for 5 years.
- (5) In this section—
- authorized broadcast recording** (獲授權廣播紀錄) means a broadcast recording made with permission of the court;
- broadcast recording** (廣播紀錄) means a recording of—
- (a) a broadcast under section 24; or
- (b) a broadcast of a physical hearing;
- unauthorized broadcast recording** (未經授權廣播紀錄) means a broadcast recording made without permission of the court.

28. Supplementary provisions to sections 26 and 27: evidence by certificate for permission of court

- (1) In a proceeding brought under section 26 or 27, a certificate stating that a specified permission is not given by the court to a person, and purporting to be signed by or on behalf of the Judiciary Administrator, is admissible in evidence on its production without further proof.
- (2) Unless the contrary is proved, a certificate admitted in evidence under subsection (1)—
- (a) is presumed to be signed by or on behalf of the Judiciary Administrator (as the case may be); and

- (b) is evidence of the facts stated in the certificate.
- (3) In this section—
- specified permission** (指明批准) means a permission to do an act that would otherwise constitute an offence under section 26 or 27.
- 29. Defence regarding reasonable excuse**
- (1) It is a defence for a person charged with an offence under section 26 or 27 to establish that, at the time of the alleged offence, the person had reasonable excuse for the contravention.
- (2) A person is taken to have established the reasonable excuse for the contravention if—
- (a) there is sufficient evidence to raise an issue with respect to the reasonable excuse; and
- (b) the contrary is not proved by the prosecution beyond reasonable doubt.

Part 6**Miscellaneous****30. General power of Chief Justice**

- (1) The Chief Justice may designate certain types of proceedings (except for excluded proceedings) as the type of proceeding to be conducted through a remote medium (*designated type of proceeding*).
- (2) In making a designation under subsection (1), the Chief Justice may also—
 - (a) provide that the court may order a different mode of hearing for a proceeding even if it falls within the designated type of proceeding; and
 - (b) specify the factors that have to be considered by the court before making an order under paragraph (a).

31. Power to amend Schedules

The Chief Justice may, by notice published in the Gazette, amend the Schedules.

32. Chief Justice may make rules or give directions

The Chief Justice may make rules or give directions regarding any or all of the following—

- (a) the designation for the purposes of the definition of *remote medium* in section 2;
- (b) the application for a remote hearing order under section 6;
- (c) the application for variation or revocation of a remote hearing order under section 7 or 8;

- (d) the procedures and practice to be followed by a court in conducting a remote hearing;
- (e) the giving of evidence through a remote medium;
- (f) the administration of oaths and affirmations under section 17;
- (g) the transmission of documents for the purposes of a remote hearing under section 19;
- (h) the presentation of objects for the purposes of a remote hearing under section 20;
- (i) the signing of or the writing on documents for the purposes of a remote hearing under section 21;
- (j) the broadcast of an open proceeding under section 24;
- (k) the designation under section 30;
- (l) the better carrying into effect of the provisions and purposes of this Ordinance.

33. Judiciary Administrator may issue administrative instructions

The Judiciary Administrator may issue instructions of an administrative nature relating to any or all of the following—

- (a) the technical details and standards of a remote medium;
- (b) the hardware, software, equipment and other technical requirements for participating in a remote hearing;
- (c) the details of pretesting requirements and contingency measures;
- (d) the details for the broadcast of an open proceeding under Part 4;
- (e) any other arrangements for facilitating the conduct of a remote hearing.

Part 7**Transitional Provisions****34. Interpretation for Part 7**

(1) In this Part—

commencement date (生效日期) means the day on which this Ordinance comes into operation;*existing proceeding* (現有法律程序) means a proceeding that has not yet been disposed of on the commencement date;*subject provision* (標的條文) means section 79I of Cap. 221 as in force immediately before the commencement date.

(2) In this Part, a reference to a proceeding to be conducted remotely is a reference to a proceeding to be conducted through a live television link or any other facility for remote communication.

35. Transitional arrangements for existing proceedings that are NS proceedings

(1) For an existing proceeding that is an NS proceeding—

- (a) every application made before the commencement date under the subject provision in the proceeding is to be regarded as having been withdrawn;
- (b) every application otherwise made before the commencement date for the proceeding to be conducted remotely is to be regarded as having been withdrawn;
- (c) as long as a verdict has not yet been delivered in the proceeding, every permission given under the pre-amended subject provision in the proceeding is to be regarded as having never been given; and

(d) as long as a final judgment has not yet been rendered in the proceeding, every order otherwise made before the commencement date for the proceeding to be conducted remotely is to be regarded as having never been made.

(2) In this section—

pre-amended subject provision (修訂前的標的條文) means section 79I of Cap. 221 as in force immediately before 23 March 2024.**36. Transitional arrangements for existing proceedings that are not NS proceedings**

(1) For an existing proceeding that is not an NS proceeding—

- (a) every application made before the commencement date under the subject provision in the proceeding is to be determined as if this Ordinance had not been enacted;
- (b) every application otherwise made before the commencement date for the proceeding to be conducted remotely is to be determined as if this Ordinance had not been enacted;
- (c) if permission has been given before the commencement date under the subject provision in the proceeding—the old law continues to apply in relation to the taking of evidence from a witness outside Hong Kong; and
- (d) every order otherwise made before the commencement date for the proceeding to be conducted remotely continues to have effect until the disposal of the proceeding.

(2) In this section—

old law (舊有法律) means—

- (a) Part IIIB of Cap. 221 as in force immediately before the commencement date; and

- (b) the Live Television Link (Witnesses outside Hong Kong) Rules (Cap. 221 sub. leg. L) as in force immediately before the commencement date.
-

Part 8

Related Amendments

Division 1—Enactments Amended

37. Enactments amended

The enactments specified in Divisions 2, 3 and 4 are amended as set out in those Divisions.

Division 2—Prohibition of Recording: Summary Offences Ordinance (Cap. 228)

38. Section 7 substituted

Section 7—

Repeal the section

Substitute

“7. Prohibition on recording etc. on court premises

- (1) A person commits an offence if the person, without lawful authority, intentionally records either or both of the following—
 - (a) any court premises;
 - (b) any person on court premises.
- (2) A person commits an offence if—
 - (a) the person, without lawful authority, intentionally publishes an unauthorized court recording or a reproduction of an unauthorized court recording; and

- (b) the person knows that, or is reckless as to whether, the recording concerned is an unauthorized court recording.
- (3) A person commits an offence if—
- (a) the person, without lawful authority, intentionally publishes an authorized court recording or a reproduction of an authorized court recording; and
- (b) the person knows that the person has no lawful authority to publish the recording or reproduction (as the case may be), or is reckless as to whether the person has the lawful authority to publish the recording or reproduction (as the case may be).
- (4) A person who commits an offence under this section is liable on summary conviction to a fine at level 5 and to imprisonment for 1 year.
- (5) It is a defence for a person charged with an offence under subsection (1), (2) or (3) to establish that, at the time of the alleged offence, the person had reasonable excuse for the contravention.
- (6) For the purposes of subsection (5), a person is taken to have established the reasonable excuse for the contravention if—
- (a) there is sufficient evidence to raise an issue that the person had a reasonable excuse; and
- (b) the contrary is not proved by the prosecution beyond reasonable doubt.
- (7) In this section—
- authorized court recording** (獲授權法院紀錄) means a court recording made with lawful authority;

- court** (法院) means a court of competent jurisdiction of Hong Kong Special Administrative Region and includes a magistrate;
- court recording** (法院紀錄) means a recording of either or both of the following—
- (a) any court premises;
- (b) any person on court premises;
- image** (影像) means—
- (a) a portrait, drawing or sketch;
- (b) a photograph, video recording or film; or
- (c) a static or moving visual record;
- proceeding** (法律程序) means a proceeding before a court, and includes part of such a proceeding, regardless of the mode of hearing for the proceeding;
- publish** (發布) includes send, transmit, distribute, circulate, upload, reproduce, make available and disseminate;
- record** (記錄)—
- (a) means—
- (i) any act of creating or generating an image; or
- (ii) any act of creating or generating an audio record; and
- (b) includes any act of making an audio record, a visual record or an audio-visual record, that is transmitted in real time with or without retention or storage in—
- (i) a physical form; or
- (ii) an electronic form from which the record is capable of being reproduced with or without the aid of any device;

unauthorized court recording (未經授權法院紀錄) means a court recording made without lawful authority.

- (8) In this section, a reference to recording any court premises is a reference to recording—
- (a) any place in—
- (i) a building specified in Part 1 of the Schedule; or
- (ii) a part of a building specified in Part 2 of the Schedule; or
- (b) any other place that is used as a courtroom on the date on which the recording is made,
- and a reference to recording any person on court premises, and a reference to a recording of court premises or any person on court premises, are to be construed accordingly.
- (9) For the purposes of subsection (8)(b), a place is used as a courtroom on a particular day if a proceeding is being conducted, or scheduled to be conducted, in that place on that day.
- (10) The Chief Justice may, by notice published in the Gazette, amend the Schedule.

Note—

Please also see Part 5 of the Courts (Remote Hearing) Ordinance (of 2024).”.

39. Section 7A added

After section 7—

Add

“7A. Supplementary provisions to section 7: evidence by certificate for permission of court

- (1) In a proceeding brought under section 7, a certificate stating that a specified permission is not given by the court to a person, and purporting to be signed by or on behalf of the Judiciary Administrator, is admissible in evidence on its production without further proof.
- (2) Unless the contrary is proved, a certificate admitted in evidence under subsection (1)—
- (a) is presumed to be signed by or on behalf of the Judiciary Administrator (as the case may be); and
- (b) is evidence of the facts stated in the certificate.
- (3) In this section—
- specified permission* (指明批准) means a permission to do an act that would otherwise constitute an offence under section 7.”.

40. Schedule added

At the end of the Ordinance—

Add

“Schedule

[s. 7]

Court Premises**Part 1**

1. Court of Final Appeal Building, 8 Jackson Road, Central, Hong Kong.
2. High Court Building, 38 Queensway, Admiralty, Hong Kong.
3. Lands Tribunal Building, 38 Gascoigne Road, Yau Ma Tei, Kowloon, Hong Kong.
4. Labour Tribunal Building, 36 Gascoigne Road, Yau Ma Tei, Kowloon, Hong Kong.
5. Fanling Law Courts Building, 1 Pik Fung Road, Fanling, New Territories, Hong Kong.
6. Kowloon City Law Courts Building, 147M Argyle Street, Kowloon City, Kowloon, Hong Kong.
7. Kwun Tong Law Courts Building, 10 Lei Yue Mun Road, Kwun Tong, Kowloon, Hong Kong.
8. Shatin Law Courts Building, 1 Yi Ching Lane, Shatin, New Territories, Hong Kong.
9. Tuen Mun Law Courts Building, 1 Tuen Hi Road, Tuen Mun, New Territories, Hong Kong.
10. West Kowloon Law Courts Building, 501 Tung Chau Street, Sham Shui Po, Kowloon, Hong Kong.

11. Tsuen Wan Law Courts Building, 70 Tai Ho Road, Tsuen Wan, New Territories, Hong Kong.

Part 2

12. 3/F to 10/F, Eastern Law Courts Building, 29 Tai On Street, Sai Wan Ho, Hong Kong.
13. 10/F to 12/F, Revenue Tower, 5 Gloucester Road, Wanchai, Hong Kong.
14. M1/F to 12/F, 15/F, 16/F, 25/F and 26/F, Wanchai Tower, 12 Harbour Road, Wanchai, Hong Kong.”.

Division 3—Presence of Defendant**Subdivision 1—Criminal Procedure Ordinance (Cap. 221)****41. Section 83U substituted**

Section 83U—

Repeal the section**Substitute****“83U. Right of defendant to be present**

- (1) Subject to subsection (2), a defendant is entitled to be present at the hearing of an appeal.
- (2) Unless with the leave of the Court of Appeal, a defendant is not entitled to be present—
 - (a) at the hearing of an application for leave to appeal;
 - (b) at the hearing of an appeal which is made on the ground of question of law alone; or

- (c) in any proceedings (other than a bail application) preliminary or incidental to an appeal.
- (3) The Court of Appeal may exercise its power to pass sentence on a person although that person is for any reason not present.”.

**Subdivision 2—Hong Kong Court of Final Appeal Ordinance
(Cap. 484)**

42. Section 36 substituted

Section 36—

Repeal the section

Substitute

“36. Right of defendant to be present

- (1) Subject to subsection (2), a defendant is entitled to be present at the hearing of an appeal.
- (2) Unless with the leave of the Court, a defendant is not entitled to be present—
 - (a) at the hearing of an application for leave to appeal;
 - (b) at the hearing of an appeal which is made on the ground of question of law alone; or
 - (c) in any proceedings (other than a bail application) preliminary or incidental to an appeal.”.

Division 4—Court Recording

Subdivision 1—The Rules of the High Court (Cap. 4 sub. leg. A)

- 43. **Order 48, rule 3 amended (record of judgment debtor’s evidence given at examination)**
Order 48, rule 3, after “mechanical,”—
Add
“digital,”.
- 44. **Order 49B, rule 1AA amended (record of judgment debtor’s evidence given at examination)**
Order 49B, rule 1AA, after “mechanical,”—
Add
“digital,”.
- 45. **Order 68, rule 8 amended (mechanical recording)**
 - (1) Order 68, rule 8, heading—
Repeal
“**recording**”
Substitute
“, **digital, electronic or optical recording**”.
 - (2) Order 68, rule 8, after “mechanical”—
Add
“, **digital, electronic or optical**”.

Subdivision 2—Labour Tribunal Ordinance (Cap. 25)**46. Section 19 amended (keeping of summary of evidence, etc.)**

Section 19, after “mechanical,”—

Add

“digital.”

Subdivision 3—Labour Tribunal (General) Rules (Cap. 25 sub. leg. A)**47. Rule 4A amended (keeping of Register of Claims, etc.)**

Rule 4A(b), after “mechanical,”—

Add

“digital.”

Subdivision 4—Criminal Procedure Ordinance (Cap. 221)**48. Section 79 amended (record of proceedings and inspection thereof)**

Section 79(1), after “mechanical”—

Add

“, digital, electronic or optical”.

Subdivision 5—Criminal Procedure (Record of Bail Proceedings) Rules (Cap. 221 sub. leg. I)**49. Rule 2 amended (record of bail proceedings)**

Rule 2(2)(b), after “mechanical,”—

Add

“digital.”

Subdivision 6—Magistrates Ordinance (Cap. 227)**50. Section 34 amended (minute of proceedings)**

Section 34(1), after “mechanical”—

Add

“, digital, electronic or optical”.

51. Section 81 amended (taking of evidence at hearing)

Section 81(3)—

Repeal

“or electrical”

Substitute

“, digital, electronic or optical”.

Subdivision 7—Magistrates (Administrative) Rules (Cap. 227 sub. leg. A)**52. Rule 2 amended (case Register)**

Rule 2(2)(b), after “mechanical,”—

Add

“digital.”

Subdivision 8—The Rules of the District Court (Cap. 336 sub. leg. H)**53. Order 48, rule 3 amended (record of judgment debtor’s evidence given at examination)**

Order 48, rule 3, after “mechanical,”—

Add

“digital.”

54. Order 49B, rule 1AA amended (record of judgment debtor's evidence given at examination)

Order 49B, rule 1AA, after “mechanical,”—

Add

“digital.”

55. Order 68, rule 8 amended (mechanical recording)

(1) Order 68, rule 8, heading—

Repeal

“recording”

Substitute

“, digital, electronic or optical recording”.

(2) Order 68, rule 8, after “mechanical”—

Add

“, digital, electronic or optical”.

Subdivision 9—Small Claims Tribunal Ordinance (Cap. 338)**56. Section 15 amended (keeping of summary of evidence, etc.)**

Section 15, after “mechanical,”—

Add

“digital.”

Subdivision 10—Small Claims Tribunal (General) Rules (Cap. 338 sub. leg. A)**57. Rule 4A amended (keeping of the Register of Claims, etc.)**

Rule 4A(b), after “mechanical,”—

Add

“digital.”

Subdivision 11—Coroners Rules (Cap. 504 sub. leg. B)**58. Rule 14 amended (coroner to take notes of evidence, etc.)**

Rule 14(1)(b)—

Repeal

“electronic or mechanical”

Substitute

“mechanical, digital, electronic or optical”.

Part 9**Consequential Amendments****Division 1—Enactments Amended****59. Enactments amended**

The enactments specified in Divisions 2 to 7 are amended as set out in those Divisions.

Division 2—The Rules of the High Court (Cap. 4 sub. leg. A)**60. Order 70, rule 4 amended (person to take and manner of taking examination)**

Order 70, rule 4(2), (2A) and (3)—

Repeal

“live television link”

Substitute

“live audio-visual link”.

61. Order 70, rule 5 amended (dealing with deposition)

Order 70, rule 5(2)—

Repeal

“live television link”

Substitute

“live audio-visual link”.

62. Order 70, rule 6 amended (claim to privilege)

Order 70, rule 6(1)—

Repeal

“live television link”

Substitute

“live audio-visual link”.

63. Order 70, rule 7 amended (minutes of examination taken by way of live television link)

(1) Order 70, rule 7, heading—

Repeal

“live television link”

Substitute

“live audio-visual link”.

(2) Order 70, rule 7(1)—

Repeal

“live television link”

Substitute

“live audio-visual link”.

Division 3—Evidence Ordinance (Cap. 8)**64. Section 74 amended (interpretation)**

(1) Section 74—

Repeal the definition of *live television link*.

(2) Section 74—

Add in alphabetical order

“*live audio-visual link* (音視直播聯繫) has the meaning given by section 2 of the Courts (Remote Hearing) Ordinance (of 2024);”.

65. Section 76 amended (power of a court in Hong Kong to give effect to an application for assistance)

Section 76(2)(a)—

Repeal

“live television link”

Substitute

“live audio-visual link”.

66. Section 77 amended (privilege of witnesses)

Section 77(2) and (2A)—

Repeal

“live television link” (wherever appearing)

Substitute

“live audio-visual link”.

67. Section 77E amended (issue of letter of request to obtain evidence in criminal proceedings)

(1) Section 77E(2)(a)—

Repeal

“live television link”

Substitute

“live audio-visual link”.

(2) Section 77E—

Repeal subsection (6A)**Substitute**

“(6A) In subsection (2)—

live audio-visual link (音視直播聯繫) has the meaning given by section 2 of the Courts (Remote Hearing) Ordinance (of 2024).”.

Division 4—Criminal Procedure Ordinance (Cap. 221)**68. Part IIIB repealed (taking evidence from witnesses outside Hong Kong by live television link)**

Part IIIB—

Repeal the Part.**69. Section 83V amended (evidence)**

Section 83V—

Repeal subsections (14) and (16).**Division 5—Live Television Link (Witnesses outside Hong Kong) Rules (Cap. 221 sub. leg. L)****70. Live Television Link (Witnesses outside Hong Kong) Rules repealed**

The Live Television Link (Witnesses outside Hong Kong) Rules—

Repeal the Rules.**Division 6—Magistrates Ordinance (Cap. 227)****71. Section 81 amended (taking of evidence at hearing)**

(1) Section 81(4)—

Repeal

“live television link under Part IIIB of the Criminal Procedure Ordinance (Cap. 221)”

Substitute

“live audio-visual link under the Courts (Remote Hearing) Ordinance (of 2024)”.

- (2) Section 81(4)(a) and (b)—

Repeal

“live television link”

Substitute

“live audio-visual link”.

- (3) Section 81—

Repeal subsection (5)

Substitute

- “(5) In subsection (4)—

live audio-visual link (音視直播聯繫) has the meaning given by section 2 of the Courts (Remote Hearing) Ordinance (of 2024).”.

72. Section 118 amended (procedure on hearing appeal)

Section 118(1)(b)—

Repeal

“and (6) to”

Substitute

“, (6) to (13A), (15) and”.

**Division 7—Mutual Legal Assistance in Criminal Matters
Ordinance (Cap. 525)**

73. Section 9 amended (requests by Hong Kong for taking of evidence, etc.)

- (1) Section 9(1)(aa)—

Repeal

“live television link”

Substitute

“live audio-visual link”.

- (2) Section 9—

Repeal subsection (4)

Substitute

- “(4) In subsection (1)—

live audio-visual link (音視直播聯繫) has the meaning given by section 2 of the Courts (Remote Hearing) Ordinance (of 2024).”.

74. Section 10 amended (requests to Hong Kong for taking of evidence, etc.)

- (1) Section 10(1)—

Repeal

“live television link” (wherever appearing)

Substitute

“live audio-visual link”.

- (2) Section 10—

Repeal subsection (15)

Substitute

- “(15) In this section—

live audio-visual link (音視直播聯繫) has the meaning given by section 2 of the Courts (Remote Hearing) Ordinance (of 2024).”.

Schedule 1

[ss. 2 & 31]

Excluded Proceedings

1. A criminal trial
 2. A hearing before the Juvenile Court
-

Schedule 2

[ss. 11 & 31]

Court Premises

1. Court of Final Appeal Building, 8 Jackson Road, Central, Hong Kong.
2. High Court Building, 38 Queensway, Admiralty, Hong Kong.
3. Lands Tribunal Building, 38 Gascoigne Road, Yau Ma Tei, Kowloon, Hong Kong.
4. Labour Tribunal Building, 36 Gascoigne Road, Yau Ma Tei, Kowloon, Hong Kong.
5. Fanling Law Courts Building, 1 Pik Fung Road, Fanling, New Territories, Hong Kong.
6. Kowloon City Law Courts Building, 147M Argyle Street, Kowloon City, Kowloon, Hong Kong.
7. Kwun Tong Law Courts Building, 10 Lei Yue Mun Road, Kwun Tong, Kowloon, Hong Kong.
8. Shatin Law Courts Building, 1 Yi Ching Lane, Shatin, New Territories, Hong Kong.
9. Tuen Mun Law Courts Building, 1 Tuen Hi Road, Tuen Mun, New Territories, Hong Kong.

10. West Kowloon Law Courts Building, 501 Tung Chau Street, Sham Shui Po, Kowloon, Hong Kong.
 11. Tsuen Wan Law Courts Building, 70 Tai Ho Road, Tsuen Wan, New Territories, Hong Kong.
 12. 3/F to 10/F, Eastern Law Courts Building, 29 Tai On Street, Sai Wan Ho, Hong Kong.
 13. 10/F to 12/F, Revenue Tower, 5 Gloucester Road, Wanchai, Hong Kong.
 14. M1/F to 12/F, 15/F, 16/F, 25/F and 26/F, Wanchai Tower, 12 Harbour Road, Wanchai, Hong Kong.
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Explanatory Memorandum

The main purpose of this Bill is to provide for the operation of remote hearings for court proceedings.

2. The Bill contains 9 Parts and 2 Schedules.

Part 1—Preliminary

3. Clause 1 sets out the short title.
4. Clause 2 contains the definitions for the interpretation of the Bill. Some key definitions are *court* (which includes certain Tribunals), *participant*, *proceeding* (which includes part of such a proceeding) and *remote medium*.
5. Clause 3 provides that the Bill applies to the Government.
6. Clause 4 provides that the Bill does not affect the operation of Part IIIA of the Criminal Procedure Ordinance (Cap. 221) (*Cap. 221*) and section 23 of the Fugitive Offenders Ordinance (Cap. 503).
7. Clause 5 expressly states that proceedings of cases concerning national security (*NS proceedings*) cannot be conducted remotely.

Part 2—Remote Hearing Order

8. Clause 6 provides that the court may make a remote hearing order on its own motion or on application.
9. Clause 7 provides that the court may, before making a remote hearing order, invite the parties to a proceeding to make submissions. If the court does not invite submissions before making the order, any party to the proceeding who is dissatisfied with the order may apply to the court to vary or revoke the order.
10. Clause 8 provides that the court may, on its own motion or on application, vary or revoke a remote hearing order if, after

considering the factors under clause 9, the court is satisfied that it is in the interests of justice to do so.

11. Clause 9 sets out the factors to be considered by the court in deciding whether to make, affirm, vary or revoke a remote hearing order for a proceeding.

Part 3—Operation of Remote Hearing

Division 1—Judges and Judicial Officers

12. Clause 10 deems the conduct of a remote hearing by a judge or judicial officer (*JJO*) to have satisfied the requirement under any law to be physically present at the proceeding.
13. Clause 11 sets out the location where a JJO may conduct a remote hearing.
14. Clause 12 provides that a JJO conducting a remote hearing has all the powers that the JJO would have if the remote hearing were a physical hearing, and the participants attended the proceeding in person.

Division 2—Participants

15. Clause 13 provides that a participant may attend a remote hearing at a place within or outside Hong Kong unless otherwise required by law, or an order or direction of the court.
16. Clause 14 aligns the consequences of failure to attend a remote hearing with those of a physical hearing.
17. Clause 15 deems the attendance at a remote hearing to have satisfied the requirement under any law, or any order or direction of the court, to be physically present at the proceeding.
18. Clause 16 stipulates that the law in force in Hong Kong relating to evidence, procedure, contempt of court and perjury applies to a

participant who attends a remote hearing at a place outside Hong Kong.

19. Clause 17 provides for the administration of oaths and affirmations in a remote hearing.

Division 3—Transmission of Documents, Presentation of Objects, etc. in Remote Hearing

20. Clause 18 contains the definitions for the interpretation of Division 3 and provides that the operation of the Electronic Transactions Ordinance (Cap. 553) and the Court Proceedings (Electronic Technology) Ordinance (Cap. 638) would not be affected by that Division.
21. Clause 19 provides for the transmission of documents in a remote hearing.
22. Clause 20 provides for the presentation of objects in a remote hearing.
23. Clause 21 provides for the signing of and writing on documents in a remote hearing.

Part 4—Public Access to Open Proceeding

24. Clause 22 provides for the meaning of *open proceeding*.
25. Clause 23 stipulates that the court must give direction to allow public access to an open proceeding unless it is excepted by the Hong Kong Bill of Rights Ordinance (Cap. 383).
26. Clause 24 provides for the broadcast of an open proceeding that must be accessible by the public.

Part 5—Offences and Penalties

27. Clause 25 contains the definitions for the interpretation of Part 5. Some key definitions are *publish* and *record*.

28. Clause 26 provides for the offences of recording and publishing protected sessions and protected subjects.
29. Clause 27 sets out the offences of recording and publishing a broadcast under clause 24 or a broadcast of a physical hearing.
30. Clause 28 supplements that a certificate signed by or on behalf of the Judiciary Administrator is admissible in evidence as to the facts stated in the certificate.
31. Clause 29 provides that it is a defence for a person charged with an offence under clause 26 or 27 to establish that, at the time of the alleged offence, the person had reasonable excuse for the contravention concerned.

Part 6—Miscellaneous

32. Clause 30 empowers the Chief Justice to designate certain types of proceedings (except for excluded proceedings) as the type of proceeding to be conducted through a remote medium.
33. Clause 31 empowers the Chief Justice to amend the Schedules to revise the list of excluded proceedings and the list of court premises.
34. Clause 32 confers power on the Chief Justice to make rules or issue practice directions regarding the application for a remote hearing order, the procedures and practice to be followed by different courts in conducting a remote hearing, the giving of evidence through a remote medium, etc.
35. Clause 33 empowers the Judiciary Administrator to issue administrative instructions relating to the technical details and standards of a remote medium, the details for the broadcast of an open proceeding, etc.

Part 7—Transitional Provisions

36. Clause 34 contains the definitions for the interpretation of Part 7.

37. Clause 35 provides for the transitional arrangement for existing proceedings that are NS proceedings.
38. Clause 36 provides for the transitional arrangement for existing proceedings that are not NS proceedings.

Part 8—Related Amendments

39. Clauses 38, 39 and 40 amend the Summary Offences Ordinance (Cap. 228) to prohibit recording etc. on court premises.
40. Clauses 41 and 42 amend Cap. 221 and the Hong Kong Court of Final Appeal Ordinance (Cap. 484) in relation to the right of the defendant to be present at the hearing of an appeal.
41. Clauses 43 to 58 standardize the means (i.e. mechanical, digital, electronic or optical) of recording to be used in different courts.

Part 9—Consequential Amendments

42. Clauses 60 to 74 make consequential amendments to various Ordinances to replace the references of live television link with live audio-visual link as defined under the Bill.

Schedule 1—Excluded Proceedings

43. Schedule 1 contains the list of proceedings to be excluded from a remote hearing order under clause 6 and the designation under clause 30.

Schedule 2—Court Premises

44. Schedule 2 lists the court premises for the purposes of clause 11(a).

**Major Related and Consequential Amendments to
Existing Legislation under the
Courts (Remote Hearing) Bill**

It is necessary to make related and consequential amendments to the existing legislation to ensure compatibility and consistency with the Bill. The major amendments are summarised below –

- (a) to expand the scope of the offence regarding photo-taking in court premises. At present, section 7 of the Summary Offences Ordinance (Cap. 228) covers the taking of photos of certain persons (including a judge, a juror, a witness in or a party to a proceeding) inside the court premises, irrespective of whether a court hearing is on-going at the time. Considering its interplay with the proposed offences under the Bill, the Judiciary proposes to expand its scope to also cover recording in other forms (i.e. taking of audio records, videos, livestreaming) of court premises and any person on court premises, and publication of such recordings. The proposed amendments serve to prohibit the making of audio and visual recordings of any court premises and/or any person on court premises, unless in circumstances as approved by the Judiciary, the Court or the Chief Justice (such as swearing-in ceremonies, admission ceremonies, or photo-taking by media at designated locations, e.g. outside the entrance of a court building). Following the expansion of the scope of the offence under section 7 of Cap. 228, we propose to increase the penalty for the offence to a fine at level 5 and to imprisonment for 1 year to properly reflect the severity of committing the offence;
- (b) to dispense with the need for physical attendance of a defendant in certain situations. To enhance the efficiency of administration of justice, the Judiciary proposes amending the Criminal Procedures Ordinance (Cap. 221) and the Hong Kong Court of Final Appeal Ordinance (Cap. 484) such that the attendance of a defendant (whether physical or remote) is to be dispensed with where an appeal is on some grounds involving a question of law alone, on an application for leave to appeal, or any proceedings preliminary or

incidental to an appeal (except bail application), unless the Court gives the defendant leave to be present;

- (c) to standardise the means (i.e. mechanical, digital, electronic or optical) of recording to be used in different courts and tribunals;
- (d) to make consequential amendments to various Ordinances to replace the references of **live television link** with **live audio-visual link** as defined under the Bill; and
- (e) to make consequential amendments to Cap. 221 and its relevant subsidiary legislation by repealing the provisions and rules which currently govern the taking of evidence from witnesses outside Hong Kong by live television link. Upon its enactment, the Bill will apply to the taking of evidence from witnesses outside Hong Kong.

7. Prohibition on taking photographs, etc., in court**(1) Any person who—**

- (a) takes or attempts to take in any court any photograph, or with a view to publication makes or attempts to make in any court any portrait or sketch, of any person, being a judge of the court or a juror or a witness in or a party to any proceeding before the court, whether civil or criminal; or (*Amended L.N. 7 of 1979*)
- (b) publishes any photograph, portrait or sketch taken or made in contravention of the foregoing provisions of this section or any reproduction thereof, (*Amended E.R. 2 of 2023*)

shall be liable to a fine at level 1. (*Amended E.R. 1 of 2021*)

(2) For the purposes of this section—

- (a) the expression **court** (法庭) means any court of justice, including any place in which an inquiry is being held by a magistrate;
- (b) the expression **judge** (法官) includes registrar and magistrate; (*Amended 47 of 1997 s. 10*)
- (c) a photograph, portrait or sketch shall be deemed to be a photograph, portrait or sketch taken or made in court if it is taken or made in the court-room or in the building or in the precincts of the building in which the court is held, or if it is a photograph, portrait or sketch taken or made of the person while he is entering or leaving the court-room or any such building or precincts as aforesaid.

(Added 11 of 1949 s. 6)
[cf. 1925 c. 86 s. 41 U.K.]

(Cross-heading repealed 21 of 2023 s. 2)

83U. Right of appellant to be present

- (1) A defendant shall be entitled to be present at the hearing of an application for leave to appeal and an appeal unless the Court of Appeal, where it considers it necessary in the interests of justice or public order or security to do so, orders otherwise. *(Replaced 79 of 1995 s. 50)*
- (2) *(Repealed 79 of 1995 s. 50)*
- (3) The power of the Court of Appeal to pass sentence on a person may be exercised although he is for any reason not present.

(Added 34 of 1972 s. 18)
[cf. 1968 c. 19 s. 22 U.K.]

36. Presence of defendant

The defendant shall be entitled to be present at the hearing of an application for leave to appeal and an appeal unless the Court, where it considers it necessary in the interests of justice or public order or security to do so, orders otherwise.

Order 48**Examination of Judgment Debtor, etc.****1. Order for examination of judgment debtor (O. 48, r. 1)**

(1) Where a person has obtained a judgment or order for the payment by some other person (hereinafter referred to as *the judgment debtor*) of money, the Court may, on an application made ex parte by the person entitled to enforce the judgment or order, order the judgment debtor or, if the judgment debtor is a body corporate, an officer thereof, to attend before the Registrar or such officer as the Court may appoint and be orally examined on the questions—

- (a) whether any and, if so, what debts are owing to the judgment debtor, and
- (b) whether the judgment debtor has any and, if so, what other property or means of satisfying the judgment or order,

and the Court may also order the judgment debtor or officer to produce any books or documents in the possession of the judgment debtor relevant to the questions aforesaid at the time and place appointed for the examination.

- (2) An order under this rule must be served personally on the judgment debtor and on any officer of a body corporate ordered to attend for examination.
- (3) Any difficulty arising in the course of an examination under this rule before the Registrar or officer, including any dispute with respect to the obligation of the person being examined to answer any question put to him, may be referred to a judge and he may determine it or give such directions for determining it as he thinks fit.

2. Examination of party liable to satisfy other judgment (O. 48, r. 2)

Where any difficulty arises in or in connection with the enforcement of any judgment or order, other than such a judgment or order as is mentioned in rule 1, the Court may make an order under that rule for the attendance of the party liable to satisfy the judgment or order and for his examination on such questions as may be specified in

the order, and that rule shall apply accordingly with the necessary modifications.

3. Record of judgment debtor's evidence given at examination (O. 48, r. 3)

The Registrar or officer conducting the examination shall cause to be recorded, by means of shorthand notes or mechanical, electronic or optical device or otherwise, the evidence given by the judgment debtor or other person at the examination.

(L.N. 108 of 2002)

Order 49B

Execution and Enforcement of Judgment for Money by Imprisonment

(L.N. 122 of 2017)

1. Securing attendance at examination (O. 49B, r. 1)

(1) Where a judgment for the payment of a specified sum of money is, wholly or partly, unsatisfied, the Court, on an ex parte application of the judgment creditor, may order that the judgment debtor be examined under rule 1A and shall, for the purpose of securing the attendance of the judgment debtor at an examination under rule 1A either—

- (a) order the judgment debtor, by an order which shall be served personally upon him, to appear before the Court at a time appointed by the Court, with such documents or records as the Court may specify; or
- (b) where it appears to the Court that there is reasonable cause, from all the circumstances of the case, including the conduct of the judgment debtor, to believe that an order under paragraph (a) may be ineffective to secure the attendance of the judgment debtor for examination, order that he be arrested and brought before the Court before the expiry of the day after the day of arrest.

(2) On an application under paragraph (1), the Court may make an order prohibiting the judgment debtor from leaving Hong Kong.

(3) Where a judgment debtor fails to appear as ordered under paragraph (1)(a), the Court may order that he be arrested and brought before the Court for examination before the expiry of the day after the day of arrest.

(4) Section 71 of the Interpretation and General Clauses Ordinance (Cap. 1) shall not apply to this rule.

- (5) The order for arrest shall be in Form No. 102 in Appendix A.

1A. Examination of debtor (O. 49B, r. 1A)

- (1) Upon appearance of the judgment debtor for examination, he shall give evidence and he may be examined on oath by the judgment creditor and the Court; and the Court may receive such other evidence as it thinks fit.
- (2) The judgment debtor shall, at his examination, make a full disclosure of all his assets, liabilities, income and expenditure and of the disposal of any assets or income and shall, subject to the directions of the Court, answer all questions put to him.
- (3) Where the examination is adjourned, the Court shall order that the judgment debtor appear at the resumption of the examination and may—
- (a) order that he be prohibited from leaving Hong Kong; or
 - (b) where it appears to the Court that there is reasonable cause, from all the circumstances of the case, including any evidence heard by the Court and the conduct of the judgment debtor, to believe that he may not appear at the resumption of the examination, order that he be imprisoned until that resumption.
- (4) The order under paragraph (3)(b) shall be in Form No. 103 in Appendix A.

1AA. Record of judgment debtor's evidence given at examination (O. 49B, r. 1AA)

The Court shall cause to be recorded, by means of shorthand notes or mechanical, electronic or optical device or otherwise, the evidence given by the judgment debtor at the examination conducted under rule 1A.

(L.N. 108 of 2002)

1B. Power of the Court following examination (O. 49B, r. 1B)

- (1) Where the Court is satisfied, following the examination conducted under rule 1A or following an examination conducted under Order 48, that the judgment debtor—
- (a) is able to satisfy the judgment, wholly or partly; or
 - (b) has disposed of assets with a view to avoiding satisfaction of the judgment or the liability which is the subject of the judgment, wholly or partly; or

- (c) has wilfully failed to make a full disclosure as required under rule 1A(2) or at the examination under Order 48 or to answer any question as provided under that rule or Order,

it may, in its discretion, order the imprisonment of the judgment debtor for a period not exceeding 3 months.

- (2) (a) Where the Court is satisfied, following the examination conducted under rule 1A or following an examination conducted under Order 48, that the judgment debtor is able or will be able to satisfy the judgment, wholly or partly, by instalments or otherwise, it may order him to satisfy the judgment in such manner as it thinks fit.
- (b) The Court may, on application, discharge, vary or suspend an order made under sub-paragraph (a), either absolutely or subject to such conditions as it thinks fit.
- (3) (a) Where the judgment debtor fails to comply with an order made under paragraph (2), the judgment creditor may apply to the Court, on not less than 2 clear days notice to the judgment debtor, for an order for the imprisonment of the judgment debtor and the Court may, unless the judgment debtor shows good cause, order the imprisonment of the judgment debtor for a period not exceeding 3 months.
- (b) Notwithstanding rule 7, the Court may order the imprisonment of the judgment debtor on each occasion of a failure to comply with an order under paragraph (2) or more than once in respect of a continuing failure to comply with an order under that paragraph.
- (4) The order for imprisonment shall be in Form No. 104 in Appendix A.
- (5) The application under paragraph (3)(a) shall be in Form No. 105 in Appendix A.
- (6) An order under paragraph (1), (2) or (3) shall not prevent execution of the judgment by other means unless the Court so directs.
- (7) An order for imprisonment of a judgment debtor shall be made in open court.

1C. Imprisonment not to satisfy debt (O. 49B, r. 1C)

An order for imprisonment under this Order shall not satisfy or extinguish any judgment debt.

2. Support and maintenance allowance to prisoner for debt (O. 49B, r. 2)

When a judgment debtor is committed to prison in execution of the judgment the Court shall fix whatever monthly allowance it may think sufficient for his support and maintenance, not exceeding \$725 per diem, which shall be paid by the person at whose instance the judgment has been executed to the Commissioner of Correctional Services by monthly payments in advance, the second and subsequent such payments to be made not less than 7 days before the last preceding such payment is exhausted.

(L.N. 74 of 1989; L.N. 403 of 1992; L.N. 167 of 1994; L.N. 419 of 1995; L.N. 94 of 2014)

3. Removal to hospital of prisoner for debt in case of serious illness (O. 49B, r. 3)

(1) In case of the serious illness of any person imprisoned in execution of a judgment it shall be lawful for the Court, on the certificate of the medical officer of the prison in which he is confined or of the Director of Health of the Government, to make an order for the removal of the judgment debtor to a hospital and for his treatment there under custody until further order. *(L.N. 76 of 1989)*

(2) In any such case the period of the judgment debtor's stay in hospital shall be counted as part of his term of imprisonment and his support and maintenance money shall be paid as if no such order had been made.

4. Release of prisoner for debt (O. 49B, r. 4)

Every person arrested or imprisoned in execution of a judgment shall be released at any time on the judgment being fully satisfied, or at the request of the person at whose instance the judgment has been executed, or on such person omitting to pay his support and maintenance money.

5. Recovery of amount of support and maintenance money (O. 49B, r. 5)

All sums paid by a plaintiff for the support and maintenance of a person imprisoned in execution of a judgment shall be added to the costs of the judgment and shall be recoverable by the attachment and sale of the property of the judgment debtor; but the judgment debtor shall not be detained in custody or arrested on account of any sum so paid.

6. Recovery of costs of execution (O. 49B, r. 6)

The costs of obtaining and executing the order and warrant of arrest or imprisonment shall be added to the costs of the judgment and shall be recoverable accordingly.

7. Effect of discharge of prisoner for debt (O. 49B, r. 7)

Subject to rule 1B(3)(b), when any person imprisoned in execution of a judgment has been once discharged he shall not again be imprisoned on account of the same judgment, but his property shall continue liable, under the ordinary rules, to attachment and sale until the judgment is fully satisfied.

8. Meaning of *judgment creditor* (O. 49B, r. 8)

In this Order, *judgment creditor* (判定債權人) includes any person entitled to enforce the judgment.

Order 68

Official Shorthand Note

1. Official shorthand note of all evidence, etc.(O. 68, r. 1)

(1) In every action or other proceeding in the Court of First Instance which is tried or heard with witnesses, an official shorthand note shall, unless the judge otherwise directs, be taken of any evidence given orally in court and of any summing up by the judge and of any judgment delivered by him, and, if any party so requires the note so taken shall be transcribed and such number of transcripts as any party may demand shall be supplied to him at the charges authorized by any scheme in force providing for the taking of official shorthand notes of proceedings in the Court of First Instance. (25 of 1998 s. 2)

(2) Nothing in this rule shall be construed as prohibiting the supply of transcripts to persons not parties to the proceedings.

(3) The powers of the Court of Appeal under this Order may be exercised by a single judge of that Court or by the registrar of civil appeals.

2. Evidence when not to be transcribed (O. 68, r. 2)

(1) If the judge intimates that in the event of an appeal his note will be sufficient, the shorthand note of the evidence need not be transcribed for the purposes of an appeal.

- (2) If the parties agree or the judge is of opinion that the evidence or some part of the evidence of any witness would, in the event of an appeal, be of no assistance to the Court of Appeal, the shorthand note of such evidence need not be transcribed for the purposes of an appeal.
- (3) If any party requires a transcript of any such evidence as aforesaid the charge therefor shall be borne by that party in any event.

3. Payment for transcripts out of public funds: excepted proceedings (O. 68, r. 3)

Rules 4 and 5 shall not apply in relation to a transcript of a note taken in proceedings in connection with which legal aid might have been given under the Legal Aid Ordinance (Cap. 91) whether or not such aid was given thereunder to any party to the proceedings.

4. Payment for transcripts for the Court of Appeal (O. 68, r. 4)

- (1) An appellant shall not be required to pay for the transcript to which a certificate given under this rule relates but, except as aforesaid, any transcript required for the Court of Appeal shall be paid for by the appellant in the first instance.
- (2) Where the judge by whom any such proceeding as is referred to in rule 1 was tried or heard or the Court of Appeal is satisfied that an appellant in that proceeding is in such poor financial circumstances that the cost of a transcript would be an excessive burden on him, and, in the case of a transcript of evidence, that there is reasonable ground for the appeal, the judge or the Court of Appeal, as the case may be, may certify that the case is one in which it is proper that the said cost should be borne by public funds.
- (3) An application for a certificate under this rule must be made in the first instance to the judge; if the application is refused, the application (if any) to the Court of Appeal must be made within 7 days after the refusal.
- (4) Where an application is made to the Court of Appeal for a certificate under this rule, then, if the Court of Appeal is of opinion that for the purpose of determining the application it is necessary for that Court to see a transcript of the summing up and judgment, with or without a transcript of the evidence, the Court of Appeal may certify that both transcripts or, as the case may be, only a transcript of the summing up and judgment may properly be supplied for the use of that Court at the expense of public funds.

- (5) No transcript supplied for the use of the Court of Appeal under a certificate given under paragraph (4) shall be handed to the appellant except by direction of the Court of Appeal.
- (6) Where the judge or the Court of Appeal certifies under paragraph (2) that there is reasonable ground for the appeal, the appellant may be supplied with as many free copies of the transcript referred to in the certificate as will, together with any free copies already supplied under a certificate given under paragraph (4), make up a total of one for his own use and three for the use of the Court of Appeal.
- (7) References in this rule to an appellant include references to an intending appellant.

5. Payment for transcript for poor respondent (O. 68, r. 5)

- (1) Where the judge by whom any such proceeding as is referred to in rule 1 was tried or heard or the Court of Appeal is satisfied that the respondent to an appeal in that proceeding is in such poor financial circumstances that the cost of obtaining a transcript, or a specified part thereof, for the purpose of resisting the appeal would be an excessive burden on him, the judge or the Court of Appeal, as the case may be, may certify that the case is one in which it is proper that the cost of the transcript or that part thereof, as the case may be, should be borne by public funds, and where such a certificate is given the respondent shall not be required to pay the said cost.
- (2) Rule 4(3) shall apply in relation to an application for a certificate under this rule as it applies in relation to an application for a certificate under that rule.

8. Mechanical recording (O. 68, r. 8)

In this Order any reference to a shorthand note of any proceedings shall be construed as including a reference to a record of the proceedings made by mechanical means.

8A. Definition (O. 68, r. 8A)

In this Order *transcript* (謄本) includes the transcript of the official shorthand note and any official typescript of the Judge's manuscript note.

19. Keeping of summary of evidence, etc.

The presiding officer shall keep or cause to be kept a summary, whether by means of shorthand notes or mechanical, electronic or optical means or otherwise, of the evidence, submissions or statements made or given and of any point of law raised at the hearing and of his decision on such point of law.

(Amended 18 of 1974 s. 7; 25 of 1999 s. 6)

4A. Keeping of Register of Claims, etc.

The Register of Claims maintained under rule 4 and the summary of evidence, submissions or statements and of any point of law and of the presiding officer's decision thereon kept under section 19 of the Ordinance may be kept—

- (a) in the form of a book;
- (b) in the form of a disc, card, tape, microchips, sound track or other device on or in which information or data is recorded or stored by mechanical, electronic, optical or other means; or
- (c) partly in the form referred to in paragraph (a) and partly in the form referred to in paragraph (b).

(25 of 1999 s. 19)

Record of proceedings

79. Record of proceedings and inspection thereof

- (1) A record (whether made by means of shorthand notes, by mechanical means or otherwise) kept in accordance with rules made under section 9, or such other record as the trial judge may direct, shall be taken of the proceedings at the trial of any person on indictment who, if convicted, is entitled or may be authorized to appeal to the Court of Appeal.
- (2) A record taken under subsection (1) shall be open for inspection without fee or reward by—
 - (a) a judge;
 - (b) the Registrar;
 - (c) the Secretary for Justice; (*Amended L.N. 362 of 1997*)
 - (d) a judge or deputy judge of the District Court;
 - (e) the registrar of the District Court;
 - (f) a party interested or his legal representative;
 - (g) any person, or his legal representative, who satisfies the Registrar that such inspection is reasonably required in connection with actual or potential civil or criminal proceedings by or against that person;
 - (h) any person who satisfies the Registrar that there is good and sufficient reason for that inspection.
- (3) A decision by the Registrar to refuse permission to inspect shall be final.
- (4) The right to inspect under subsection (2) shall include the right to a copy of the record subject, in the case of applicants under subsection (2)(g) and (h), to payment of the prescribed fee.
- (5) Disclosure of the contents of a record under subsection (2) shall not amount to a breach of the Rehabilitation of Offenders Ordinance (Cap. 297).
- (6) For the purposes of subsection (2) *a party interested* (有利害關係的一方) means the prosecutor or the person convicted or any person named in, or immediately affected by, any order made by the trial judge or any other person authorized to act on behalf of any such person.

(Replaced 13 of 1995 s. 43)

2. Record of bail proceedings

- (1) For the purposes of section 9Q of the Ordinance, a record of all bail proceedings shall be maintained and shall consist of a summary of all matters relevant to such proceedings including any application for admission to bail, the grounds of such application, the grounds of any objection to any admission to bail, the adjudication of the court and the reasons for such adjudication.
- (2) A record of all bail proceedings kept under subrule (1) may be kept—
 - (a) in writing;
 - (b) in the form of a disc, card, tape, microchip, sound track or other device on or in which information or data is recorded or stored by mechanical, electronic, optical or other means; or
 - (c) partly in the form referred to in paragraph (a) and partly in the form referred to in paragraph (b).
- (3) An extract of the record of bail proceedings mentioned in subrule (1) in the form prescribed in the Schedule shall be made available to the accused person and to counsel and solicitors engaged in the proceedings.

34. Minute of proceedings

- (1) In all proceedings under this Part the magistrate at the hearing shall take or cause to be taken a full minute in writing, or a record whether by means of shorthand notes or mechanical means or otherwise, so far as circumstances permit, of the following matters— (*See Form 19*) (*Amended 51 of 1995 s. 15*)
 - (a) the nature of the complaint, if an oral complaint has been made; (*Amended 49 of 1965 s. 7*)
 - (b) the names of the complainant, informant or prosecutor, and of the defendant, and of the respective witnesses on either side;
 - (c) the evidence or depositions of the witnesses;
 - (d) objections to the admissibility of evidence and whether the same have been allowed or disallowed; and
 - (e) the fines, if any, paid into court.
- (2) The minute shall, immediately after the close of the case, be handed to the magistrates' clerk for safe custody.
- (3) The minute or record may be kept in either or both of the official languages. (*Added 51 of 1995 s. 15*)

81. Taking of evidence at hearing

- (1) At a preliminary inquiry where the accused is present at the hearing, the magistrate shall, before committing the accused to prison for trial or before admitting him to bail to take his trial, in the presence of the accused proceed to take evidence for and on behalf of the prosecutor and his witnesses in the same manner, subject to subsection (3), as is hereinbefore provided for the taking of the evidence of the complainant or informant and his witnesses on a complaint or information for an offence punishable on summary conviction. (*See Form 19*) (*Amended 49 of 1965 s. 14; 48 of 1983 s. 3*)
- (2) The accused or his counsel shall be at liberty to put questions to any witnesses produced against him, and, subject to subsection (3), the depositions or evidence of the prosecutor and his witnesses shall, in the presence of the accused, be read over to and signed respectively by the witnesses who have been so examined, and shall also be signed by the magistrate taking the same.

- (3) The magistrate may cause the deposition or evidence of a witness who is examined under subsection (2) to be recorded by way of shorthand note or mechanical or electrical recording device and, thereafter, reduced into writing; and where—
- (a) that writing is made available to the accused or his counsel; and
 - (b) the witness thereafter, on oath and in the presence of the accused, confirms the accuracy of that writing,
- the deposition or evidence of that witness shall be treated, for all purposes, including section 70 of the Evidence Ordinance (Cap. 8), as if it had been reduced into writing immediately, read over to the witness and signed by him in the presence of the accused. (*Added 75 of 1984 s. 2*)
- (4) Where the evidence of a witness is taken by way of a live television link under Part IIIB of the Criminal Procedure Ordinance (Cap. 221)—
- (a) the requirement in subsection (2) that the deposition or evidence of the witness shall be signed by the witness in the presence of the accused shall be deemed to have been complied with if, in the presence of the accused, the witness confirms on oath the accuracy of the deposition or evidence by way of a live television link; and
 - (b) where subsection (3) applies, paragraph (b) of that subsection shall be deemed to have been complied with if, after the writing concerned is made available to the accused or his counsel, and in the presence of the accused, the witness confirms on oath the accuracy of the writing concerned by way of a live television link. (*Added 23 of 2003 s. 23*)
- (5) In subsection (4), **live television link** (電視直播聯繫) has the meaning assigned to it by section 79H of the Criminal Procedure Ordinance (Cap. 221). (*Added 23 of 2003 s. 23*)

(Amended 75 of 1984 s. 2)
[cf. 1848 c. 42 s. 17 U.K.]

2. Case Register

- (1) There shall be kept in respect of each magistracy a case register in which shall be entered particulars, as required, of every proceeding or matter before a magistrate there sitting taken from the relevant— (*L.N. 331 of 1995*)
- (a) information; or
 - (b) complaint; or
 - (c) claim; or
 - (d) charge sheet; and
 - (e) the magistrate's minutes referred to in section 34 of the Ordinance.
- (2) A case register kept under subrule (1) may be kept—
- (a) in the form of a book;
 - (b) in the form of a disc, card, tape, microchip, sound track or other device on or in which information or data is recorded or stored by mechanical, electronic, optical or other means; or
 - (c) partly in the form referred to in paragraph (a) and partly in the form referred to in paragraph (b). (*L.N. 331 of 1995*)
- (3) A case register kept under subrule (1) may be divided into parts. (*L.N. 331 of 1995*)
- (4)-(5) (*Repealed L.N. 331 of 1995*)

(*G.N.A. 91 of 1960*)

Order 48**Examination of Judgment Debtor, etc.****1. Order for examination of judgment debtor (O. 48, r. 1)**

(1) Where a person has obtained a judgment or order for the payment by some other person (hereinafter referred to as *the judgment debtor*) of money, the Court may, on an application made ex parte by the person entitled to enforce the judgment or order, order the judgment debtor or, if the judgment debtor is a corporation, an officer thereof, to attend before a master and be orally examined on the questions—

- (a) whether any and, if so, what debts are owing to the judgment debtor; and
- (b) whether the judgment debtor has any and, if so, what other property or means of satisfying the judgment or order,

and the Court may also order the judgment debtor or officer to produce any books or documents in the possession of the judgment debtor relevant to the questions aforesaid at the time and place appointed for the examination.

- (2) An order under this rule must be served personally on the judgment debtor and on any officer of a corporation ordered to attend for examination.
- (3) Any difficulty arising in the course of an examination under this rule before a master may be referred to a judge and he may determine it or give such directions for determining it as he thinks fit.

2. Examination of party liable to satisfy other judgment (O. 48, r. 2)

Where any difficulty arises in or in connection with the enforcement of any judgment or order, other than such a judgment or order as is mentioned in rule 1, the Court may make an order under that rule for the attendance of the party liable to satisfy the judgment or order and for his examination on such questions as may be specified in the order, and that rule shall apply accordingly with the necessary modifications.

3. Record of judgment debtor's evidence given at examination (O. 48, r. 3)

A master conducting the examination shall cause to be recorded, by means of shorthand notes or mechanical, electronic or optical device or otherwise, the evidence given by the judgment debtor or other person at the examination.

(L.N. 153 of 2008)

Order 49B

Execution and Enforcement of Judgment for Money by Imprisonment

1. Securing attendance at examination (O. 49B, r. 1)

- (1) Where a judgment for the payment of a specified sum of money is, wholly or partly, unsatisfied, the Court, on an ex parte application of the judgment creditor, may order that the judgment debtor be examined under rule 1A and shall, for the purpose of securing the attendance of the judgment debtor at an examination under rule 1A either—
 - (a) order the judgment debtor, by an order which shall be served personally upon him, to appear before the Court at a time appointed by the Court, with such documents or records as the Court may specify; or
 - (b) where it appears to the Court that there is reasonable cause, from all the circumstances of the case, including the conduct of the judgment debtor, to believe that an order under subparagraph (a) may be ineffective to secure the attendance of the judgment debtor for examination, order that he be arrested and brought before the Court before the expiry of the day after the day of arrest.
- (2) On an application under paragraph (1), the Court may make an order prohibiting the judgment debtor from leaving Hong Kong.
- (3) Where a judgment debtor fails to appear as ordered under paragraph (1)(a), the Court may order that he be arrested and brought before the Court for examination before the expiry of the day after the day of arrest.
- (4) Section 71 of the Interpretation and General Clauses Ordinance (Cap. 1) shall not apply to this rule.
- (5) The order for arrest under paragraph (3) shall be in Form No. 102 in Appendix A.

1A. Examination of judgment debtor (O. 49B, r. 1A)

- (1) Upon appearance of the judgment debtor for examination, he shall give evidence and he may be examined on oath by the judgment creditor and the Court; and the Court may receive such other evidence as it thinks fit.
- (2) The judgment debtor shall, at his examination, make a full disclosure of all his assets, liabilities, income and expenditure and of the disposal of any assets or income and shall, subject to the directions of the Court, answer all questions put to him.
- (3) Where the examination is adjourned, the Court shall order that the judgment debtor appear at the resumption of the examination and may—
 - (a) order that he be prohibited from leaving Hong Kong; or
 - (b) where it appears to the Court that there is reasonable cause, from all the circumstances of the case, including any evidence heard by the Court and the conduct of the judgment debtor, to believe that he may not appear at the resumption of the examination, order that he be imprisoned until that resumption.
- (4) The order for imprisonment under paragraph (3)(b) shall be in Form No. 103 in Appendix A.

1AA. Record of judgment debtor's evidence given at examination (O. 49B, r. 1AA)

The Court shall cause to be recorded, by means of shorthand notes or mechanical, electronic or optical device or otherwise, the evidence given by the judgment debtor at the examination conducted under rule 1A.

(L.N. 153 of 2008)

1B. Power of Court following examination (O. 49B, r. 1B)

- (1) Where the Court is satisfied, following the examination conducted under rule 1A or following an examination conducted under Order 48, that the judgment debtor—
 - (a) is able to satisfy the judgment, wholly or partly; or
 - (b) has disposed of assets with a view to avoiding satisfaction of the judgment or the liability which is the subject of the judgment, wholly or partly; or
 - (c) has wilfully failed to make a full disclosure as required under rule 1A(2) or at the examination under Order 48 or to answer any question as provided under that rule or Order,

the Court may, in its discretion, order the imprisonment of the judgment debtor for a period not exceeding 3 months.

- (2) (a) Where the Court is satisfied, following the examination conducted under rule 1A or following an examination conducted under Order 48, that the judgment debtor is able or will be able to satisfy the judgment, wholly or partly, by instalments or otherwise, it may order him to satisfy the judgment in such manner as it thinks fit.
- (b) The Court may, on application, discharge, vary or suspend an order made under subparagraph (a), either absolutely or subject to such conditions as it thinks fit.
- (3) (a) Where the judgment debtor fails to comply with an order made under paragraph (2), the judgment creditor may apply to the Court, on not less than 2 clear days' notice to the judgment debtor, for an order for the imprisonment of the judgment debtor and the Court may, unless the judgment debtor shows good cause, order the imprisonment of the judgment debtor for a period not exceeding 3 months. (*E.R. 1 of 2022*)
- (b) Notwithstanding rule 7, the Court may order the imprisonment of the judgment debtor on each occasion of a failure to comply with an order made under paragraph (2) or more than once in respect of a continuing failure to comply with an order made under that paragraph.
- (4) The order for imprisonment under paragraph (1) shall be in Form No. 104 in Appendix A.
- (5) The application under paragraph (3)(a) shall be in Form No. 105 in Appendix A.
- (6) An order under paragraph (1), (2) or (3) shall not prevent execution of the judgment by other means unless the Court so directs.
- (7) An order for imprisonment of a judgment debtor shall be made in open court.

1C. Imprisonment not to satisfy debt (O. 49B, r. 1C)

An order for imprisonment under this Order shall not satisfy or extinguish any judgment debt.

2. Support and maintenance allowance to prisoner for debt (O. 49B, r. 2)

When a judgment debtor is committed to prison in execution of the judgment the Court shall fix whatever monthly allowance it may

think sufficient for his support and maintenance, not exceeding \$660 per diem, which shall be paid by the person at whose instance the judgment has been executed to the Commissioner of Correctional Services by monthly payments in advance, the second and subsequent such payments to be made not less than 7 days before the last preceding such payment is exhausted.

3. Removal to hospital of prisoner for debt in case of serious illness (O. 49B, r. 3)

- (1) In case of the serious illness of any person imprisoned in execution of a judgment it shall be lawful for the Court, on the certificate of the medical officer of the prison in which he is confined or of the Director of Health, to make an order for the removal of the judgment debtor to a hospital and for his treatment there under custody until further order.
- (2) In any such case the period of the judgment debtor's stay in hospital shall be counted as part of his term of imprisonment and his support and maintenance money shall be paid as if no such order had been made.

4. Release of prisoner for debt (O. 49B, r. 4)

Every person arrested or imprisoned in execution of a judgment shall be released at any time on the judgment being fully satisfied, or at the request of the person at whose instance the judgment has been executed, or on such person omitting to pay his support and maintenance money.

5. Recovery of amount of support and maintenance money (O. 49B, r. 5)

All sums paid by a plaintiff for the support and maintenance of a person imprisoned in execution of a judgment shall be added to the costs of the judgment and shall be recoverable by the attachment and sale of the property of the judgment debtor; but the judgment debtor shall not be detained in custody or arrested on account of any sum so paid.

6. Recovery of costs of execution (O. 49B, r. 6)

The costs of obtaining and executing the order and warrant of arrest or imprisonment shall be added to the costs of the judgment and shall be recoverable accordingly.

7. Effect of discharge of prisoner for debt (O. 49B, r. 7)

Subject to rule 1B(3)(b), when any person imprisoned in execution of a judgment has been once discharged he shall not again be

imprisoned on account of the same judgment, but his property shall continue liable, under the ordinary rules, to attachment and sale until the judgment is fully satisfied.

8. Meaning of *judgment creditor* (O. 49B, r. 8)

In this Order *judgment creditor* (判定債權人) includes any person entitled to enforce the judgment.

Order 68

Official Shorthand Note

1. Official shorthand note of all evidence, etc. (O. 68, r. 1)

- (1) In every action or other proceeding in the Court which is tried or heard with witnesses, an official shorthand note shall, unless the judge otherwise directs, be taken of any evidence given orally in court and of any judgment delivered by the judge, and, if any party so requires the note so taken shall be transcribed and such number of transcripts as any party may demand shall be supplied to him at the charges authorized by any scheme in force providing for the taking of official shorthand notes of proceedings in the Court.
- (2) Nothing in this rule shall be construed as prohibiting the supply of transcripts to persons not parties to the proceedings.

2. Evidence when not to be transcribed (O. 68, r. 2)

- (1) If the judge intimates that in the event of an appeal his note will be sufficient, the shorthand note of the evidence need not be transcribed for the purposes of an appeal.
- (2) If the parties agree or the judge is of opinion that the evidence or some part of the evidence of any witness would, in the event of an appeal, be of no assistance to the Court of Appeal, the shorthand note of such evidence need not be transcribed for the purposes of an appeal.
- (3) If any party requires a transcript of any such evidence as aforesaid the charge therefor shall be borne by that party in any event.

3. Payment for transcripts out of public funds: excepted proceedings (O. 68, r. 3)

Rules 4 and 5 shall not apply in relation to a transcript of a note taken in proceedings in connection with which legal aid might have been given under the Legal Aid Ordinance (Cap. 91) whether or not such aid was given thereunder to any party to the proceedings.

4. Payment for transcripts for the Court of Appeal (O. 68, r. 4)

- (1) An appellant shall not be required to pay for the transcript to which a certificate given under this rule relates but, except as aforesaid, any transcript required for the Court of Appeal shall be paid for by the appellant in the first instance.
- (2) Where the judge by whom any such proceeding as is referred to in rule 1 was tried or heard or the Court of Appeal is satisfied that an appellant in that proceeding is in such poor financial circumstances that the cost of a transcript would be an excessive burden on him, and, in the case of a transcript of evidence, that there is reasonable ground for the appeal, the judge or the Court of Appeal, as the case may be, may certify that the case is one in which it is proper that the said cost should be borne by public funds.
- (3) An application for a certificate under this rule must be made in the first instance to the judge; if the application is refused, the application (if any) to the Court of Appeal must be made within 7 days after the refusal.
- (4) Where an application is made to the Court of Appeal for a certificate under this rule, then, if the Court of Appeal is of opinion that for the purpose of determining the application it is necessary for that Court to see a transcript of the reasons for decision and judgment, with or without a transcript of the evidence, the Court of Appeal may certify that both transcripts or, as the case may be, only a transcript of the reasons for decision and judgment may properly be supplied for the use of that Court at the expense of public funds.
- (5) No transcript supplied for the use of the Court of Appeal under a certificate given under paragraph (4) shall be handed to the appellant except by direction of the Court of Appeal.
- (6) Where the judge or the Court of Appeal certifies under paragraph (2) that there is reasonable ground for the appeal, the appellant may be supplied with as many free copies of the transcript referred to in the certificate as will, together with any free copies already supplied under a certificate given under paragraph (4), make up a total of one for his own use and three for the use of the Court of Appeal.
- (7) References in this rule to an appellant include references to an intending appellant.

5. Payment for transcript for poor respondent (O. 68, r. 5)

- (1) Where the judge by whom any such proceeding as is referred to in rule 1 was tried or heard or the Court of Appeal is satisfied that the respondent to an appeal in that proceeding is in such poor financial circumstances that the cost of obtaining a transcript, or a specified part thereof, for the purpose of resisting the appeal would be an excessive burden on him, the judge or the Court of Appeal, as the case may be, may certify that the case is one in which it is proper that the cost of the transcript or that part thereof, as the case may be, should be borne by public funds, and where such a certificate is given the respondent shall not be required to pay the said cost.
- (2) Rule 4(3) shall apply in relation to an application for a certificate under this rule as it applies in relation to an application for a certificate under that rule.

8. Mechanical recording (O. 68, r. 8)

In this Order any reference to a shorthand note of any proceedings shall be construed as including a reference to a record of the proceedings made by mechanical means.

8A. Definition (O. 68, r. 8A)

In this Order *transcript* (謄本) includes the transcript of the official shorthand note and any official typescript of the judge's manuscript note.

15. Keeping of summary of evidence, etc.

The adjudicator shall keep or cause to be kept a summary, whether by means of shorthand notes or mechanical, electronic or optical means or otherwise, of the evidence, submissions or statements made or given in proceedings in the tribunal and of any point of law and of his decision thereon.

(Amended 28 of 1999 s. 7)

4A. Keeping of the Register of Claims, etc.

The Register of Claims kept under rule 4 and the summary kept under section 15 of the Ordinance may be kept—

- (a) in the form of a book;
- (b) in the form of a disc, card, tape, microchip, sound track or other device on or in which information or data is recorded or stored by mechanical, electronic, optical or other means; or
- (c) partly in the form referred to in paragraph (a) and partly in the form referred to in paragraph (b).

(28 of 1999 s. 18)

14. Coroner to take notes of evidence, etc.

- (1) The coroner shall—
 - (a) take notes of the evidence at an inquest; or
 - (b) cause a record to be made of the evidence at an inquest, whether by shorthand or with the use of any electronic or mechanical device.
- (2) A transcription of the notes or record of evidence referred to in subrule (1) shall be prepared by, or under the supervision of, the coroner.

Order 70**Obtaining Evidence for Requesting Courts**

(L.N. 146 of 2015)

1. **Interpretation and exercise of jurisdiction (O. 70, r. 1)**
 - (1) In this Order *the Ordinance* (條例) means the Evidence Ordinance (Cap. 8) and expressions used in this Order which are used in the Ordinance shall have the same meaning as in the Ordinance.
 - (2) The power of the Court of First Instance to make an order under section 76 or section 76 as extended by section 77B of the Ordinance may be exercised by the Registrar. (L.N. 403 of 1992; 25 of 1998 s. 2)

2. **Application for order (O. 70, r. 2)**
 - (1) Subject to rule 3 an application for an order under the Ordinance must be made *ex parte* and must be supported by affidavit.
 - (2) There shall be exhibited to the affidavit the request in pursuance of which the application is made, and if the request is not in the English language, a translation thereof in that language.

3. **Application by Law Officer (International Law) in certain cases (O. 70 r. 3)**

Where a request—

 - (a) is received by the Chief Secretary for Administration and sent by him to the Registrar with an intimation that effect should be given to the request without requiring an application for that purpose to be made by the agent in Hong Kong of any party to the matter pending or contemplated before the requesting court; or
 - (b) is received by the Registrar in pursuance of a Civil Procedure Convention providing for the taking of the evidence of any person in Hong Kong for the assistance of the requesting court, and no person is named in the document as the person who will make the necessary application on behalf of such party,

the Registrar shall send the document to the Law Officer (International Law) and the Law Officer (International Law) may make an application for an order under the Ordinance, and take such other steps as may be necessary, to give effect to the request.

(L.N. 362 of 1997; L.N. 322 of 1998; L.N. 146 of 2015)

Editorial Note:

Please see the transitional provision in rule 2 of L.N. 322 of 1998.

4. Person to take and manner of taking examination (O. 70, r. 4)

- (1) Any order made in pursuance of this Order for the examination of a witness may order the examination to be taken before any fit and proper person nominated by the person applying for the order or before such other qualified person as to the Court seems fit.
- (2) If the examination of a witness is to be taken other than by way of a live television link by the requesting court, subject to rule 6 and to any special directions contained in any order made under this Order for the examination, the examination shall be taken in manner provided by Order 39, rules 5, 6, 7, 8, 9, 10 and 11(1), (2) and (3), and an order may be made under Order 39, rule 14, for payment of the fees and expenses due to the examiner, and those rules shall apply accordingly with any necessary modifications. *(L.N. 146 of 2015)*
- (2A) If the examination of a witness is to be taken by way of a live television link by the requesting court, subject to any special directions contained in any order made under this Order for the examination, Order 39, rules 5, 6, 7, 8, 9, 10, 11(1), (2) and (3) and 14 apply with any necessary modifications. *(L.N. 146 of 2015)*
- (3) Any order made in pursuance of this Order for the examination of a witness (other than by way of a live television link by the requesting court) shall permit the cross-examination of the witness by a person who— *(L.N. 146 of 2015)*
 - (a) has the examiner's approval to do so; and
 - (b) is affected by the examination or his legal representative. *(87 of 1997 s. 36)*

5. Dealing with deposition (O. 70, r. 5)

- (1) Unless any order made in pursuance of this Order for the examination of any witness otherwise directs, the examiner before whom the examination was taken must send the deposition of that witness to the Registrar, and the Registrar shall— (*L.N. 146 of 2015*)
 - (a) give a certificate sealed with the Seal of the Court for use out of the jurisdiction identifying the documents annexed thereto, that is to say, the request, the order of the Court for examination and the deposition taken in pursuance of the order; and
 - (b) send the certificate with the documents annexed thereto to the Chief Secretary for Administration, or, where the request was sent to the Registrar by some other person in accordance with a Civil Procedure Convention, to that other person, for transmission to the requesting court. (*L.N. 362 of 1997; L.N. 146 of 2015*)
- (2) Paragraph (1) does not apply if the examination was taken by way of a live television link by the requesting court. (*L.N. 146 of 2015*)

6. Claim to privilege (O. 70, r. 6)

- (1) The provisions of this rule shall have effect where a claim by a witness (other than a witness who is giving evidence to the requesting court by way of a live television link) to be exempt from giving any evidence on the ground specified in section 77(1)(b) of the Ordinance is not supported or conceded as mentioned in subsection (2) of that section. (*L.N. 146 of 2015*)
- (2) The examiner may, if he thinks fit, require the witness to give the evidence to which the claim relates and, if the examiner does not do so, the Court may do so, on the ex parte application of the person who obtained the order under section 76.
- (3) If such evidence is taken—
 - (a) it must be contained in a document separate from the remainder of the deposition of the witness;
 - (b) the examiner shall send to the Registrar with the deposition a statement signed by the examiner setting out the claim and the ground on which it was made;

- (c) on receipt of the statement the Registrar shall, notwithstanding anything in rule 5, retain the document containing the part of the witness's evidence to which the claim relates and shall send the statement and a request to determine the claim to the requesting court with the documents mentioned in rule 5; *(L.N. 146 of 2015)*
- (d) if the claim is rejected by the requesting court, the Registrar shall send to the requesting court the document containing that part of the witness's evidence to which the claim relates, but if the claim is upheld he shall send the document to the witness, and shall in either case notify the witness and the person who obtained the order under section 76 of the requesting court's determination. *(L.N. 146 of 2015)*

7. Minutes of examination taken by way of live television link (O. 70, r. 7)

- (1) If an order made under this Order is for the examination of a witness by way of a live television link by the requesting court, the person before whom the examination is taken must be present at the place where the witness is present during the examination and must on the conclusion of the examination—
 - (a) draw up minutes indicating—
 - (i) unless otherwise directed by the order, the identity of the witness;
 - (ii) the date on which, and the time at which, the examination is taken;
 - (iii) the place where the examination is taken; and
 - (iv) whether or not an oath or affirmation has been administered to the witness;
 - (b) certify that the minutes were drawn up by the person; and
 - (c) cause the minutes so certified to be sent to the Registrar.
- (2) The Registrar must, after receiving the minutes sent under paragraph (1)(c), cause the minutes to be sent—
 - (a) if the request was sent to the Registrar by the Chief Secretary for Administration, to the Chief Secretary for Administration; or
 - (b) if the request was sent to the Registrar by some other person in accordance with a Civil Procedure Convention, to that other person.

(L.N. 146 of 2015)

74. Interpretation

In this Part, unless the context otherwise requires—

civil proceedings (民事法律程序), in relation to the requesting court, means proceedings in any civil or commercial matter;

live television link (電視直播聯繫) means a system in which two places are equipped with, and linked by, audio visual facilities that enable persons at one place to see and hear persons at the other place, and vice versa, at the same time; (*Added 23 of 2003 s. 12*)

requesting court (提出請求的法院) has the meaning given in section 75;

request (請求、請求書) includes any commission, order or other process issued by or on behalf of the requesting court.

[*cf. 1975 c. 34 s. 9(1) U.K.*]

76. Power of a court in Hong Kong to give effect to an application for assistance

(1) Subject to this section, the Court of First Instance shall have power, on any such application as is mentioned in section 75, by order to make such provision for obtaining evidence in Hong Kong as may appear to the court to be appropriate for the purpose of giving effect to the request in pursuance of which the application is made; and any such order may require a person specified therein to take such steps as the court considers appropriate for that purpose. (*Amended 25 of 1998 s. 2*)

(2) Without prejudice to the generality of subsection (1) but subject to this section, an order under this section may, in particular, make provision—

- (a) for the examination of witnesses by any means, including by way of a live television link; (*Amended 23 of 2003 s. 13*)
- (b) for the production of documents;
- (c) for the inspection, photographing, preservation, custody or detention of any property;
- (d) for the taking of samples of any property and the carrying out of any experiments on or with any property;
- (e) for the medical examination of any person.

- (3) An order under this section shall not require any particular steps to be taken unless they are steps which can be required to be taken by way of obtaining evidence for the purposes of civil proceedings in the court making the order (whether or not proceedings of the same description as those to which the application for the order relates); but this subsection shall not preclude the making of an order requiring a person to give evidence otherwise than on oath where this is asked for by the requesting court. (*Amended 23 of 2003 s. 13*)
- (4) An order under this section shall not require a person—
 - (a) to state what documents relevant to the proceedings to which the application for the order relates are or have been in his possession, custody or power; or
 - (b) to produce any documents other than particular documents specified in the order as being documents appearing to the court making the order to be, or to be likely to be, in his possession, custody or power.
- (5) A person who, by virtue of an order under this section, is required to attend at any place shall be entitled to the like conduct money and payment for expenses and loss of time as on attendance as a witness in civil proceedings before the Court of First Instance. (*Amended 25 of 1998 s. 2*)
[cf. 1975 c. 34 s. 2 U.K.]

77. Privilege of witnesses

- (1) A person shall not be compelled by virtue of an order under section 76 to give any evidence which he could not be compelled to give—
 - (a) in civil proceedings in Hong Kong; or
 - (b) subject to subsections (2) and (2A), in civil proceedings in the country or territory in which the requesting court exercises jurisdiction. (*Amended 23 of 2003 s. 14*)
- (2) Where a person is giving evidence by any means other than by way of a live television link, subsection (1)(b) shall not apply unless the claim of the person in question to be exempt from giving the evidence is either— (*Amended 23 of 2003 s. 14*)
 - (a) supported by a statement contained in the request (whether it is so supported unconditionally or subject to conditions that are fulfilled); or
 - (b) conceded by the applicant for the order;
 and where such a claim made by any person is not supported or conceded as aforesaid he may (subject to the other provisions of this section) be required to give the evidence to

which the claim relates but that evidence shall not be transmitted to the requesting court if that court, on the matter being referred to it, upholds the claim.

- (2A) Where a person is giving evidence by way of a live television link, subsection (1)(b) shall not apply unless—
- (a) the claim of the person in question to be exempt from giving the evidence is supported or conceded as mentioned in subsection (2); or
 - (b) the requesting court, on the matter being referred to it by way of a live television link, upholds the claim. (*Added 23 of 2003 s. 14*)
- (3) Without prejudice to subsection (1), a person shall not be compelled by virtue of an order under section 76 to give any evidence if his doing so would be prejudicial to national security or the security of the HKSAR; and a certificate signed by or on behalf of the Chief Secretary for Administration to the effect that it would be so prejudicial for that person to do so shall be conclusive evidence of that fact. (*Amended 30 of 1978 s. 2; L.N. 362 of 1997; 6 of 2024 s. 124*)
- (4) In this section references to giving evidence include references to answering any question and to producing any document and the reference in subsection (2) to the transmission of evidence given by a person shall be construed accordingly.

[*cf. 1975 c. 34 s. 3 U.K.*]

77E. Issue of letter of request to obtain evidence in criminal proceedings

- (1) Where it appears to the Court of First Instance that any criminal proceedings—
- (a) have been instituted in Hong Kong; or
 - (b) are likely to be instituted in Hong Kong if evidence is obtained for the purposes of those criminal proceedings by virtue of an order made under this section,

the Court of First Instance may order that a letter of request shall be issued and transmitted in such manner as the Court of First Instance may direct to a court or tribunal specified in the order and exercising jurisdiction in a place outside Hong Kong, requesting such court or tribunal to assist in obtaining evidence for the purposes of those criminal proceedings.

- (2) An order under this section shall specify the evidence to be obtained and, in the case of evidence to be obtained—

- (a) by the examination of any person as a witness by any means (including by way of a live television link), the name and particulars of such person or such other particulars by reference to his office or employment as may be sufficient to ascertain his identity; or (*Amended 23 of 2003 s. 16*)
 - (b) by the production of any document or thing, the nature of such document or thing or a description thereof.
- (3) An application to the Court of First Instance for an order under this section may be made ex parte supported by affidavit—
- (a) in respect of criminal proceedings referred to in subsection (1)(a), by the Secretary for Justice or any person charged with an offence to which such criminal proceedings relate; or
 - (b) in respect of criminal proceedings referred to in subsection (1)(b), by the Secretary for Justice. (*Amended L.N. 362 of 1997*)
- (4) A letter of request ordered to be issued by the Court of First Instance under this section shall be issued by the Registrar of the High Court (in this Part referred to as *the Registrar*) under the seal of the High Court in such form as may be prescribed by rules of court, or if no such form is prescribed in such form as the Court of First Instance may direct.
- (5) The power to make rules of court under section 54 of the High Court Ordinance (Cap. 4) shall include power to make rules of court with respect to this section (including the procedure to be followed) and for supplementing its provisions.
- (6) A letter of request may be issued under this section in respect of an investigation or ancillary criminal matter as if the investigation or ancillary criminal matter, as the case may be, were criminal proceedings referred to in subsection (1)(a) and, in such a case, the provisions of sections 77F and 77G shall, with all necessary modifications, operate in relation to any such request as if any references in those provisions to criminal proceedings were references to—
- (a) where paragraph (a) of the definition of *investigation* is applicable, a prosecution arising out of the investigation to which the request relates;
 - (b) where paragraph (b) of the definition of *investigation* is applicable, the ancillary criminal matter to which the request relates;
 - (c) in the case of an ancillary criminal matter, the ancillary criminal matter,

and the other provisions of this Ordinance, or of any other Ordinance, which relates, whether directly or indirectly, to the provisions of this Part shall be construed accordingly. (*Added 87 of 1997 s. 36*)

(6A) In subsection (2), *live television link* (電視直播聯繫) has the same meaning as in Part VIII. (*Added 23 of 2003 s. 16*)

(7) In subsection (6)—

ancillary criminal matter (附帶刑事事宜) means ancillary criminal matter within the meaning of section 2 of the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525);

investigation (偵查) means an investigation—

(a) into an offence against a law of Hong Kong; or

(b) for the purposes of an ancillary criminal matter. (*Added 87 of 1997 s. 36*)

(*Amended 25 of 1998 s. 2*)

(*Format changes—E.R. 1 of 2016*)

Part IIIB

Taking Evidence from Witnesses outside Hong Kong by Live Television Link

(Part IIIB added 23 of 2003 s. 17)
(Format changes—E.R. 1 of 2018)

79H. Interpretation

In this Part, unless the context otherwise requires—

court (法庭) includes the District Court and a magistrate;

live television link (電視直播聯繫) means a system in which two places are equipped with, and linked by, audio visual facilities that enable persons at one place to see and hear persons at the other place, and vice versa, at the same time.

79I. Court may take evidence by live television link from person outside Hong Kong

- (1) Subject to subsection (2), a court may, on the application of a party to any criminal proceedings, permit a person, other than a person who is a defendant in the proceedings concerned, to give evidence to the court by way of a live television link from a place outside Hong Kong, subject to such conditions as the court considers appropriate in the circumstances.
- (2) The court shall not give permission under subsection (1) if—
 - (a) the person concerned is in Hong Kong;
 - (ab) the criminal proceedings concerned are specified proceedings; *(Added 6 of 2024 s. 144)*
 - (b) the evidence can more conveniently be given in Hong Kong;
 - (c) a live television link is not available and cannot reasonably be made available;
 - (d) measures to ensure that the person will be giving evidence without coercion cannot reasonably be taken; or
 - (e) it is not in the interests of justice to do so.

(3) Even if any permission has been given, in specified proceedings, under this section that is not yet amended, then, as long as a verdict has not yet been delivered in the proceedings, the permission is to be regarded as having never been given. (*Added 6 of 2024 s. 144*)

(4) In this section—

amended (經修訂) means amended by the Safeguarding National Security Ordinance (6 of 2024);

specified proceedings (指明法律程序) means proceedings of a case concerning national security (within the meaning of section 3(2) of the Safeguarding National Security Ordinance (6 of 2024)). (*Added 6 of 2024 s. 144*)

79J. Place from which person gives evidence to be deemed part of courtroom

(1) Where a person is giving evidence in proceedings by way of a live television link pursuant to permission given under section 79I, the place from which the person is giving evidence shall, for all purposes in connection with the proceedings concerned, be deemed to be part of the courtroom in Hong Kong in which the proceedings concerned are taking place.

(2) Without prejudice to the generality of subsection (1), that subsection has effect for the purposes of the laws in force in Hong Kong relating to evidence, procedure, contempt of court and perjury.

79K. Administration of oaths and affirmations

An oath to be sworn or affirmation to be made by a person who is to give evidence by way of a live television link under this Part may be administered—

(a) by way of a live television link, as nearly as practicable in the same way as oaths or affirmations are administered in a court in Hong Kong; or

(b) by a person authorized by the court, acting at the direction of and on behalf of the court, at the place where the person is to give evidence.

79L. Chief Justice to make rules or give directions

The Chief Judge may make rules or give directions respecting the giving of evidence by way of a live television link under this Part.

(*Amended 10 of 2005 s. 19*)

83V. Evidence

- (1) For the purposes of this Part, the Court of Appeal may, if it thinks it necessary or expedient in the interests of justice—
 - (a) order the production of any document, exhibit or other thing connected with the proceedings, the production of which appears to it necessary for the determination of the case;
 - (b) order any witness who would have been a compellable witness in the proceedings from which the appeal lies to attend for examination and be examined before the Court of Appeal whether or not he was called in those proceedings; and
 - (c) subject to subsection (3), receive the evidence, if tendered, of any witness.
- (2) Without prejudice to subsection (1), where evidence is tendered to the Court of Appeal thereunder the Court of Appeal shall, unless it is satisfied that the evidence, if received, would not afford any ground for allowing the appeal, exercise its powers of receiving it if—
 - (a) it appears to it that the evidence is likely to be credible and would have been admissible in the proceedings from which the appeal lies on an issue which is the subject of the appeal; and
 - (b) it is satisfied that it was not adduced in those proceedings but there is a reasonable explanation for the failure to adduce it.
- (3) Subsection (1)(c) applies to any witness (including the appellant) who is a competent but not a compellable witness.
(Amended 23 of 2003 s. 6)
- (4) For the purposes of this Part, the Court of Appeal may, if it thinks it necessary or expedient in the interests of justice, order the examination of any witness whose attendance might be required under subsection (1)(b) to be conducted, in manner provided by rules and orders made under section 9, before any judge or officer of the Court of Appeal or other person appointed by the Court of Appeal for the purpose, and allow the admission of any depositions so taken as evidence before the Court of Appeal.
- (5) In no case shall any sentence be increased by reason of or in consideration of any evidence which was not given at the trial.

- (6) Where the husband or wife of an appellant or respondent is required to be examined under subsection (1)(b) or (4), other than on behalf of the appellant or respondent concerned, the husband or wife may apply to the Court of Appeal for an exemption from the requirement to be so examined. *(Added 23 of 2003 s. 6)*
- (7) Where the husband or wife of an appellant or respondent has the right to apply to the Court of Appeal for an exemption under subsection (6), the Court of Appeal must be satisfied that the husband or wife is aware of such a right. *(Added 23 of 2003 s. 6)*
- (8) Where the husband or wife of an appellant or respondent applies to the Court of Appeal for an exemption under subsection (6), the Court of Appeal may exercise the same powers that a court may exercise under section 57A(2), and that section shall apply with such modifications as the circumstances require. *(Added 23 of 2003 s. 6)*
- (9) Section 7 of the Evidence Ordinance (Cap. 8) (privilege of husband and wife) and section 8(2) of that Ordinance (evidence of access) shall not apply to the husband or wife of an appellant or respondent, where the husband or wife is being examined under subsection (1)(b) or (4). *(Added 23 of 2003 s. 6)*
- (10) Section 65A of the Evidence Ordinance (Cap. 8) (privilege against incrimination of self or spouse in criminal proceedings) shall not apply to the husband or wife of an appellant or respondent, where the husband or wife is being examined under subsection (1)(b) or (4), other than on behalf of the appellant or respondent concerned. *(Added 23 of 2003 s. 6)*
- (11) Where a child is required to be examined before the Court of Appeal under subsection (1)(b) in proceedings in respect of an offence specified in section 79B(2), the Court of Appeal may exercise the same powers that a court may exercise under section 79B(2). *(Added 23 of 2003 s. 18)*
- (12) Where a mentally incapacitated person is required to be examined before the Court of Appeal under subsection (1)(b) in proceedings in respect of an offence specified in section 79B(3), the Court of Appeal may exercise the same powers that a court may exercise under section 79B(3). *(Added 23 of 2003 s. 18)*

(13) Where a witness in fear is required to be examined before the Court of Appeal under subsection (1)(b) in proceedings in respect of any offence, the Court of Appeal may exercise the same powers that a court may exercise under section 79B(4).
(Added 23 of 2003 s. 18)

(13A) If a complainant is required to be examined before the Court of Appeal under subsection (1)(b) in proceedings involving a specified sexual offence, the Court of Appeal may exercise the same powers that a court may exercise under section 79B(4A).
(Added 17 of 2018 s. 4)

(14) Where a person outside Hong Kong is required to be examined before the Court of Appeal under subsection (1)(b) in proceedings in respect of any offence, the Court of Appeal may exercise the same powers that a court may exercise under section 79I. (Added 23 of 2003 s. 18)

(15) Section 79B(5) shall apply in relation to the exercise of the powers referred to in subsection (11), (12), (13) or (13A) as it applies in relation to the exercise of the powers under section 79B. (Added 23 of 2003 s. 18. Amended 17 of 2018 s. 4)

(16) Sections 79J and 79K shall apply in relation to the exercise of the powers referred to in subsection (14) as they apply in relation to the exercise of the powers under section 79I.
(Added 23 of 2003 s. 18)

(17) In subsections (11) to (13)—

child (兒童) means a person—

- (a) who, in the case of an offence specified in section 79B(2) (a), is under 17 years of age; or
- (b) who, in the case of an offence specified in section 79B(2) (b) or (c), is under 14 years of age;

mentally incapacitated person (精神上無行為能力的人) means a person who is mentally disordered or mentally handicapped within the meaning of section 2 of the Mental Health Ordinance (Cap. 136);

witness in fear (惶恐證人) means a witness in respect of whom the Court of Appeal is satisfied, on reasonable grounds, is apprehensive as to the safety of himself or any member of his family if he gives evidence. (Added 23 of 2003 s. 18. Amended 17 of 2018 s. 4)

(18) In subsection (13A)—

complainant (申訴人) has the meaning given by section 156(8) of the Crimes Ordinance (Cap. 200);

specified sexual offence (指明性罪行) has the meaning given by section 117(1) of the Crimes Ordinance (Cap. 200). (*Added 17 of 2018 s. 4*)

(*Added 34 of 1972 s. 18*)
[*cf. 1968 c. 19 s. 23 U.K.*]

Live Television Link (Witnesses outside Hong Kong) Rules

(Cap. 221, s. 79L)

(Enacting provision omitted—E.R. 1 of 2016)

[1 February 2016] *(L.N. 232 of 2015)*

1. *(Omitted as spent—E.R. 1 of 2016)*

2. Interpretation

In these Rules—

court (法庭) includes the District Court and a magistrate;

live television link (電視直播聯繫) means a system in which 2 places are equipped with, and linked by, audio visual facilities that enable persons at one place to see and hear persons at the other place, and vice versa, at the same time;

officer of the court (法院人員) means—

- (a) in relation to proceedings in the High Court, the Registrar of the High Court;
- (b) in relation to proceedings in the District Court, the Registrar of the District Court; or
- (c) in relation to proceedings before a magistrate, the first clerk of the magistracy.

3. Making applications

(1) An application under section 79I of the Ordinance for permission for a witness to give evidence by way of a live television link from a place outside Hong Kong must be made by giving a notice in the form specified by the Chief Judge to—

- (a) the officer of the court; and
- (b) all other parties to the proceedings.

(2) If the application is made for a witness to give evidence for a preliminary inquiry before a magistrate in respect of a charge, the application must be made within 42 days after the following date—

- (a) the date on which the defendant elects, or is deemed to have elected, under section 80C of the Magistrates Ordinance (Cap. 227) to have the charge heard at a preliminary inquiry; or
 - (b) the date on which the defendant elects under section 77A(5) of the District Court Ordinance (Cap. 336) to have the charge heard at a preliminary inquiry.
- (3) If the application is made for a witness to give evidence for a trial in the Court of First Instance in respect of a charge, the application must be made within 42 days after the following date—
- (a) if the charge has been heard at a preliminary inquiry before a magistrate, the date on which the defendant was committed for trial under section 85(2) of the Magistrates Ordinance (Cap. 227) in respect of the charge;
 - (b) if the defendant does not elect, and is not deemed to have elected, to have the charge heard at a preliminary inquiry before a magistrate—
 - (i) the date on which the defendant is committed for trial under section 80C(4) of the Magistrates Ordinance (Cap. 227) in respect of the charge; or
 - (ii) the date on which an order of transfer of proceedings to the Court of First Instance is made under section 77A of the District Court Ordinance (Cap. 336) in respect of the charge;
 - (c) if an indictment is preferred under section 24A(1)(b) of the Ordinance by the direction or with the consent of a judge in respect of the charge, the date on which the judge gives the direction or consent;
 - (d) if the proceedings against the defendant are transferred to the Court of First Instance under an order made under section 4 of the Complex Commercial Crimes Ordinance (Cap. 394), the date on which the order is made;
 - (e) if the defendant is committed for trial in the Court of First Instance under an order made under section 79F(5) of the Ordinance, the date on which the order is made.
- (4) If the application is made for a witness to give evidence for a trial in the District Court in respect of a charge, the application must be made within 42 days after the following date—
- (a) if the proceedings against the defendant are transferred to the District Court under an order made under section 88 of the Magistrates Ordinance (Cap. 227), the date on which the order is made;

- (b) if the proceedings against the defendant are transferred to the District Court under an order made under section 65F of the Ordinance, the date on which the order is made.
- (5) If the application is made for a witness to give evidence for a trial before a magistrate in respect of a charge, the application must be made within 42 days after the following date—
- (a) if the case is referred back to the magistrate by the Secretary for Justice under section 10 of the Ordinance, the date on which the Secretary for Justice refers the case back to the magistrate;
 - (b) if the proceedings against the defendant are transferred before the magistrate under an order made under section 77A of the District Court Ordinance (Cap. 336), the date on which the order is made;
 - (c) if the proceedings against the defendant are transferred before the magistrate under an order made under section 65F of the Ordinance, the date on which the order is made;
 - (d) in any other case, the date on which the case is set down for trial before the magistrate.

4. Parties may oppose applications

A party who is given a notice under rule 3(1) may, within 14 days after the date on which the notice is given, oppose the application concerned by—

- (a) notifying the officer of the court and all other parties to the proceedings in writing of the opposition; and
- (b) giving reasons for the opposition in the notice of opposition.

5. Determination

- (1) The court may determine an application under rule 3 without a hearing if the officer of the court is not notified of any opposition to the application under rule 4 in the period within which the opposition may be made.
- (2) If the court determines the application without a hearing, the officer of the court must notify all parties to the proceedings of the determination.
- (3) If the court grants the application without a hearing, the notification under subrule (2) must state—
 - (a) the country or territory in which the witness will give evidence;

- (b) if known, the place from which the witness will give evidence;
 - (c) the name of the witness if—
 - (i) the witness is to give evidence for the prosecution (except where section 65DA(3) of the Ordinance applies); or
 - (ii) the witness is to give evidence for the defendant, and disclosure is required by section 65D or 65DA of the Ordinance or section 75A of the District Court Ordinance (Cap. 336); and
 - (d) the conditions, if any, imposed by the court under rule 6.
- (4) If the court decides to conduct a hearing in respect of the application (whether because an opposition is received or otherwise), the officer of the court must notify all parties to the proceedings of the time and place of the hearing.
- (5) The hearing must be conducted in open court unless the court, where it considers it necessary in the interests of justice, orders that all or part of the hearing is to be conducted in camera.

6. Court may impose conditions

- (1) If the court grants an application under rule 3, it may impose conditions on the permission given.
- (2) Without limiting subrule (1), the court may impose a condition that the witness is to give evidence in the presence of a person who is able and willing to answer under oath any question the court may put as to the circumstances in which the evidence is given, including any question about—
 - (a) any person who is present when the evidence is given; and
 - (b) any matter which may affect the giving of the evidence.

7. Putting documents to witnesses

- (1) If it is necessary to put a document to a witness when the witness is giving evidence by way of a live television link from a place outside Hong Kong, the court may—
 - (a) if the document is at the courtroom in Hong Kong, permit—
 - (i) the transmission by any means of a copy of the document to that place; and
 - (ii) the putting of the copy so transmitted to the witness; and

- (b) if the document is at that place, permit—
 - (i) the putting of the document to the witness; and
 - (ii) the transmission by any means of a copy of the document to the courtroom in Hong Kong.
- (2) If a document or a copy of it is put to a witness in accordance with subrule (1), the transmitted copy of the document is, until the contrary is proved, to be presumed to be a true copy of the document and to be admitted in evidence without further proof.

8. Extension of time

- (1) The court may—
 - (a) extend the period of 42 days specified in rule 3(2), (3), (4) or (5) on the application of a party to the proceedings, either before or after its expiry; or
 - (b) extend the period of 14 days specified in rule 4 on the application of a party who is given a notice under rule 3(1), either before or after its expiry.
- (2) The application must—
 - (a) be made in writing;
 - (b) specify the grounds on which it is made;
 - (c) in the case of an application under subrule (1)(b), be made within 28 days after the date on which the notice under rule 3(1) is given; and
 - (d) be given to—
 - (i) the officer of the court; and
 - (ii) all other parties to the proceedings.
- (3) The court may determine the application with or without a hearing.
- (4) If the court determines the application without a hearing, the officer of the court must notify all parties to the proceedings of the determination.
- (5) If the court decides to conduct a hearing in respect of the application, the officer of the court must notify all parties to the proceedings of the time and place of the hearing.
- (6) The hearing must be conducted in open court unless the court, where it considers it necessary in the interests of justice, orders that all or part of the hearing is to be conducted in camera.

9. Abridgement of time

The court may, on the application of a party to the proceedings, abridge the period of 42 days specified in rule 3(2), (3), (4) or (5), or the period of 14 days specified in rule 4, if it considers that it is fair and reasonable to do so in the circumstances of the case.

81. Taking of evidence at hearing

- (1) At a preliminary inquiry where the accused is present at the hearing, the magistrate shall, before committing the accused to prison for trial or before admitting him to bail to take his trial, in the presence of the accused proceed to take evidence for and on behalf of the prosecutor and his witnesses in the same manner, subject to subsection (3), as is hereinbefore provided for the taking of the evidence of the complainant or informant and his witnesses on a complaint or information for an offence punishable on summary conviction. (*See Form 19*) (*Amended 49 of 1965 s. 14; 48 of 1983 s. 3*)
- (2) The accused or his counsel shall be at liberty to put questions to any witnesses produced against him, and, subject to subsection (3), the depositions or evidence of the prosecutor and his witnesses shall, in the presence of the accused, be read over to and signed respectively by the witnesses who have been so examined, and shall also be signed by the magistrate taking the same.
- (3) The magistrate may cause the deposition or evidence of a witness who is examined under subsection (2) to be recorded by way of shorthand note or mechanical or electrical recording device and, thereafter, reduced into writing; and where—
 - (a) that writing is made available to the accused or his counsel; and
 - (b) the witness thereafter, on oath and in the presence of the accused, confirms the accuracy of that writing,the deposition or evidence of that witness shall be treated, for all purposes, including section 70 of the Evidence Ordinance (Cap. 8), as if it had been reduced into writing immediately, read over to the witness and signed by him in the presence of the accused. (*Added 75 of 1984 s. 2*)
- (4) Where the evidence of a witness is taken by way of a live television link under Part IIIB of the Criminal Procedure Ordinance (Cap. 221)—

- (a) the requirement in subsection (2) that the deposition or evidence of the witness shall be signed by the witness in the presence of the accused shall be deemed to have been complied with if, in the presence of the accused, the witness confirms on oath the accuracy of the deposition or evidence by way of a live television link; and
 - (b) where subsection (3) applies, paragraph (b) of that subsection shall be deemed to have been complied with if, after the writing concerned is made available to the accused or his counsel, and in the presence of the accused, the witness confirms on oath the accuracy of the writing concerned by way of a live television link.
(*Added 23 of 2003 s. 23*)
- (5) In subsection (4), **live television link** (電視直播聯繫) has the meaning assigned to it by section 79H of the Criminal Procedure Ordinance (Cap. 221). (*Added 23 of 2003 s. 23*)
- (Amended 75 of 1984 s. 2)*
[cf. 1848 c. 42 s. 17 U.K.]

118. Procedure on hearing appeal

- (1) In the case of any appeal to which section 105 or 113 applies —
 - (a) the depositions taken before the magistrate or a certified copy thereof shall, without prejudice to any other method of proof, be admissible as evidence of the evidence which was given and of the statements which were made before the magistrate, and generally that the proceedings therein recorded took place;
 - (b) when the appeal comes on for hearing the appellant shall be first heard in support of the appeal, the respondent if present and if he so desires shall be heard against it and the appellant thereafter shall be entitled to reply. If the judge thinks additional evidence to be necessary he may receive such evidence, and for that purpose shall have the like powers under subsections (1) and (6) to (17) of section 83V of the Criminal Procedure Ordinance (Cap. 221) that the Court of Appeal would have had if the appeal had been an appeal to which that section applied, and the judge may issue any process necessary for enforcing the exercise of such powers; (*Amended 34 of 1972 s. 22; 23 of 2003 ss. 11 and 24*)
 - (c) the appeal shall not operate as a stay of execution except in the case of—
 - (i) (*Repealed 13 of 1995 s. 2*)

- (ii) an order for payment of compensation; (*Replaced 36 of 1976 s. 14*)
 - (d) the judge may reserve the appeal, or any point in the appeal for the consideration of the Court of Appeal, or may direct the appeal, or point in the appeal, to be argued before the Court of Appeal; and the Court of Appeal shall have power to hear and determine any such appeal or point so reserved or so directed to be argued and may in connection therewith exercise all or any of the powers conferred on a judge by this Part or may remit the matter to the judge with the opinion or decision of the Court of Appeal and may also make any such other order in relation to the matter and such orders as to costs as to the Court of Appeal shall seem fit; (*Amended 92 of 1975 s. 58*) [*cf. 1857 c. 43 s. 6 U.K.; 1873 c. 66 s. 46 U.K.*]
 - (e) the powers and duties of a judge shall be exercised and performed by the Chief Judge of the High Court or by such one of the judges as the Chief Judge of the High Court shall from time to time appoint; (*Amended 92 of 1975 s. 58; 79 of 1995 s. 50; 25 of 1998 s. 2*)
 - (f) if any step in or in connection with any appeal or intended appeal is rendered impossible by the death, absence or incapacity of a magistrate, a judge upon motion shall have power for good cause to order that the case be heard de novo by a magistrate and the case shall be so heard accordingly. (*Amended 92 of 1975 s. 58*)
- (2) Either party to any appeal under section 105 or 113 may be heard in person or by any barrister and in any appeal under section 113(1) and (2), not being appeals reserved for hearing or directed to be argued before the Court of Appeal, either party may be heard by any counsel.

(Replaced 24 of 1949 s. 39)

9. Requests by Hong Kong for taking of evidence, etc.

- (1) The Secretary for Justice may request an appropriate authority of a place outside Hong Kong to arrange for—
- (a) evidence to be taken in the place and the transmission of the evidence to Hong Kong; (*Amended 23 of 2003 s. 19*)
 - (aa) evidence to be taken by way of a live television link from a person at the place; or (*Added 23 of 2003 s. 19*)
 - (b) a thing (including a thing belonging to a class of things) in the place to be produced and the transmission of the thing to Hong Kong,
- for the purposes of a criminal matter in Hong Kong.
- (2) The provisions of sections 77F and 77G of the Evidence Ordinance (Cap. 8) shall, with all necessary modifications, apply to and in relation to any deposition, together with any thing exhibited or annexed thereto, which is received by the Secretary for Justice pursuant to a request under subsection (1) as if—
- (a) that request were a letter of request issued by the Registrar of the High Court under section 77E of that Ordinance; (*Amended 25 of 1998 s. 2*)
 - (b) that deposition, together with any thing exhibited or annexed thereto, were received by that Registrar pursuant to such letter; and
 - (c) any references in those provisions to criminal proceedings were references to—
 - (i) where the criminal matter concerned is an investigation to which paragraph (a) of the definition of *investigation* is applicable, a prosecution arising out of the investigation;
 - (ii) where the criminal matter concerned is an investigation to which paragraph (b) of the definition of *investigation* is applicable, the ancillary criminal matter to which the investigation relates;
 - (iii) where the criminal matter concerned is an ancillary criminal matter, the ancillary criminal matter,

and the other provisions of that Ordinance, or of any other Ordinance, which relate, whether directly or indirectly, to sections 77F and 77G of the Evidence Ordinance (Cap. 8) shall be construed accordingly.

(3) In this section, any reference to a deposition includes a reference to an affidavit, affirmation or declaration made under an obligation to state the truth according to the law of the place where the affidavit, affirmation or declaration is made. (*Added 18 of 2014 s. 50*)

(4) In subsection (1)—

live television link (電視直播聯繫) means a system in which two places are equipped with, and linked by, audio visual facilities that enable persons at one place to see and hear persons at the other place, and vice versa, at the same time. (*Replaced 17 of 2018 s. 132*)

(*Amended L.N. 362 of 1997*)

10. Requests to Hong Kong for taking of evidence, etc.

(1) Where a request is made by an appropriate authority of a place outside Hong Kong that—

(a) evidence be taken in Hong Kong;

(b) evidence be taken by way of a live television link from a person in Hong Kong; or

(c) a thing (including a thing belonging to a class of things) in Hong Kong be produced,

for the purposes of a criminal matter in the place, the Secretary for Justice may authorize in writing—

(i) where paragraph (a) applies, the taking of evidence and the transmission of the evidence to that place;

(ii) where paragraph (b) applies, the taking of evidence by way of a live television link from the person concerned; or

(iii) where paragraph (c) applies, the production of the thing and, subject to subsection (14), the transmission of the thing to that place. (*Replaced 23 of 2003 s. 20*)

(2) Where the Secretary for Justice authorizes the taking of evidence or the production of a thing under subsection (1)—

- (a) in the case of the taking of evidence under subsection (1) (i), a magistrate may take the evidence on oath or otherwise than on oath of each witness appearing before the magistrate to give evidence in relation to the matter, and a magistrate who takes any such evidence shall — (*Amended 23 of 2003 s. 20*)
 - (i) cause the evidence to be put in writing and certify that the evidence was taken by the magistrate; and
 - (ii) cause the writing so certified to be sent to the Secretary for Justice; (*Amended 23 of 2003 s. 20*)
- (aa) in the case of the taking of evidence under subsection (1) (ii), a magistrate shall be present during the taking of the evidence and the magistrate shall—
 - (i) identify the witness;
 - (ii) upon the conclusion of the taking of the evidence, draw up minutes indicating the date on which the evidence is taken, the place where the evidence is taken, and whether or not an oath or affirmation has been administered to the witness;
 - (iii) certify that the minutes were drawn up by the magistrate; and
 - (iv) cause the minutes so certified to be sent to the Secretary for Justice; or (*Added 23 of 2003 s. 20*)
- (b) in the case of the production of a thing under subsection (1)(iii), a magistrate may require the production of the thing and, where the thing is produced, the magistrate shall certify that the thing was produced to the magistrate and shall send the thing (which, in the case of a document, may be a copy of the document certified by the magistrate to be a true copy) to the Secretary for Justice. (*Amended L.N. 362 of 1997; 23 of 2003 s. 20*)
- (2A) A magistrate may only take the evidence of a witness under subsection (2)(a) otherwise than on oath where this is asked for by the appropriate authority of the place outside Hong Kong. (*Added 23 of 2003 s. 20*)
- (3) A proceeding under subsection (2) shall be held in open court except where—
 - (a) the magistrate is satisfied that it is necessary for the proceeding to be held in camera in order to comply with any prescribed arrangements relating to the proceeding;

- (b) the magistrate exercises a power pursuant to the provisions of any other Ordinance whereby he may hold the proceeding in camera; (*Amended 23 of 2003 s. 20*)
- (c) the criminal matter outside Hong Kong to which the proceeding relates is an investigation and the magistrate is satisfied that there are reasonable grounds for believing that—
 - (i) it is in the interest of the person required to give evidence, or produce a thing, for the purposes of that matter that the proceeding be held in camera; or
 - (ii) that matter would be substantially prejudiced if the proceeding were held in open court; or (*Amended 23 of 2003 s. 20*)
- (d) in the case of the taking of evidence under subsection (1) (ii)—
 - (i) the criminal matter outside Hong Kong to which the proceeding relates is a prosecution;
 - (ii) the appropriate authority of the place concerned requests that the proceeding be held in camera; and
 - (iii) the proceedings in the place concerned in which the evidence is to be received will be held in camera. (*Added 23 of 2003 s. 20*)
- (4) The magistrate conducting a proceeding under subsection (2) shall permit—
 - (a) the person to whom the criminal matter in the place outside Hong Kong concerned relates;
 - (b) any other person giving evidence or producing a thing at the proceeding before the magistrate; and
 - (c) the appropriate authority of that place, to appear, or have legal representation, or both, at the proceeding before the magistrate.
- (5) The certificate by the magistrate under subsection (2) shall state whether, when the evidence was taken or the thing was produced, any of the following persons were present—
 - (a) the person to whom the criminal matter in the place outside Hong Kong concerned relates or his legal representative, if any;
 - (b) any other person giving evidence or producing a thing or his legal representative, if any.

- (6) For the purposes of this section, the person to whom the criminal matter in the place outside Hong Kong concerned relates is competent but not compellable to give evidence.
- (7) For the purposes of this section, a person who is required to give evidence, or produce a thing, for the purposes of a criminal matter in a place outside Hong Kong, is not compellable to answer a question, or produce a thing, that the person is not compellable to answer or produce, as the case may be, in the criminal matter in that place.
- (8) A duly certified external law immunity certificate is admissible in proceedings under this section as evidence of the facts stated in the certificate.
- (9) Subsection (7) does not apply in a case where its application would be inconsistent with any provision of prescribed arrangements, if any, between Hong Kong and the prescribed place concerned.
- (10) For the purposes of this section, a person who is required to give evidence, or produce a thing, for the purposes of a criminal matter in a place outside Hong Kong, is not compellable to give evidence, or produce a thing, that the person could not be compelled to give or produce, as the case may be, in Hong Kong—
 - (a) if that matter were a trial of a person for a Hong Kong offence or proceedings to determine whether a person should be tried for such an offence; or
 - (b) without prejudice to the generality of paragraph (a)—
 - (i) on the ground that to do so might tend to incriminate him; and
 - (ii) if—
 - (A) the provisions of any Ordinance which qualify a person's right not to incriminate himself had never been enacted; and
 - (B) that matter were a trial of a person for a Hong Kong offence or proceedings to determine whether a person should be tried for such an offence.

- (11) Without prejudice to the generality of subsection (10), for the purposes of this section, a tax adviser or relevant auditor who is required to give evidence, or produce a thing, for the purposes of a criminal matter in a place outside Hong Kong which is an investigation into an external offence relating to taxation, is not compellable to give evidence, or produce a thing, to the extent that the evidence or thing, as the case may be, relates to, or is, a tax document which—
- (a) is the property of that tax adviser or relevant auditor, as the case may be; and
 - (b) in the case of a tax adviser, originates from him, or from his client or another tax adviser of the client, for or in connection with the giving or obtaining of advice about the tax affairs of the client.
- (12) For the purposes of this section, and without prejudice to the operation of subsection (6), (7), (9), (10) or (11), a person who is required to give evidence, or produce a thing, for the purposes of a criminal matter in a place outside Hong Kong, shall not be required—
- (a) to state what things relevant to that matter are or have been in his possession or control; or
 - (b) to produce any things other than particular things specified by the magistrate conducting the proceedings concerned under subsection (2), or things belonging to a particular class of things specified by that magistrate, as being things, or a class of things, as the case may be, appearing to that magistrate to be, or to be likely to be, in his possession or control.
- (13) It is hereby declared that evidence taken for the purposes of this section shall not be admissible in evidence, or otherwise used, for the purposes of any criminal matter, civil proceedings, disciplinary proceedings, or other proceedings, in Hong Kong except any prosecution of the person who gave that evidence for the offence of perjury, or contempt of court, in respect of that evidence.
- (14) The Secretary for Justice shall not authorize under subsection (1) the transmission of the original of a thing to a place outside Hong Kong unless—
- (a) the appropriate authority of the place has, not more than 1 month after the thing was produced, given the Secretary for Justice a notice in writing setting out the grounds on which the original of the thing is required for the purposes of the criminal matter concerned in that place; and

- (b) in any case where the Secretary for Justice is of the opinion, after considering all the circumstances, that the original of the thing should be returned to Hong Kong upon the conclusion of the proceedings relating to that criminal matter, the appropriate authority has given an unqualified undertaking to the Secretary for Justice that the original of the thing will be so returned. (*Amended L.N. 362 of 1997*)
- (15) In this section, *live television link* (電視直播聯繫) means a system in which two places are equipped with, and linked by, audio visual facilities that enable persons at one place to see and hear persons at the other place, and vice versa, at the same time. (*Added 23 of 2003 s. 20*)