

立法會

Legislative Council

LC Paper No. CB(4)843/18-19
(These minutes have been seen
by the Administration)

Ref: CB4/BC/5/17

Bills Committee on Evidence (Amendment) Bill 2018

**Minutes of the fifth meeting
held on Friday, 25 January 2019 at 4:30 pm
in Conference Room 3 of the Legislative Council Complex**

Members present : Hon CHEUNG Kwok-kwan, JP (Chairman)
Hon James TO Kun-sun
Hon Tommy CHEUNG Yu-yan, GBS, JP
Hon CHAN Chi-chuen
Dr Hon Elizabeth QUAT, BBS, JP

Members absent : Hon Paul TSE Wai-chun, JP
Hon Kenneth LEUNG
Hon Dennis KWOK Wing-hang
Dr Hon Junius HO Kwan-yiu, JP
Hon Holden CHOW Ho-ding
Hon YUNG Hoi-yan

Public officers attending : **Agenda Item I**

Mr Wesley WONG Wai-chung, SC, JP
Solicitor General

Ms Diana LAM
Assistant Solicitor General
(Policy Affairs)(Acting)

Mr Richard MA
Senior Government Counsel

Miss Cindy CHEUK
Senior Government Counsel

Mr Ivan LEUNG
Senior Public Prosecutor (Acting)

Clerk in attendance : Ms Sophie LAU
Chief Council Secretary (4)2

Staff in attendance : Ms Rachel DAI
Assistant Legal Adviser 2

Ms Jacqueline LAW
Council Secretary (4)2

Miss Mandy LAM
Legislative Assistant (4)2

Action

I. Meeting with the Administration

[File Ref: LP 5019/16C, LC Paper Nos. CB(4)453/18-19(01), CB(4)428/18-19(01), CB(4)387/18-19(01), CB(3)731/17-18, LS81/17-18, CB(4)1601/17-18(01) – (04), CB(4)196/18-19(01), CB(4)310/18-19(01) and CB(4)253/18-19(01) – (02)]

Discussion

The Bills Committee deliberated (index of proceedings attached at **Annex**).

Follow-up actions to be taken by the Administration

- Admin 2. The Administration was requested to:
- (a) consult the Hong Kong Bar Association and The Law Society of Hong Kong (if not already done) regarding the Administration's proposed amendments to section 55O(1)(e) in clause 5 of the Evidence (Amendment) Bill 2018 ("the Bill"), which will limit the scope of application of that provision to

the defence only; and report the responses of the two professional bodies to members for reference;

- (b) give an elaboration as to under what circumstances would the new Part IVA in clause 5 of the Bill be useful in proceedings for, or in relation to, the surrender of a person to a place outside Hong Kong under the Fugitive Offenders Ordinance (Cap. 503); and identify the possible impact it may have on agreements for the surrender of fugitive offenders between the Hong Kong Special Administrative Region and other places; and
- (c) confirm whether and, if so, how the proposed relaxation of the rule against hearsay by way of the Bill is expected to change the existing practice of obtaining evidence from witnesses in another jurisdiction by way of letter of request.

II. Any other business

3. The Chairman said that pending the Administration's provision of written response to the issues in paragraph 2 above, the Bills Committee had completed scrutiny of the Bill. The Bills Committee noted that the Administration's written response to outstanding issues would be circulated to members for consideration as and when it was available. The Chairman advised that a further meeting with the Administration might be scheduled, if necessary, after the Administration's provision of its response to the outstanding issues.

4. The Chairman informed members that the Bills Committee would submit a written report to the House Committee for consideration before the second reading debate on the Bill was to be resumed.

(Post-meeting note: since more time would be needed for the Administration to prepare the response on the outstanding issues referred to in paragraph 2 above, members would be informed of the corresponding legislative timetable in due course.)

5. There being no other business, the meeting ended at 11:50 am.

**Proceedings of the fifth meeting of
Bills Committee on Evidence (Amendment) Bill 2018
held on Friday, 25 January 2019 at 10:45 am
in Conference Room 3 of the Legislative Council Complex**

Running Time	Speaker	Subject(s)	Action required
<i>Agenda Item I – Meeting with the Administration</i>			
000654 – 001740	Chairman	<p>Opening remarks</p> <p>The Administration's briefing on its proposed amendments to the Evidence (Amendment) Bill 2018 ("the Bill") and response to amendments proposed by Mr Tommy CHEUNG [LC Paper No. CB(4) 428/18-19(01)]. Members did not raise objection to the draft amendments.</p> <p>In response to the Chairman's enquiry, the Administration informed members that the Hong Kong Bar Association ("Bar Association") and The Law Society of Hong Kong had been invited to give views on its proposed amendment to the new section 55O(1)(e) in clause 5 of the Bill, which would limit the scope of application of that provision to the defence only. The response of the two legal professional bodies would be circulated to members for reference once available.</p>	Admin (paragraph 2(a) of the minutes referred)
001741 – 002517	Chairman Mr Tommy CHEUNG Administration	<p>Mr CHEUNG said that the Liberal Party welcomed the Administration's proposed amendment to limit the scope of application of the new section 55O(1)(e) to the defence only.</p> <p>In reply to Mr CHEUNG's concern, the Administration clarified that under common law, a confession (being an out-of-court admission made against the interest of the declarant) was admissible as an exception to the hearsay rule against the maker of it only. Therefore, a confession would not be admissible against a co-accused. Before a confession (usually made to a person in authority) could be admitted in evidence, the prosecution was required to prove beyond reasonable doubt that it was made voluntarily. The Administration pointed out that the proposed section 55O(1)(e), instead of the proposed section 55O(1)(c), would be applicable in dealing with evidence of confessions. The proposed section 55O(1)(c) prescribed the circumstances under which a declarant outside Hong Kong could satisfy the condition of necessity. The relevant principles as set out in the proposed section 55O(1)(c)(i) and (ii) were whether or not it</p>	

Running Time	Speaker	Subject(s)	Action required
		<p>was reasonably practicable to secure the declarant's attendance at the proceedings or to make the declarant available for examination and cross-examination in another competent manner in the proceedings. It sought to implement the Law Reform Commission of Hong Kong's proposal in relation to the condition of necessity.</p> <p>Having heard the Administration's explanation on why the new section 55O(1)(c) should be retained, Mr CHEUNG expressed that he would withdraw his proposed amendment to delete the said section.</p>	
002518 – 004202	Chairman Mr James TO Assistant Legal Adviser 2 ("ALA2") Administration	<p>Mr TO raised his enquiry on the Bar Association's concern that "the absence of cross-examination of the declarant at trial" was not included as a factor in assessing the threshold reliability under the proposed section 55P in clause 5 of the Bill. ALA2's and the Administration's response in this regard. In this regard, the Administration reiterated that this factor should not be added to sections 55O or 55P because, by its very nature, there would not be cross-examination in respect of hearsay evidence, whereas the appropriate safeguard would be provided in section 55Q(5)(e).</p> <p>Mr TO's enquiry and the Administration's response regarding the operation of the proposed section 55Q in proceedings before a jury.</p> <p>Mr TO's further enquiry and the Administration's response regarding the possibility of the prosecution withdrawing hearsay evidence after such evidence was admitted in proceedings.</p>	
004203 – 005815	Chairman Mr James TO Administration	<p>Mr TO expressed his concern on the application of the new Part IVA of the Bill as proposed in sections 55E(1) and (2). He queried the reasons for including proceedings for surrender of a person to a place outside Hong Kong under the Fugitive Offenders Ordinance (Cap. 503) as criminal proceedings to which the new Part IVA would apply. He also raised his concern on whether the safeguards incorporated in the Bill would be sufficient for proceedings set out in section 55E(2).</p> <p>The Administration was requested to give an elaboration, in writing, as to under what circumstances would the new Part IVA be useful in proceedings for, or in relation to, the surrender of a</p>	Admin (paragraph 2(b) of the minutes referred)

Running Time	Speaker	Subject(s)	Action required
		person to a place outside Hong Kong under Cap. 503; and to identify the possible impact it might have on agreements for the surrender of fugitive offenders between the Hong Kong Special Administrative Region and other places.	
005816 – 010100	Chairman Mr James TO	Members noted that the response of the two legal professional bodies in respect of the Administration's proposed amendments to sections 55O(1)(e) and (2) together with the Administration's written response to issues of concern raised at the meeting would be circulated to members for consideration once available. Discussion on meeting arrangement.	
010101 – 010553	Chairman Mr James TO Administration	Mr TO was concerned that the admission of hearsay evidence might lead to more prosecutions. He was also concerned about the impact of the proposed relaxation of the rule against hearsay by way of the Bill on the existing practice of obtaining evidence from witnesses in another jurisdiction by way of letter of request. At the request of Mr TO, the Administration undertook to provide after the meeting written response in this regard.	Admin (paragraph 2(c) of the minutes referred)
010554 – 010821	Chairman ALA2 Administration	ALA2 advised that she had no further comments on the Bill. Meeting arrangement and the proposed date for resumption of the Second Reading debate on the Bill.	
<i>Agenda Item II –Any other business</i>			
010822 – 010831	Chairman Administration	Closing remarks	