

**立法會**  
**Legislative Council**

LC Paper No. CB(4)173/15-16  
(These minutes have been seen  
by the Administration)

Ref: CB4/SS/15/14

**Subcommittee on  
Live Television Link (Witnesses outside Hong Kong) Rules and  
Rules of the High Court (Amendment) (No. 2) Rules 2015**

**Minutes of the first meeting held on  
Thursday, 22 October 2015, at 2:30 pm  
in Conference Room 2B of the Legislative Council Complex**

**Members present** : Hon Dennis KWOK (Chairman)  
Hon Albert HO Chun-yan  
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP  
Hon Paul TSE Wai-chun, JP

**Public Officers  
attending** : **Agenda item II**

Department of Justice

Ms Adeline WAN  
Senior Assistant Solicitor General

Ms Anthea LI  
Deputy Principal Government Counsel (Mutual Legal  
Assistance) (Ag)

Miss Selina LAU  
Senior Assistant Law Draftsman (Ag)

Miss Lily HO  
Senior Public Prosecutor

Mr L K WONG  
Government Counsel

**Clerk in attendance** : Anthony CHU  
Chief Council Secretary (4)1

**Staff in attendance** : Miss Evelyn LEE  
Assistant Legal Adviser 10

Ms Angela CHU  
Senior Council Secretary (4)1

Miss Kay PANG  
Legislative Assistant (4)7

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Action

**I. Election of Chairman**

Election of Chairman

Mr Albert HO, the member with the highest precedence among those present at the meeting, presided over the election of the Chairman of the Subcommittee. He invited nominations for the chairmanship of the Subcommittee.

2. Dr Priscilla LEUNG nominated Mr Dennis KWOK and the nomination was seconded by Mr Albert HO. Mr Dennis KWOK accepted the nomination. There being no other nomination, Mr KWOK was elected Chairman of the Subcommittee.

3. Members agreed that there was no need to elect a Deputy Chairman.

**II. Meeting with the Administration**

L.N. 145 of 2015	-- Live Television Link (Witnesses outside Hong Kong) Rules
L.N. 146 of 2015	-- Rules of the High Court (Amendment) (No. 2) Rules 2015
LP 911/00/2C XX	-- Legislative Council Brief
LC Paper No. LS76/14-15	-- Legal Service Division Report

Action

- LC Paper No. CB(4)73/15-16(02) -- Letter from Assistant Legal Adviser to the Administration dated 20 July 2015
- LC Paper No. CB(4)73/15-16(03) -- Administration's letter dated 24 July 2015 in response to the letter from Assistant Legal Adviser
- LC Paper No. CB(4)73/15-16(04) -- Marked-up copy of the relevant provisions of L.N. 146 of 2015 prepared by the Legal Service Division (Restricted to members only)
- LC Paper No. CB(4)73/15-16(05) -- Background brief prepared by the Legislative Council Secretariat

4. The Subcommittee deliberated (index of proceedings attached at **Annex**).

Discussion

5. The Subcommittee discussed the issues of the time taken to prepare the Live Television Link (Witnesses outside Hong Kong) Rules and the Rules of the High Court (Amendment) (No. 2) Rules 2015 (collectively as "the Rules"), concerns raised by the Law Society of Hong Kong over the Rules, measures to ensure that witnesses giving evidence from places outside Hong Kong were not made under coercion, and places where the Rules would be applicable. The Administration's response to the above issues is recorded in the index of proceedings at **Annex**.

6. Members expressed concern that there was only one Technology Court in the High Court Building ("the Technology Court") which was equipped with the required technical facilities to support the use of a live television ("TV") link. Since the District Court or the Magistrates' Courts might have to make use of the Technology Court for taking evidence from witnesses via a live TV link, such an arrangement was not desirable. Members urged the Judiciary to consider installing the necessary technical facilities at the District Court and the Magistrates' Courts to facilitate the taking of evidence by way of a live TV link.

7. Members agreed that the Administration should convey the above views to the Judiciary for consideration.

ActionCompletion of the scrutiny and the legislative timetable

8. The Subcommittee completed the scrutiny of the Rules and would not propose any amendment to the Rules.

9. The Subcommittee agreed that the Chairman would move at the Council meeting on 28 October 2015 a proposed resolution to extend the scrutiny period of the Rules to the Council meeting of 18 November 2015. Members noted that, upon extension of the scrutiny period, the Chairman would report the Subcommittee's deliberations to the House Committee on 6 November 2015. The deadline for giving notice to move amendments to the Rules was 11 November 2015.

**III. Any other business**

10. There being no other business, the meeting ended at 3:37 pm.

Council Business Division 4  
Legislative Council Secretariat  
12 November 2015

**Proceedings of the first meeting of the  
Subcommittee on Live Television Link (Witnesses outside Hong Kong) Rules and  
Rules of the High Court (Amendment) (No. 2) Rules 2015  
on Thursday, 22 October 2015, at 2:30 pm  
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
<b>Agenda item I – Election of Chairman</b>			
000000 – 000337	Mr Albert HO Dr Priscilla LEUNG Mr Dennis KWOK	Election of Chairman	
<b>Agenda item II – Meeting with the Administration</b>			
000338 – 000616	Chairman Administration	Briefing by the Administration on the Live Television Link (Witnesses outside Hong Kong) Rules ("LTVL(WOHK)R") and Rules of the High Court (Amendment) (No. 2) Rules 2015 ("the Amendment Rules") (collectively known as "the Rules").	
000617 – 001321	Chairman Mr Albert HO Administration	<p>Mr Albert HO's enquiries about –</p> <p>(a) why it took over 12 years to prepare for the Rules after the Evidence (Miscellaneous Amendments) Ordinance 2003 ("the Principal Ordinance") was enacted in July 2003; and</p> <p>(b) experience of taking evidence by way of a live television ("TV") link in Hong Kong.</p> <p>The Administration's explanation that a longer time was taken for the gazettal of the Rules because of –</p> <p>(a) the technical nature of the Rules;</p> <p>(b) the need to consult relevant parties including the Judiciary Administration and the two legal professional bodies on the drafting of the Rules, facilities required of and costs for using a live TV link for taking evidence; and</p> <p>(c) extensive discussions with the Law Society of Hong Kong ("Law Society") to address their concerns over the Rules.</p> <p>In reply to Mr HO's enquiry regarding the concerns of Law Society, the Administration advised that a majority of their concerns and proposals on the Rules were <i>ultra vires</i> the Principal Ordinance and thus could not be addressed in the Rules. However, the Law Society's proposal to extend the time for a party to make an application to oppose to another party's</p>	

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		<p>application for taking evidence via a live TV link was accepted by the Administration and thus reflected in LTVL(WOHK)R.</p> <p>The Administration further advised that there were cases of taking evidence for civil proceedings in Hong Kong via a live TV link according to relevant provisions under Order 38 of the Rules of the High Court (Cap. 4A) and section 47 of the Evidence Ordinance (Cap. 8). However, no such provisions were provided in the Criminal Procedure Ordinance (Cap. 221) for criminal proceedings in Hong Kong.</p>	
001322 – 002432	Dr Priscilla LEUNG Administration Chairman	<p>Dr Priscilla LEUNG's enquiry about ways to ensure that overseas witnesses giving evidence by way of a live TV link would not be made under coercion or undue influence.</p> <p>The Administration's response that –</p> <p>(a) the litigating parties concerned might make an application for taking evidence from an overseas witness via a live TV link to the court. In considering the application, the court should not give permission in any of the situations set out in section 79(I)(2) of the Principal Ordinance. Specifically, section 79I(2)(d) and (e) provided that permission should not be given if measures to ensure that the person would be giving evidence via a live TV link without coercion could not reasonably be taken or it was not in the interests of justice to do so respectively; and</p> <p>(b) rule 4 of LTVL(WOHK)R provided a procedure for a party to the proceedings to oppose an application for taking evidence from an overseas witness via a live TV link. Also, rule 6(2) provided that the court might impose a condition that the witness was to give evidence in the presence of a person who was able and willing to answer under oath any question the court might put as to the circumstances in which the evidence was given.</p> <p>In reply to Dr LEUNG's further enquiry, the Administration advised that under the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525), the taking of evidence in Hong Kong via a live TV link for foreign criminal matters was overseen by a judge in the Hong Kong courtroom. In considering</p>	

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		<p>an application for taking evidence via a live TV link under the LTVL(WOHK)R, the court could also impose the conditions relating to how the evidence was to be taken, such as the venue in which the evidence must be taken and who was to be present when the evidence was taken.</p>	
002433 – 003525	Chairman Mr Albert HO Administration	<p>In reply to Mr Albert HO's enquiry on whether the Rules would only be applicable to the taking of evidence in jurisdictions that had bilateral or multilateral agreements on mutual legal assistance on criminal matters (“MLA”) with Hong Kong, the Administration advised that the Rules would also be applicable to the taking of evidence in foreign jurisdictions which did not have operative MLA agreements with Hong Kong by virtue of the principle of reciprocity. With the commencement of the remaining provisions of the Principal Ordinance and the Rules, the court could approve applications from parties of a criminal proceeding for a witness to give evidence from any place outside Hong Kong, including the Mainland, Taiwan and Macau, by a live television link. The processing of such requests was a matter for the requested place and would be subject to the law of the requested place as well as the availability of necessary facilities in that place. As regards requests from the Mainland, Taiwan and Macau for taking evidence, such requests could be processed under the Evidence Ordinance (Cap. 8).</p> <p>The Administration advised that the Amendment Rules and LTVL(WOHK)R would come into operation upon the commencement of sections 13 and 17 of the Principal Ordinance respectively.</p>	
003526 – 003758	Chairman Administration	<p>The Chairman's concern that the District Court and the Magistrates' Courts had to rely on the Technology Court in the High Court Building to take evidence from overseas witnesses by a live TV link. It would be undesirable that the venue for taking evidence by a live TV link for the purpose of criminal proceedings at all levels of courts, in particular, the District Court, was limited to the Technology Court.</p> <p>The Administration was requested to relay members' concern to the Judiciary for consideration.</p>	

Time marker	Speaker	Subject(s)	Action required
<i>Examination of the provisions of the Rules</i>			
003759 – 003857	Chairman Administration	<p><u>Live Television Link (Witnesses outside Hong Kong) Rules (L.N. 145 of 2015)</u></p> <p><i>Rule 1 – Commencement</i></p> <p>Members raised no comments on the rule.</p>	
003858 – 004338	Chairman Administration Mr Paul TSE	<p><i>Rule 2 - Interpretation</i></p> <p>In response to Mr Paul TSE's enquiry, the Administration advised that, subject to any agreement with the overseas jurisdictions concerned, there was no restriction on the venue in which the taking of evidence via a live TV link might take place. Further, certain safeguards were provided in section 79I(2) of the Principal Ordinance to ensure that the use of a live TV link for taking evidence would be in the interests of justice in the circumstances.</p> <p>In reply to the Chairman's enquiry on the technological requirements of a live TV link, the Administration advised that the Rules allowed flexibility in the use of technology so long as it would facilitate the taking of evidence between the two places.</p>	
004339 – 004442	Chairman Administration	<p><i>Rule 3 - Making applications</i></p> <p>Members raised no comments on the rule.</p>	
004443 – 004515	Chairman Administration	<p><i>Rule 4 - Parties may oppose applications</i></p> <p>Members raised no comments on the rule.</p>	
004516 – 004546	Chairman Administration	<p><i>Rule 5 - Determination</i></p> <p>Members raised no comments on the rule.</p>	
004547 – 005134	Chairman Administration Mr Paul TSE	<p><i>Rule 6 - Court may impose conditions</i></p> <p>In reply to the Chairman's enquiry on rule 6(2), the Administration advised that the use of word “person” in the singular form did not prevent the court from requiring the presence of more than one person at the place where the evidence was taken. According to the Interpretation and General Clauses Ordinance (Cap. 1), words and expressions in the singular included the plural.</p>	



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		The Administration further advised that the court's power to impose other conditions as it considered appropriate in the circumstances was provided in section 79I(1) of the Principal Ordinance.	
004831 – 004906	Chairman Administration	<i>Rule 7 - Putting documents to witnesses</i>  Members raised no comments on the rule.	
005134 – 005140	Chairman Administration	<i>Rule 8 - Extension of time</i>  Members raised no comments on the rule.	
005141 – 005243	Chairman Administration	<i>Rule 9 – Abridgement of time</i>  Members raised no comments on the rule.	
005244 – 005743	Chairman Administration	<u>Rules of the High Court (Amendment) (No. 2) Rules (L.N. 146 of 2015)</u>  Members raised no comments on the Rules.	
005744 – 010128	Chairman Mr Albert HO Administration Mr Paul TSE	Mr Albert HO and Mr Paul TSE's enquiry on the handling of exhibits when the witness was giving evidence by way of a live TV link from a place outside Hong Kong.  The Administration advised that since the Rules did not have provisions on the handling of exhibits, the prevailing laws regarding the handling of exhibits would be applicable. According to previous practice in cases where vulnerable witnesses gave evidence by way of a live TV link in Hong Kong criminal proceedings, the images of the exhibits would be shown to the witnesses via the live TV link.	
010129 – 010530	Mr Paul TSE Administration Mr Albert HO	In reply to Mr Albert HO's enquiry on the identification of suspects by witnesses via a live TV link, the Administration advised that the prosecution would usually have dealt with such an issue, if necessary, before evidence was taken by way of a live TV link.	
010531 – 010612	Chairman Clerk	Legislative timetable and extension of the scrutiny period	
010613 – 010716	Chairman	The Subcommittee decided that it was not necessary to invite public views on the Rules.	

Time marker	Speaker	Subject(s)	Action required
<b>Agenda item III – Any other business</b>			
010717 – 010748	Chairman	Closing remarks	

Council Business Division 4  
Legislative Council Secretariat  
 12 November 2015