

**Bills Committee on
Evidence (Miscellaneous Amendments) Bill 2002**

**Response by the Administration to issues raised by
Members at the meeting on 13 May 2003**

This paper is a response to the issues raised at the Bills Committee meeting held on 13 May 2003.

Part II

Clause 11

Section 74 of the Evidence Ordinance

- (a) **The Administration is requested to review the drafting of the English and Chinese versions of the definition of “live television link” to achieve consistency, in the light of any drafting practice on the term “vice versa”. A member has suggested to amend the English version to read “ ..., audio visual facilities that enable persons at the two places to see and hear each other at the respective places at the same time.”;**

There is no hard and fast rule to deal with the term “vice versa” in our existing legislation. The main consideration is whether the Chinese text of the legislation reflects the policy intent accurately and whether the choice of words is appropriate in the context. Generally speaking, so far, “vice versa” has been dealt with in the following ways and each is illustrated with an example:

- (a) In the Schedule to Coroners (Fees) Rules (Cap. 504D), the English text provides that “translation... from Chinese to English, or vice versa...” while in the Chinese text it is “中譯英或英譯中”. There is no Chinese equivalent for “vice versa” but the meaning of the English text is brought out;

- (b) in section 15(3)(c)(ii) and (4) of the Merchant Shipping (Safety) (Arrangements for Embarkation and Disembarkation of Pilots) Regulation (Cap. 369AU), “vice versa” in the Chinese text is “反之亦然”;
- (c) in Schedule 5 to the Shipping and Port Control (Pleasure Vessels) (Certificates of Competency) Rules (Cap. 313R), the English text provides “... convert true courses to compass courses and vice versa”. In Chinese, it becomes “在真航向及羅經航向兩者互相換算”; and
- (d) in section 117 of the Crimes Ordinance (Cap. 200), “vice versa” has become “或相反情況”.

Copies of the relevant provisions are attached at **Annex A**.

In the proposed amendments to sections 74 of the Evidence Ordinance, 79H of the Criminal Procedure Ordinance and sections 9 and 10 of the Mutual Legal Assistance in Criminal Matters Ordinance; and section 81 of the Magistrates Ordinance, the same definition of “live television link” in both languages is provided. The Administration is of the view despite the absence of a direct translation of “vice versa” in the Chinese text, the translation as a whole does accurately reflect the policy intent and is not inconsistent with the previous practice of drafting. The definition of “live television link” in both languages would require no amendments and should stand as they are drafted.

Clause 12

Section 76 of the Evidence Ordinance

- (b) **The Administration is requested to consider a member's suggestion to amend the Chinese version of the heading of section 76 to “香港法院實現協助申請的權力”.**

The Administration agrees that the Chinese version of the heading of section 76 should be amended to read “香港法院實現協助申請的權力”. This will be done by way of a CSA.

Clause 16***Proposed section 79I of CPO***

- (c) **A member has pointed out that it would be difficult for the court to determine whether the evidence of the witness can “more” conveniently be given in Hong Kong, and proposed to delete the word “more” in proposed new section 79I(2)(b). The Administration is requested to consider the proposal, having regard to the expression in similar legislation in other jurisdictions;**

Under the proposed section 79I of CPO, the court is given a general discretion as to whether an application for evidence to be given via live TV link should be granted. Section 79I(1) gives the court the required general discretion to permit evidence to be given by live TV link; while section 79I(2) particularises limits within which the court shall not give permission.

The term “more conveniently” in proposed section 79I(2)(b) is adopted from the New South Wales legislation. Section 5B(2) of the New South Wales Ordinance (Audio and Audio Visual Links) Act 1998 provides –

“(2) The court must not make such a direction if :

- (a) the necessary facilities are unavailable or cannot reasonably be made available, or
- (b) the court is satisfied that the evidence or submission can **more conveniently** be given or made in the courtroom or other place at which the court is sitting, or
- (c) the court is satisfied that the direction would be unfair to the party, or
- (d) the court is satisfied that the person in respect of whom the direction is sought will not give evidence or make the submission.”

For example, giving evidence in Hong Kong may be inconvenient but giving evidence via live TV link is even more inconvenient. In removing the word “more”, the party seeking to call a witness to give evidence by TV link will only have to show that the evidence cannot conveniently be given in Hong Kong. The removal of “more” would seem to lower the threshold. Although the effect will apply equally to

both the prosecution and the defence, video link evidence should only be used as an exception rather than as a general rule and it is not deemed appropriate to remove the word “more”.

Proposed section 79J of CPO

- (d) A member has enquired whether it is necessary to include the phrase “for all purposes in connection with the proceedings concerned” in proposed section 79J(1). The Administration is requested to explain the legislative intent and the implications of removing the phrase from the proposed section;**

The policy intent of the proposed provision is to deem the place abroad to be part of the Hong Kong courtroom but only for purposes in connection with the proceedings e.g. to give effect to the laws in Hong Kong relating to evidence, procedure, contempt of court and perjury. It is not intended to give Hong Kong extra-territorial jurisdiction in respect of any general criminal offence (e.g. armed assault) which occurs during the taking of the evidence, although in certain cases such conduct might also amount to contempt of court. Therefore it is important that the words "for all purposes in connection with the proceedings concerned" are retained so as to limit the extended application of jurisdiction.

Proposed section 79L of CPO

- (e) The Administration is requested to provide the draft rules to be made by the Chief Justice under section 79L respecting the giving of evidence by way of a live television link for the Bills Committee's consideration.**

A copy of the draft rules is enclosed at **Annex B** for member's information.

Others

- (f) The Administration is requested to review the Chinese translation of the terms “person charged” and “accused” in the Bill to achieve consistency.**

As defined in section 57 of the Criminal Procedure Ordinance, “被控人” is the equivalent of “accused”. “被控人” is adopted as the Chinese equivalent of “accused” throughout the Criminal Procedure Ordinance.

“被控告的人” is the equivalent of “person charged” throughout the Criminal Procedure Ordinance. Consistency of the translation of the two terms is therefore maintained in so far as it relates to the Criminal Procedure Ordinance (in particular clauses 4-5 of the Bill).

The odd reference in Clause 8 pointed out by the Bills Committee, i.e. “被控人” for “person charged”, appears in section 20 the Defamation Ordinance. As the Bill seeks to repeal section 20 of the Defamation Ordinance, that reference will cease to exist on the commencement of this Ordinance.

Department of Justice
May 2003

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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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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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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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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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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

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

65DA of the Criminal Procedure Ordinance (Cap. 221) (expert witness).

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.