

**Bills Committee on
Statute Law (Miscellaneous Provisions) Bill 2005**

Follow-up to Meeting on 24 May 2005

Background

At the meeting held on 24 May 2005, when examining the proposed amendments in clause 9 of the Bill to transfer the chairmanship of the Criminal Procedure Rules Committee (“CPRC”) from the Chief Justice (“CJ”) to the Chief Judge of the High Court (“CJHC”), the Bills Committee pointed out that the rules and orders made by the CPRC covered wide-ranging matters in criminal proceedings at different levels of court. As such, they differed in nature from the Rules of the High Court and the Rules of the District Court. The Bills Committee requested information on the scope of the Criminal Procedure Ordinance (“CPO”) and the rules made by the CPRC. It also requested the Judiciary to reconsider the justification for the proposed amendments having regard to the Bar Association’s comments in its letter of 18 May 2005.

Scope of the CPO

2. The CPO makes provisions relating to criminal procedures, evidence and practice. The provisions therein apply mainly to the High Court, including the Court of First Instance (“CFI”) acting in the exercise of its criminal jurisdiction and the Court of Appeal. Certain parts of it also apply to the District Court and the Magistrates’ Courts. The CPO contains the following parts -

- (a) Part I – Business of the court;
- (b) Part IA – Bail;
- (c) Part II – Proceedings preliminary to trial;
- (d) Part III – Proceedings at trial;
- (e) Part IIIA – Special procedures for vulnerable witnesses;
- (f) Part IIIB – Taking evidence from witnesses outside Hong Kong by live television link (Not yet commenced);
- (g) Part IV – Appeals, questions of law reserved and referred and review;
- (h) Part IVA – Other proceedings subsequent to trial;
- (i) Part V – Parties; and
- (j) Part VI – Miscellaneous.

Empowering Provisions for CPRC to Make Rules

3. Section 9 of the CPO provides that rules and orders regulating the practice and procedure under the CPO shall be made by the CPRC. Such rules and orders may provide for the times for or within which documents must be filed or notices given, the duties of the various officers of the court, the manner in which cases and arguments are to be presented, and generally for the better carrying out of the provisions of the CPO. The CPRC may also specify forms for use under the CPO. Pursuant to this section, the CPRC has made the following 7 sets of Rules

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- (a) Criminal Appeal Rules (Cap. 221A);
- (b) Indictment Rules (Cap. 221C);
- (c) Criminal Procedure (Reference of Questions of Law) Rules (Cap. 221E);
- (d) Criminal Procedure (Appeal Against Discharge) Rules (Cap. 221F);
- (e) Criminal Procedure (Applications Under Section 16) Rules (Cap. 221G);
- (f) Criminal Procedure (Representation) Rules (Cap. 221H); and
- (g) Criminal Procedure (Record of Bail Proceedings) (Cap. 221I).

4. Section 9A of the CPO provides that the CPRC may make rules providing for the granting of legal aid in criminal cases. Pursuant to this section, the CPRC has made the Legal Aid in Criminal Cases Rules (Cap. 221D). In this connection, it may be relevant to note that in 2002-03 and 2003-04, about 96% of the legal aid expenses for criminal cases were provided for trials and appeals heard in the High Court or the lower levels of courts.

5. Section 9B provides that the CPRC may make rules providing for the payment of an allowance to witnesses in criminal proceedings before any court. Pursuant to this section, the CPRC has made the Criminal Procedure (Witnesses' Allowances) Rules (Cap. 221B).

Empowering Provisions for CJ to Make Rules

6. Under Part IIIA of the CPO on special procedures for vulnerable witnesses, the CJ may -

- (a) Under section 79D make rules or give directions respecting (i) the giving of evidence by way of a live television link; and (ii) the admission and use of video recorded interviews as evidence in proceedings to which Part IIIA applies. The Live Television Link and Video Recorded Evidence Rules (Cap. 221J) are made under this section; and
- (b) Under section 79G make rules or give directions for the purposes of application for dismissal of charges contained in a notice of transfer. The Application for Dismissal of Charges Contained in a Notice of Transfer Rules (Cap. 221K) are made under this section.

7. Under Part IIIB of the CPO (not yet commenced) on taking evidence from witnesses outside Hong Kong by live television link, the CJ may, under section 79L, make rules or give directions respecting the giving of evidence by way of a live television link.

8. The Judiciary has proposed to introduce Committee Stage Amendments to transfer the CJ's rule-making powers under sections 79D, 79G and 79L to the CJHC.

Justifications for the Transfer of CPRC Chairmanship and Rule-making Powers under CPO from the CJ to CJHC

9. The Judiciary considers that it is more appropriate for the CJHC, as the court leader of the High Court, to chair the CPRC and to make rules under the CPO, having regard to the following -

- (a) The CFI of the High Court has unlimited jurisdiction in all criminal matters. The more serious criminal offences are tried at the CFI. The CFI also has criminal appellate jurisdiction in respect of Magistracy appeals. The Court of Appeal of the High Court hears criminal appeals from the CFI and the District Court.
- (b) As set out in paragraph 2 above, the scope of the CPO covers the various stages of criminal proceedings in the High Court (the CFI exercising its criminal jurisdiction and the Court of Appeal), and certain parts of it also apply to the District Court and the Magistrates Courts. (It should be noted that the CPO

does not extend to cover criminal appeals to the Court of Final Appeal which are from the High Court).

- (c) As set out in paragraphs 3 – 7 above, the Rules made under the CPO, either by the CPRC or the CJ, mainly regulate procedural matters of criminal proceedings in the High Court and the courts below.
- (d) As set out in paragraph 4 above, a large proportion (about 96%) of the expenses of legal aid in criminal cases is on cases at the High Court or the courts below.

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