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

Background brief prepared by the Legislative Council Secretariat

Purpose

This paper provides background information on the Live Television Link (Witnesses outside Hong Kong) Rules ("LTVL(WOHK)R") (L.N. 145 of 2015) and Rules of the High Court (Amendment) (No. 2) Rules 2015 ("the Amendment Rules") (L.N. 146 of 2015), and summarizes the views of members of the Panel on Administration of Justice and Legal Services ("the AJLS Panel") on the legislative proposals.

Background

Live Television Link (Witnesses outside Hong Kong) Rules

2. According to the Legislative Council ("LegCo") Brief (File Ref.: LP 911/00/2C XX), at present, the Criminal Procedure Ordinance (Cap. 221) ("CPO") does not provide for the taking of evidence from witnesses outside Hong Kong by a live television link ("TV link") for the purposes of criminal proceedings in Hong Kong. With the passage of the Evidence (Miscellaneous Amendments) Ordinance 2003 ("the Principal Ordinance") by LegCo in June 2003¹, a new Part IIIB (sections 79H to 79L) was introduced to CPO by virtue of section 17 of the Principal Ordinance. The new Part IIIB of CPO allows the court to permit a

¹ Sections 12 to 26 in Part II of the Principal Ordinance amend the relevant sections of CPO, the Evidence Ordinance (Cap. 8), the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) ("MLA Ordinance"), the Crimes Ordinance (Cap. 200), the Magistrates Ordinance (Cap. 227) and the Mutual Legal Assistance in Criminal Matters Regulation (Cap. 525 sub. leg. A) to facilitate the use of live TV link in criminal proceedings. Sections 20, 21, 22, 25 and 26 came into operation on 3 March 2006. These sections principally relate to requests to Hong Kong made by an appropriate authority from a place outside Hong Kong for taking evidence in Hong Kong for a criminal matter in that place under the MLA Ordinance. The remaining sections in Part II, namely, sections 12 to 19, 23 and 24 have not yet come into operation, pending the finalization of LTVL(WOHK)R and the Amendment Rules.

person, other than the defendant, to give evidence for Hong Kong criminal proceedings by way of a live TV link from a place outside Hong Kong.

3. LTVL(WOHK)R, which was made by the Chief Judge of the High Court under the new section 79L of Part IIIB of CPO², sets out the procedures in respect of the giving of evidence to the court³ by way of a live TV link from a country or territory outside Hong Kong. The key provisions of LTVL(WOHK)R include rules which set out certain definitions, provisions in respect of an application for a witness to give evidence by a live TV link from a place outside Hong Kong under section 79I of CPO, the determination of the application and rules in respect of the putting of documents to a witness who gives evidence via a live TV link.

Rules of the High Court (Amendment) (No. 2) Rules 2015

4. According to the LegCo Brief, there is no general authority at present for Hong Kong courts to give assistance to a court or tribunal outside Hong Kong ("requesting court") by ordering the examination of a witness via a live TV link before a Hong Kong court for the purposes of criminal proceedings in the requesting court⁴. When sections 12 to 16 of the Principal Ordinance come into operation, the Court of First Instance will be able to give such assistance. To this end, the High Court Rules Committee has made the Amendment Rules to amend the provisions in Order 70 of the Rules of the High Court (Cap. 4A)⁵ ("Order 70") to provide for the procedures in respect of the taking of evidence by way of a live TV link by a requesting court. In addition, the Amendment Rules add certain provisions regarding the drawing up, certification and transmission of minutes upon the conclusion of a live TV link examination.

Commencement of the rules

5. The new Part IIIB of CPO and sections 12 to 19, 23 and 24 of the Principal Ordinance have not been brought into operation, pending the making of LTVL(WOHK)R and the Amendment Rules.

6. LTVL(WOHK)R and the Amendment Rules were gazetted on 3 July

² The original section 79L as inserted by section 17 of the Principal Ordinance had named the Chief Justice as the rule making authority. However, this was subsequently amended by section 19 of the Statute Law (Miscellaneous Provisions) Ordinance (Ord. No. 10 of 2005) which substituted the Chief Justice with the Chief Judge of the High Court.

³ According to section 2 of LTVL(WOHK)R, *court* includes the District Court and a magistrate.

⁴ Whilst sections 20, 21, 22, 25 and 26 in Part II of the Principal Ordinance which are already in operation allow evidence be taken by way of a live TV link from a person in Hong Kong, these sections are generally confined to the situations where a request to Hong Kong is made by an appropriate authority from a place outside Hong Kong for taking evidence for a criminal matter in that place under the MLA Ordinance.

⁵ Order 70 sets out the detailed rules for "Obtaining Evidence For Foreign Courts, Etc."

2015 and tabled at the Council meeting of 8 July 2015. LTVL(WOHK)R and the Amendment Rules will come into operation on the days on which sections 17 and 13 of the Principal Ordinance come into operation respectively. According to paragraph 18 of the LegCo Brief, the Administration aims to bring sections 17 and 13 of the Principal Ordinance into operation as soon as practicable after negative vetting of LTVL(WOHK)R and the Amendment Rules.

Deliberations by members of the Panel on Administration of Justice and Legal Services

7. The Administration briefed members of the AJLS Panel on the draft LTVL(WOHK)R and Amendments Rules at its meeting on 24 November 2014. Deputations representing the Hong Kong Bar Association and the Law Society of Hong Kong ("the Law Society") also attended the meeting to give views. At the meeting, the Law Society expressed reservation about the draft LTVL(WOHK)R as it was unclear what remedies the defence could have if an overseas witness concerned gave false evidence to a Hong Kong court via a live TV link. Also, they opined that permitting witnesses to give evidence in criminal proceedings in a Hong Kong court by way of a live television link outside Hong Kong would accord more convenience to the prosecution and thereby tip the balance. The Law Society's views on the draft rules and the Administration's response are attached in Annexes E and F to the paper provided by the Administration for the meeting (LC Paper No. CB(4)853/13-14(01)).

8. The major views expressed by members of the AJLS Panel at the meeting are summarized in the ensuing paragraphs.

Safeguarding interests of all parties

9. Taking note of the concern expressed by deputations that LTVL(WOHK)R might tip the balance in favour of the prosecution side, some members enquired whether the Administration would consider making the proposed provisions under the new section 79I(2)(a) to (e) of CPO, which related to the conditions that the court had to be satisfied in order to grant an application for taking evidence from overseas witnesses by way of a live TV link, more stringent to safeguard the interests of all parties to the criminal proceedings. In addressing the member's concern, the Administration advised that:

- (a) as the defence side could also apply to the court the taking of evidence from a person outside Hong Kong via a live TV link, there was no question of LTVL(WOHK)R granting greater benefit to the prosecution side;

- (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. To ensure that a witness giving evidence via a live TV link from a place outside Hong Kong would not be made under coercion, rule 6(2) of LTVL(WOHK)R 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 taken, including any question about any person who was present when the evidence was given and any matter which might affect the giving of the evidence; and
- (c) in granting any permission for the taking of evidence from an overseas witness via a live TV link in any criminal proceedings in Hong Kong, the court must be satisfied that such permission would not undermine the interests of justice, and would take into account all relevant considerations when making the decision.

Giving false evidence by witnesses

10. Some members expressed concern about the enforceability of the offence of perjury or contempt of court if an overseas witness gave false evidence via a live TV link. They opined that in order to safeguard the interests of justice, permission for an overseas witness to give evidence via a live TV link should only be granted to cases where an extradition agreement was in place between Hong Kong and the place where the overseas witness originated.

11. The Administration advised that under the new section 79J of the CPO, the place from which a witness outside Hong Kong was giving evidence would be deemed as part of the courtroom in Hong Kong. The laws of Hong Kong relating to evidence, procedure, contempt of court and perjury would apply to the proceedings in which the witness was giving evidence via a live TV link. The enforceability of the offence of perjury or contempt of court for cases involving the use of a live TV link from an overseas witness giving false evidence would not pose additional difficulty as compared to cases where an overseas witness came to Hong Kong to give false evidence and then left Hong Kong. This was because in both scenarios, Hong Kong courts could only order the overseas witnesses to be extradited if there was an extradition agreement between Hong Kong and the overseas jurisdiction from which the witnesses originated.

12. On members' enquiry about the experience of overseas jurisdictions in

taking evidence from witnesses by way of a live TV link in a place outside their jurisdictions, and whether there were cases whereby the witnesses concerned gave false evidence, the Administration advised that there was no such information available. However, it should be noted that since March 2006, Hong Kong courts had, on the request of overseas authorities, taken evidence from witnesses in Hong Kong by way of a live TV link for the criminal proceedings of those jurisdictions under section 10 of the MLA Ordinance. Hitherto, there was no record of any cases whereby the evidence taken from the witnesses in Hong Kong turned out to be false. The Administration further advised that witnesses who gave evidence in Hong Kong for overseas criminal proceedings would be subject to Hong Kong laws relating to contempt of court or perjury under section 10 of the MLA Ordinance.

Cost of using a live TV link

13. On members' enquiry regarding the cost of using a live TV link for taking evidence from overseas witnesses and which party would bear the cost, the Administration advised that the cost of using a live TV link was not high, and it would be borne by the requesting party concerned. At present, if evidence was to be taken from witnesses situated in places outside Hong Kong, a team of lawyers would need to be sent to the overseas jurisdiction to do so, which was a costly endeavour.

Giving evidence not under oath/affirmation by overseas witnesses

14. Some members enquired about scenarios in which witnesses were requested to give evidence at a place outside Hong Kong which did not require the giving of evidence under oath/affirmation, and whether actions would be taken by the Hong Kong authority to ensure that the witness concerned was keenly aware of his legal liability for not providing truthful evidence in criminal proceedings in a Hong Kong court. The Administration advised that, depending on the law of the overseas jurisdiction and the circumstances of each case, Hong Kong courts could request overseas court to require witnesses who gave evidence for Hong Kong criminal proceedings by way of a live TV link to make a declaration that their evidence to be given was true.

Latest development

15. At the House Committee meeting on 9 October 2015, Members agreed to form a subcommittee to study the legislative proposals.

Relevant papers

16. A list of relevant papers is in the **Appendix**.

Council Business Division 4
Legislative Council Secretariat
20 October 2015

Appendix

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

List of relevant papers

Committee	Date of meeting	Paper
Bills Committee on Evidence (Miscellaneous Amendments) Bill 2002	25 June 2003	Report to the Council meeting on 25 June 2003
Panel on Administration of Justice and Legal Services	24 November 2014	Agenda Minutes

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