

《 2002 年證據(雜項修訂)條例草案 》委員會

政府對委員在 2003 年 5 月 13 日會議席上  
所提事項作出的回應

本文件旨在回應上述法案委員會在 2003 年 5 月 13 日會議席上所提出的事項。

第 II 部

第 11 條

《 證據條例 》第 74 條

- (a) 委員會要求政府參考草擬“**vice versa**”一詞的經驗，重新檢視“電視直播聯繫(live television link)”的定義中英文本的草擬方式，使兩個文本達到一致。有委員建議將英文本修訂為“**..., audio visual facilities that enable persons at the two places to see and hear each other at the respective places at the same time**(…，讓分處兩個不同地點的人於同一時間在所處地點聽到及看到對方的視聽設施。”；

現行法例中並沒有一成不變的方法來處理“**vice versa**”一詞。主要須考慮的是：法例的中文本是否準確反映政策原意，用詞在文中是否恰當。大體而言，“**vice versa**”一詞曾以下列方法處理，每種方式附有例子說明－

- (a) 《死因裁判官(費用)規則》(第 504D 章)附表的英文本訂明“translation.... from Chinese to English, or vice versa....”，中文

本則是“中譯英或英譯中”。中文本內“vice versa”一詞並無對等詞，但卻清楚帶出了英文本的意思。

- (b) 《商船(安全)(領港員登船與離船安排)規例》(第 369AU 章)第 15(3)(c)(ii)及(4)條，“vice versa”一詞在中文本中是“反之亦然”；
- (c) 《商船及港口管制(遊樂船隻)(合格證書)規則》(第 313R 章)附表 5 的英文本訂明“...convert true courses to compass courses and vice versa”。這句在中文本中則變成“在直航向及羅經航向兩者互相換算”；以及
- (d) 在《刑事罪行條例》(第 200 章)第 117 條中，“vice versa”變成“或相反情況”。

上述的有關係文載於附件 A。

在建議修訂的《證據條例》第 74 條、《刑事訴訟程序條例》第 79H 條、《刑事事宜相互法律協助條例》第 9 及 10 條和《裁判官條例》第 81 條中，“電視直播聯繫(live television link)”均使用了相同的中英文定義。政府認為中文本中沒有“vice versa”一詞的直接譯詞，並非與過往的做法不同，因此“live television link”一詞的定義的中英文本都無須修訂，原來所草擬的條文應維持不變。

## 第 12 條

### 《證據條例》第 76 條

- (b) 委員會要求政府考慮委員的建議，將第 76 條中文本的標題修訂為“香港法院實現協助申請的權力”。

政府同意將第 76 條中文本的標題修訂為“香港法院實現協助申請的權力”，並會透過委員會審議階段修正案作出修訂。

## 第 16 條

### 建議的《刑事訴訟程序條例》第 79I 條

- (c) 有委員指出，由法庭決定證人是否能夠在“更”方便的情況下在香港提供證據，十分困難，並建議將建議新訂的第 79I(2)(b)條的“更”字刪除。委員會要求政府參考其他司法管轄區類似法例的詞句和考慮有關建議；

根據建議的《刑事訴訟程序條例》第 79I 條，法庭享有一般酌情決定權，決定是否批准藉電視直播聯繫提供證據的申請。第 79I(1)條給予法庭所需的一般酌情決定權，批准藉電視直播聯繫提供證據，而第 79I(2)詳細列明法庭不得給予批准的範圍。

建議的第 79I(2)(b)條中“more conveniently”(“在更方便的情況下”)的字眼取自新南威爾士州的法例。新南威爾士州《1998 年證據(語音及視聽聯繫)法令》第 5B(2)條訂明－

“(2) 法庭在下述情況不得作出此項指令：

- (a) 沒有可供使用或屬合理地能夠供使用的所需設施；或
- (b) 法庭信納有關證據或陳詞能夠在更方便的情況下在法庭或在開庭聆訊的其他地方提供或作出；或
- (c) 法庭信納有關指令對該一方不公平；或
- (d) 法庭信納擬尋求的指令所針對的人不會提供證據或作出陳詞。”

例如，在香港提供證據可能不方便，但藉電視直播聯繫提供證據會更加不方便。如刪除“更”字，要求傳召證人藉電視直播聯繫提供證據的一方，只須證明有關證據不能在方便的情況下在香港提供。刪除“更”字似乎會把最低要求降低。雖然其效力同樣適用於

控方和辯方，但藉電視直播聯繫提供證據只應用於例外情況，而非作為一般原則。政府不認為刪除“更”字是恰當的做法。

#### *建議的《刑事訴訟程序條例》第 79J 條*

- (d) 有委員詢問是否有需要在建議的第 79J(1)條中包括“就與該等法律程序相關的所有目的而言”的字眼。委員會要求政府解釋有關的立法意圖，以及如從建議的條文中刪除上述字眼會帶來的影響；

根據政策原意，建議的條文是要把外地當作香港法庭的一部分，但這僅就與該等法律程序相關的目的而言，例如使有關證據、程序、藐視法庭和作假證供的香港法例可以執行。政府不擬就取證期間發生的任何一般刑事罪行(例如持械襲擊)，給予香港域外司法管轄權，儘管這類行為亦可能構成藐視法庭。因此，把“就與該等法律程序相關的所有目的而言”的字眼保留至為重要，以便把擴大的司法管轄權的適用範圍加以限制。

#### *建議的《刑事訴訟程序條例》第 79L 條*

- (e) 委員會要求政府向法案委員會提供終審法院首席法官將根據第 79L 條就藉電視直播聯繫方式提供證據所訂立的規則的擬稿，以供研究。

規則擬稿副本夾附於附件 B，供委員參閱。

#### 其他

- (f) 委員會要求政府重新檢視《條例草案》中“**person charged**”和“**accused**”二詞的中譯，使之達到一致。

正如《刑事訴訟程序條例》第 57 條所界定，“**accused**”的對等詞為“被控人”。整條《刑事訴訟程序條例》都採用“被控人”為“**accused**”的對等詞，而“**person charged**”的對等詞則為“被控告的

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**Section of Enactment**

Chapter: 504D    Title: CORONERS (FEES) RULES    Gazette Number: L.N. 339 of 2000; L.N. 27 of 2001

Schedule:    Heading: **SCHEDULE**    Version Date: 12/01/2001

Item	Description	[rule 2] Fee \$
1.	(a) Transcription of notes or record of evidence, documentary exhibits or a document made at an inquest, per page	36
	(b) Additional copies, per page	4
2.	For a copy of a coroner's warrant, order or certificate, per page	36
3.	(a) For a photostatic copy of a document made in the Coroner's Office, per page	4
	(b) Photostatic copy and certification, per page	5.5
4.	(a) Translation made in the Coroner's Office of a document from Chinese into English, or vice versa, including certificate, per page	72
	(b) Transcription and translation made in the Coroner's Office from Chinese into English, or vice versa, of a tape or recording, including certificate, per page	132
5.	(a) Certifying translations made outside the Coroner's Office from Chinese into English, or vice versa, per page	36
	(b) Certifying transcription made outside the Coroner's Office from Chinese into English, or vice versa, per page	36
6.	Search (including inspection) in the Coroner's Office, for each document or file referred to or required	18
7.	Copy of police officer's report on death of person, per page	4

(L.N. 339 of 2000; L.N. 27 of 2001)

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章： 504D 標題： 死因裁判官(費用)規則 憲報編號： L.N. 339 of 2000; L.N. 27 of 2001  
附表： 條文標題： 附表 版本日期： 12/01/2001

項	說明	[第2條] 費用 \$
1.	(a) 研訊中的證供筆錄或記錄、文件證物或文件等的謄本，每頁	36
	(b) 額外副本，每頁	4
2.	死因裁判官手令、命令或證明書的副本，每頁	36
3.	(a) 在死因裁判官辦事處製備的文件的影印本，每頁	4
	(b) 文件影印及核證，每頁	5.5
4.	(a) 在死因裁判官辦事處將文件翻譯(中譯英或英譯中)，包括證明書，每頁	72
	(b) 在死因裁判官辦事處將錄音或錄影帶或其他紀錄的內容轉為謄本及將有關內容翻譯(中譯英或英譯中)，包括證明書，每頁	132
5.	(a) 核證並非在死因裁判官辦事處翻譯的譯本(中譯英或英譯中)為真確譯本，每頁	36
	(b) 核證並非在死因裁判官辦事處製備的謄本(中譯英或英譯中)為真確謄本，每頁	36
6.	在死因裁判官辦事處翻查(包括閱覽)文件或檔案，每份所提述或所要求的文件或檔案	18
7.	關於某人的死亡的警務人員報告的副本，每頁	4

(2000年第339號法律公告；2001年第27號法律公告)

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## Section of Enactment

Chapter: 369AU Title: MERCHANT SHIPPING (SAFETY) (ARRANGEMENTS FOR EMBARKATION AND DISEMBARKATION OF PILOTS) REGULATION Gazette Number:  
Section: 15 Heading: Construction of hoists Version Date: 30/06/1997

(1) A hoist shall be of such construction that, when operating under the working load determined in accordance with section 14(3), each component has an adequate factor of safety having regard to the material used, the method of construction and the nature of its duty.

(2) In selecting the materials of construction of a hoist, regard shall be paid to the conditions under which the hoist will be required to operate.

(3) A hoist shall consist of the following main parts-

(a) a mechanically powered winch;

(b) 2 separate falls;

(c) a ladder or, in the case of a hoist installed on or after 1 January 1994, a platform, consisting of 2 parts, being-

(i) a rigid upper part for the transportation of any person upwards or downwards; and

(ii) a flexible lower part, consisting of a short length of pilot ladder, which enables any person to climb from a launch or tender to the rigid upper part of the ladder and vice versa.

(4) There shall be safe means of access between the ladder at its upper limit and the deck and vice versa, such access to be gained directly by a platform securely guarded by handrails.

(5) Any electrical appliance associated with ladder section of a hoist shall not be operated at a voltage of more than 25 volts.

(6) A hoist shall be securely attached to the structure of the ship, such attachment not to be solely by means of the ship's side rails.

(7) Without prejudice to the generality of subsection (6)-

(a) proper and strong attachment points shall be provided for a portable hoist on each side of the ship; and

(b) a portable hoist shall be equipped with an interlock that prevents operation of the hoist when the hoist is not correctly installed.

(Enacted 1995)

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章： 369AU 標題： 商船(安全)(領港員登船與 離船安排)規例 憲報編號：  
條： 15 條文標題： 升降器的構造 版本日期： 30/06/1997

- (1) 升降器須經構造，使其在按照第14(3)條決定的操作負荷下操作時，並在顧及所使用的材料、建造方法和它的工作性質後，每一部件均有適當的安全因數。
- (2) 在選擇升降器的建造材料時，須注意升降器將須在何情況下操作。
- (3) 升降器須由下列主要部分組成—
- (a) 一部機械動力絞車；
  - (b) 2根分開的吊索；
  - (c) 一道梯子，或如屬在1994年1月1日或之後裝設的升降器，則為一個平台，由以下2部分組成—
    - (i) 用於將任何人上下運輸的硬質的上半部分；及
    - (ii) 柔軟的下半部分，由一短段領港員梯組成，它能使任何人得以從小艇或附屬船上，爬到梯子的硬質的上半部分，反之亦然。
- (4) 從該梯子最高極限處到達甲板，須有進入船上的安全設施，反之亦然，並須藉有扶手欄杆穩固圍護的平台直接到達。
- (5) 與升降器的梯子部分有關連的電器裝置，不得在高於25伏特的電壓下操作。
- (6) 升降器須穩固地附裝在船舶的結構上，不得僅藉船舷欄杆而附裝。
- (7) 在不損害第(6)款的一般性的原則下—
- (a) 船舶的每舷須設置適當而牢固的附裝點，用以安裝輕便型升降器；及
  - (b) 輕便型升降器須配備有聯鎖裝設，使升降器在未正確裝設時不能運作。

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## Section of Enactment

Chapter:	313R	Title:	SHIPPING AND PORT CONTROL (PLEASURE VESSELS) (CERTIFICATES OF COMPETENCY) RULES	Gazette Number:	
Schedule:	5	Heading:	SYLLABUS FOR PLEASURE VESSEL MASTER GRADE I	Version Date:	30/06/1997

[rules 4 & 6]

The examination comprises a 1 hour 50 minutes written paper on Navigation and an oral examination on Seamanship, covering the following subjects-  
(A) Navigation (Written)

1. To express a position on a chart in terms of latitude and longitude or bearing and distance from a charted object.
2. Given the latitude and longitude, or bearing and distance from a charted object, to plot the position on a chart.
3. Given a table of deviations to convert true courses to compass courses and vice versa.
4. To find the compass course and distance between 2 positions, and, given the vessel's speed, to calculate the estimated time of arrival (E.T.A.).
5. Given compass courses steered and distances run, to work up the dead reckoning (D.R.) position by plotting on the chart.
6. Given compass course steered, the speed of the vessel and the direction and rate of the tidal stream or current, to find the course and speed made good over the ground (ground track angle).
7. To find the compass course to steer to make allowance for leeway and/or tidal stream or current so as to achieve a specified course made good.
8. Given compass course steered, distances run or speed of ship and time intervals, direction and rate of tidal stream or current and leeway allowance, to find the estimated position (E.P.) by plotting on a chart.
9. To fix the vessel's position on a chart by simultaneous cross bearings, bearings and ranges or by radio direction finder (D.F.) bearings.
10. To find the vessel's approximate position from a line of soundings.
11. Use of clearing lines and transits.
12. Full knowledge of important chart symbols.
13. Use of tide tables, tidal stream atlas and tidal information on charts for Hong Kong waters.

### (B) Seamanship (Oral)

1. A full knowledge of the International Regulations for the Prevention of Collisions at Sea and to demonstrate their application. Candidates will be considered to be in charge of vessels up to 20 metres in length.
2. Berthing alongside, and unberthing from jetties and piers making due allowance for the effect of wind and tide on large pleasure vessels, both single and twin screw.
3. Action to be taken in unusual circumstances such as stranding, collision, fire, etc.
4. Assisting a person or vessel in distress, including towing and beaching of a vessel.
5. (a) To identify the permanent marking on a liferaft as regards the number of persons to be carried.  
(b) To know the equipment in a liferaft required under the Merchant Shipping (Life Saving

Appliances) Regulations (Cap 369 sub. leg.) and its correct use.

(c) Method of launching a liferaft and the precautions to be taken before, during and after launching.

(d) Boarding a liferaft from a vessel or the water.

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章： 313R 標題： 船舶及港口管制(遊樂船隻)憲報編號：  
(合格證書)規則  
附表： 5 條文標題： 遊樂船隻一級船長考試範圍 版本日期： 30/06/1997

[第4及6條]

考試由1小時50分鐘有關航行的筆試及有關航海技術的口試組成，涵蓋以下的範圍—

#### (A) 航行(筆試)

1. 以經緯度或以相對於某圖註物體的方位和距離表示海圖上某位置。
2. 按已知的經緯度或按已知的相對於某圖註物體的方位及距離，在海圖上標繪出某位置。
3. 已知偏差表，在真航向及羅經航向兩者間互相換算。
4. 找出2個位置之間的羅經航向及距離，並在已知船隻航速的情況下，計算出預算到達時間(E.T.A.)。
5. 已知已航駛的羅經航向及已走距離，在海圖上標繪出船隻不計風向流水影響(D.R.)而推算的位置。
6. 已知已航駛的羅經航向、船隻航速及潮汐水流或海流的方向及級數，找出船隻實際的對地航向和航速(航道角)。
7. 經預計風壓偏航及／或潮汐水流或海流後，找出應航駛的羅經航向以達致實際的指定航向。
8. 已知已航駛的羅經航向、已走距離或船舶航速和相隔時間、潮汐水流或海流的方向及級數以及風壓偏航預計，藉在海圖上標繪而找出預算位置(E.P.)。
9. 藉同時交叉方位、方位和距離，或藉無線電測向儀(D.F.)方位，在海圖上定出船隻的位置。
10. 由一系列的測深紀錄找出船隻的約略位置。
11. 分離法及重註法的使用。
12. 重要海圖符號的全面知識。
13. 香港水域的潮汐表、潮汐水流圖及海圖潮汐資料的使用。

#### (B) 航海技術(口試)

1. 關於《國際海上避碰規則》\*的全面知識，並演示該規則的應用。考生將視為掌管長度達20米的船隻。
2. 在適當預計風力及潮汐對單雙螺旋槳的大型遊樂船隻的影響下，並靠突堤式碼頭與碼頭而停泊，以及駛離上述碼頭。
3. 在擱淺、碰撞或火警等非常情況下須採取的行動。
4. 協助遇險的人或遇險船隻，包括將船隻拖曳及擱於灘上。
5. (a) 識別救生筏上的永久標示以得知可運載的人數。  
(b) 通曉《商船(救生裝置)規例》+(第369章，附屬法例)所規定救生筏內應有的裝

備及其正確的使用。

(c) 救生筏的下水方法，以及在下水前後和下水期間所須採取的預防措施。

(d) 自船隻或水中登上救生筏的方法。

(e) 扳正倒轉的救生筏。

(f) 求生程序。

6. 防火與滅火，包括滅火裝備的維修。

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## Section of Enactment

Chapter: 200 Title: CRIMES ORDINANCE Gazette Number: 23 of 2002  
Section: 117 Heading: Interpretation Version Date: 19/07/2002

### PART XII

#### SEXUAL AND RELATED OFFENCES

##### Interpretation

(1) In this Part, unless the context otherwise requires-

"closure order" (封閉令) means an order made under section 153A(2); (Added 69 of 1990 s. 2)

"forfeiture order" (沒收令) means an order made under section 153F(4); (Added 69 of 1990 s. 2)

"mentally incapacitated person" (精神上無行為能力的人) means a mentally disordered person or a mentally handicapped person (within the meaning of the Mental Health Ordinance (Cap 136)) whose mental disorder or mental handicap, as the case may be, is of such a nature or degree that that person is incapable of living an independent life or guarding himself against serious exploitation, or will be so incapable when of an age to do so; (Added 81 of 1997 s. 59)

"owner" (擁有人) in relation to any premises means any person holding the premises direct from the Government, whether under lease, licence or otherwise, any mortgagee in possession and any person receiving the rent of the premises, solely or with another and on his behalf or that of any person, or who would receive the same if such premises were let to a tenant, and, where such owner as above defined cannot be found or ascertained, or is absent from Hong Kong or is under disability, also includes the agent of such owner; (Amended 29 of 1998 s. 105)

"prostitute" (娼妓) means a prostitute of either sex; (Added 90 of 1991 s. 2)

"public place" (公眾地方) means-

(a) any place to which for the time being the public or a section of the public are entitled or permitted to have access, whether on payment or otherwise; and

(b) a common part of any premises notwithstanding that the public or a section of the public are not entitled or permitted to have access to that common part or those premises; (Added 90 of 1991 s. 2)

"rape offence" (強姦罪行) means any of the following, namely, rape, attempted rape, aiding, abetting, counselling or procuring rape or attempted rape, and incitement to rape; (Added 25 of 1978 s.2) [cf. 1976 c. 82 s. 7(2) U.K.]

"specified sexual offence" (指明性罪行) means any of the following, namely, rape, non-consensual buggery, indecent assault, an attempt to commit any of those offences, aiding, abetting, counselling or procuring the commission or attempted commission of any of those offences, and incitement to commit any of those offences; (Added 90 of 1991 s. 2)

"suspension order" (暫停執行令) means an order made under section 153I(4). (Added 69 of 1990 s. 2)

(1A) For the purposes of this Part a person does an unlawful sexual act if, and only if, that person-

(a) has unlawful sexual intercourse;

(b) commits buggery or an act of gross indecency with a person of the opposite sex with whom that person may not have lawful sexual intercourse; or

(c) commits buggery or an act of gross indecency with a person of the same sex. (Added 90 of 1991 s. 2)

(1B) For the avoidance of doubt, it is declared that for the purposes of sections 118, 119, 120 and 121 and without affecting the generality of any other provisions of this Part, "unlawful sexual intercourse" (非法性交、非法的性交) does not exclude sexual intercourse that a man has with his wife. (Added 23 of 2002 s. 11)

(2) The use in any provision of this Part of the word "man" without the addition of the word "boy", or vice versa, shall not prevent the provision applying to any person to whom it would have applied if both words had been used, and similarly with the words "woman" and "girl".

(3) Premises, vessel or any place shall not be treated as a vice establishment for the purposes of this Part unless-

(a) the premises, vessel or place are or is used wholly or mainly by 2 or more persons for the purposes of prostitution; or (Amended 90 of 1991 s. 2)

(b) the premises, vessel or place are or is used wholly or mainly for or in connection with the organizing or arranging of prostitution.

(Added 1 of 1978 s. 6. Amended 81 of 1997 s. 59)  
[cf. 1956 c. 69 s. 45 U.K.]

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章： 200 標題： 刑事罪行條例 憲報編號： 23 of 2002  
條： 117 條文標題： 釋義 版本日期： 19/07/2002

### 第XII部

#### 性罪行及相關的罪行

##### 釋義

(1) 在本部中，除文意另有所指外—  
“公眾地方” (public place) 指—

- (a) 公眾或任何一類公眾，不論是憑付費或其他方式，於當其時有權進入或獲准進入的地方；及
- (b) 任何處所的共用部分，即使公眾或任何一類公眾無權進入或不獲准進入該共用部分或該等處所亦然；(由1991年第90號第2條增補)

“沒收令” (forfeiture order) 指根據第153F(4)條作出的命令；(由1990年第69號第2條增補)

“指明性罪行” (specified sexual offence) 指下列任何罪行，即強姦，未經同意下進行的肛交，猥褻侵犯，企圖犯任何該等罪行，協助、教唆、慫使或促使犯或企圖犯任何該等罪行，以及煽惑犯任何該等罪行；(由1991年第90號第2條增補)

“封閉令” (closure order) 指根據第153A(2)條作出的命令；(由1990年第69號第2條增補)

“娼妓” (prostitute) 指男性或女性娼妓；(由1991年第90號第2條增補)

“強姦罪行” (rape offence) 指下列任何罪行，即強姦，企圖強姦，協助、教唆、慫使或促使強姦或企圖強姦，以及煽惑強姦；(由1978年第25號第2條增補) [比照 1976 c. 82 s. 7(2) U.K.]

“精神上無行為能力的人” (mentally incapacitated person) 指《精神健康條例》(第136章)所指的精神紊亂的人或弱智人士，而其精神紊亂或弱智(視屬何情況而定)的性質或程度令他沒有能力獨立生活或沒有能力保護自己免受他人嚴重利用，或將會令他在到達應獨立生活或保護自己免受他人嚴重利用的年齡時沒有能力如此行事；(由1997年第81號第59條增補)

“暫停執行令” (suspension order) 指根據第153I(4)條作出的命令；(由1990年第69號第2條增補)

“擁有人” (owner) 就任何處所而言，指根據租契、特許或其他方式直接從政府名下持有該處所的人、管有承按人、單獨或與他人共同及為其本人或為他人收取該處所租金的人，及在假設該處所租給租客的情況下，任何收取該處所租金的人；此外，在不能尋獲或不能確定上文界定的擁有人時，或在上文界定的擁有人不在港或無行為能力時，則此詞亦包括該等擁有人的代理人。(由1998年第29號第105條修訂)

(1A) 就本部而言，任何人如作出下列作為即屬作非法的性行為，亦只有作出下列作為方屬作非法的性行為—

- (a) 作出非法的性交；

(b) 與一名異性的人作出肛交或嚴重猥褻作為，而該人是不可與該異性的人作出合法性交的；或

(c) 與一名同性的人作出肛交或嚴重猥褻作為。(由1991年第90號第2條增補)

(1B) 為免生疑問，現宣布就第118、119、120及121條而言，並在不影響本部其他條文的一般性的原則下，任何男子與其妻子性交並非在“非法性交”、“非法的性交”(unlawful sexual intercourse)的涵蓋範圍以外。(由2002年第23號第11條增補)

(2) 在本部條文中，如使用“男子”一詞而無加上“男童”一詞，或相反情況，則該條文適用於該二詞同被使用時所會適用的人；“女子”及“女童”兩詞的情形亦相同。

(3) 就本部而言，除非有下列情況，否則處所、船隻或任何地方不得視為賣淫場所—

(a) 該處所、船隻或地方由2人或由超過2人完全或主要用以賣淫；或 (由1991年第90號第2條修訂)

(b) 該處所、船隻或地方完全或主要用以組織或安排賣淫，或與組織或安排賣淫有關而使用。

(由1978年第1號第6條增補。由1997年第81號第59條修訂)  
[比照 1956 c. 69 s. 45 U.K.]

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**LIVE TELEVISION LINK (WITNESSES OUTSIDE HONG  
KONG) RULES**

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# **LIVE TELEVISION LINK (WITNESSES OUTSIDE HONG KONG) RULES**

(Made under section 79L of the Criminal Procedure Ordinance (Cap. 221))

## **1. Commencement**

These Rules shall come into operation on the day when Part II of the Evidence (Miscellaneous Amendments) Ordinance 200[ ] (Ord. No. of ) comes into operation.

## **2. Interpretation**

“applicant” means the party who makes an application in accordance with rule 3;

“court” includes the District Court and a magistrate;

“officer of the court” means the Registrar of the High Court, the Registrar of the District Court or the First Clerk of the magistracy where proceedings are taking place, as the case may be;

“witness”, in relation to an application under rule 3, means the person who is to give evidence outside Hong Kong.

## **3. Making applications**

An application for leave under section 79I of the Ordinance for a person to give evidence to the court by way of a live television link from a place outside Hong Kong shall be made by giving a notice –

- (a) within 42 days after the date of –
  - (i) the committal for trial of the defendant under section 85(2) of the Magistrates Ordinance (Cap. 227);
  - (ii) the consent to the preferment of a bill of indictment in relation to the case under section 24A(1)(b) of the Ordinance (Cap. 227);

- (iii) the order of transfer under section 88 of the Magistrates Ordinance (Cap. 227);
  - (iv) the setting down of the case for trial before a magistrate;
  - (v) the election by the defendant under section 80C of the Magistrates Ordinance (Cap. 227) to have a charge against him heard at a preliminary inquiry; or
  - (vi) the making of an order of transfer under section 4 of the Complex Commercial Crimes Ordinance (Cap. 394);
- (b) in the form prescribed in the Schedule; and
  - (c) to the officer of the court and all other parties to the proceedings.

#### **4. Extension of time**

(1) The time specified in rule 3(a) may be extended by the court, either before or after it expires, on an application in writing.

(2) An application for extension of time shall –

- (a) specify the grounds of the application for extension; and
- (b) be given to the officer of the court and all other parties to the proceedings.

(3) An application for extension of time may be determined by the court without a hearing, unless the court otherwise directs.

(4) If the court decides to have a hearing in respect of the application for extension of time, the officer of the court shall notify all parties concerned of the time and place of the hearing.

(5) If an application for extension of time is determined by the court without a hearing, the officer of the court shall notify all parties concerned of the determination.

## **5. Parties may oppose applications**

(1) A party who receives a notice mentioned in rule 3 may oppose the application.

(2) A party who wishes to oppose the application shall, within 14 days of receiving the notice, notify the applicant and the officer of the court in writing of his opposition and give reasons for the opposition.

## **6. Determination**

(1) The court may determine an application under rule 3 without a hearing if no opposition is received within the time limit specified under rule 5(2).

(2) If the court decides to have a hearing in respect of the application (either because an opposition is received or otherwise), the officer of the court shall notify all parties concerned of the time and place of the hearing.

(3) If the application is determined by the court without a hearing, the officer of the court shall notify all parties concerned of the determination and, where leave is granted, the notification shall state –

- (a) the country, territory or place in which the witness will give evidence;
- (b) if known, the location where the witness will give evidence;
- (c) where the witness is to give evidence for the prosecution (except where section 65DA(3) of the Ordinance applies), or where disclosure is required by section 65D of the Ordinance or section 75A of the District Court Ordinance (Cap. 336) (alibi) or by section 65DA of the Ordinance (expert evidence), the name of the witness;
- (d) the conditions, if any, imposed by the court.

**7. Court may impose conditions**

(1) The court may impose conditions on the grant of leave.

(2) Without prejudice to the generality of subrule (1), the court may specify that the witness shall give evidence in the presence of a specified person who is able and willing to answer under oath any questions the court may put as to the circumstances in which the evidence is given, including questions about any persons who are present when the evidence is given and any matters which may be relevant to the giving of evidence.

**8. Putting documents at trials**

(1) If it is necessary to put a document to a witness during the course of examination of the witness, the court may –

- (a) if the document is at the courtroom in Hong Kong, permit the transmission by any means of a copy of the document to the place where the witness is giving evidence and then the putting of the copy so transmitted to the witness;
- (b) if the document is at the place where the witness is giving evidence, permit the document to be put to the witness and then be transmitted by any means a copy of it to the courtroom in Hong Kong.

(2) If a document is put to the witness in accordance with subrule (1), the transmitted copy shall be admitted in evidence without further proof that it is a true copy of the document concerned.

**9. Recording Evidence**

(1) Subject to subsection (2), in the case of a trial before a jury, the court may direct that video recording be made of the evidence given under Part IIIB of the Ordinance in the absence of the jury and that the evidence so recorded be played to the jury at a later time.

(2) Any evidence recorded under subsection (1) may be played to the jury once only.

## SCHEDULE

[r.3]

### CRIMINAL PROCEDURE ORDINANCE (CAP. 221)

#### Notice of Application for Leave to Use Television Link under Section 79I

An application should be made within 28 days after the date of the committal for trial of the defendant under section 85(2) of the Magistrates Ordinance (Cap. 221), the consent to the preferment of a bill of indictment in relation to the case under section 24A(1)(6) of the Criminal Procedure Ordinance (Cap. 221), the order of transfer under section 88 of the Magistrate Ordinance (Cap 227), the setting down of the case for trial before a magistrate, the election by the defendant under section 80C of the Magistrates Ordinance (Cap. 227) to have a charge against him heard at a preliminary enquiry, or the order of transfer under section 4 of the Complex Commercial Crimes Ordinance (Cap. 394). This form may also be used where an extension of time has been granted for the making of this application.

A copy of this form must be given at the same time to the other party or parties to the case.

Case Details

The ..... Court Case Number :

Date of : committal for trial under section \*Delete as appropriate  
85(2) of the Magistrates  
Ordinance (Cap. 227)\*:

consent to preferment of bill of  
indictment under section  
24A(1)(b) of the Criminal  
Procedure Ordinance (Cap. 221)\*:

order of transfer under section 88  
of the Magistrates Ordinance  
(Cap. 227)\*:

setting down of case for trial  
before magistrate\*:

election by the defendant under  
section 80C of the Magistrates  
Ordinance (Cap. 227) to have a  
charge against him heard at a  
preliminary enquiry\*:

order of transfer under section 4 of  
the Complex Commercial Crimes  
Ordinance (Cap. 394)\*:

Defendant(s) : State the name(s) of  
the defendant(s) to

whom this application  
relates

Application

Name of Applicant :

Name of Applicant's Solicitor :

Address of Solicitor :

Reference :

Charges :

Give brief details of  
those charges to  
which this application  
applies

Witness-Please read the Notes beside this section before  
completing it.

Notes:

An application by the  
defence for evidence  
to be given through  
live television link  
need not disclose who  
that witness is except  
to the extent that the  
disclosure is required  
by section 65D of the  
Criminal Procedure  
Ordinance (Cap. 221)

Name of the witness :



Country, territory or place in which the witness will give evidence or section 75A of the District Court Ordinance (Cap. 336) (alibi) or by section 65DA of the Criminal Procedure Ordinance (Cap. 221) (expert witness).

Location where the witness will give evidence (e.g. courtroom, hotel)

If the applicant is the prosecutor, it is necessary to provide the name of the witness unless disclosure is not required by virtue of section 65DA(3) of the Criminal Procedure Ordinance (Cap. 221).

Grounds for applying for evidence to be given by television link :

.....

Signature of applicant

or

applicant's solicitor

.....

Date

Chief Justice

2003

### **Explanatory Note**

These Rules set out the procedure respecting the giving of evidence by way of a live television link from a place outside Hong Kong under Part III B of The Criminal Procedure Ordinance (Cap. 221).

2. Rule 3 sets out the requirements for making an application for leave for a person to give evidence to the court by way of a live television link from a place outside Hong Kong ("the application").

3. Rule 4 provides that the time limit for making the application can be extended by the court upon application.

4. Rule 5 provides for the making of opposition to the application.

5. Rule 6 enables the court to determine an application with or without a hearing and imposes a duty on the officer of the court to notify the applicant of the determination of the court if the application is determined without a hearing.

6. Rule 7 provides that the court may impose conditions on the grant of leave.

7. Rule 8 deals with documents that may need to be put to a witness during the course of examination.

8. Rule 9 enables the making of a video recording of the evidence concerned in the absence of the jury.