

## **LEGISLATIVE COUNCIL BRIEF**

The Secretary for Justice submits the following Note of Members' information:

<b><u>Title of the Note</u></b>	<b><u>Date of ExCo</u></b>	<b><u>Date of Gazette</u></b>
Evidence (Amendment) Bill 1998	9 June 1998	3 July 1998

June 1998

Department of Justice

**LEGISLATIVE COUNCIL BRIEF**

Evidence Ordinance

(Chapter 8)

**EVIDENCE (AMENDMENT) BILL 1998**

**INTRODUCTION**

At the meeting of the Executive Council on 9 June 1998, the Council ADVISED and the Chief Executive ORDERED that the Evidence (Amendment) Bill 1998 at Annex should be introduced into the Legislative Council.

**BACKGROUND AND ARGUMENT**

2. The Bill seeks to implement the recommendations of the Law Reform Commission (LRC) published in its Report in July 1996 that the rule against hearsay evidence in civil proceedings be abolished and a simpler system for the admission of hearsay evidence in civil proceedings be introduced.

**The present law**

3. “Hearsay” is a statement made otherwise than by a person giving oral evidence in proceedings. At common law, a hearsay assertion was inadmissible as evidence of any fact asserted. The rule was based on the view that such evidence is unsafe and unsatisfactory since the maker of a

hearsay assertion would not have been bound by a solemn declaration to tell the truth, nor would the jury have the benefit of seeing the witness and observing his or her attitude in order to judge the reliability of the evidence.

4. The common law rule has never been absolute. Exceptions to the rule evolved from cases where judicial experience demonstrated that the evidence was sound, despite the taint of hearsay, and where the circumstances necessitated reliance on a source that might otherwise be excluded.

5. Part IV of the Evidence Ordinance (EO) has replaced the common law rule against hearsay and many of the common law exceptions. It, nevertheless, preserves certain long established rules governing admissibility of hearsay evidence formerly admissible at common law, in a fashion that retains the existing case law and allows it to develop.

6. The categories of hearsay statement described in Part IV of the EO are not made unconditionally admissible. Parties wishing to adduce hearsay statements have to comply with the procedural requirements specified in the Rules of the High Court. Under these rules, a party wishing to adduce a hearsay statement must give notice of his intention to do so, and the opposing party must serve a counter-notice if he wishes the maker of the hearsay statement to attend court.

7. Part IV of the EO and the above rules are based on the English Civil Evidence Act 1968 and the English Rules of the Supreme Court. Criticism of the complexity of the rules and procedures in England led to the enactment of the Civil Evidence Act 1995, which abolished the exclusionary rules against hearsay and introduced a simpler system for the admission of hearsay evidence in England.

## **Law Reform Commission Report**

8. There has been similar criticism in Hong Kong. In the light of the criticism, the LRC recommended that Part IV of the EO be replaced by a new regime that would -

- (a) provide for the admissibility of hearsay evidence in civil proceedings subject to safeguards;
- (b) provide that a copy of a document and even a copy of a copy is admissible in civil proceedings provided that they are authenticated in such manner as the court might approve;
- (c) provide a simpler system for the admissibility of business and computer records.

The proposals are explained below.

9. The LRC considered that, as a general rule, all evidence should be admissible unless there is good reason for it to be treated as inadmissible. Relevant evidence should not be excluded solely on the ground that it is hearsay. Hearsay is something that should go to weight and not admissibility. The LRC recommended that in civil proceedings, whether held with or without a jury, evidence should not be excluded on the ground that it is hearsay and that hearsay of whatever degree should be admissible. At the same time, safeguards should be provided in order to avoid possible abuse of the relaxation of the hearsay rule.

10. The LRC recommended that the present hearsay notice and counter-notice requirements as mentioned in paragraph 6 above be abolished and no special provision should be made for the giving of notice of intention to adduce hearsay evidence. The issue as to whether such a notice should be given should be left to informal arrangement between the

parties. The LRC considered that the present judicial case management system, and the requirement that parties exchange pre-trial witness statements, would help to ensure that questions concerning hearsay evidence are dealt with before trial and would minimize the risk of surprise at trial even if hearsay notices were dispensed with. In addition, the court has power to take account of a failure to give informal notification of an intention to adduce hearsay evidence through its control of proceedings and costs.

11. Under the EO, a hearsay statement contained in a document can be proved in civil proceedings by the production of the document itself or by the production of a copy of the document, authenticated in such manner as the court may approve. It is not clear whether a copy of a copy is admissible. In the business world today, it is common to use copy documents and even copies of copies. The LRC recommended that a statement contained in a document should be capable of being proved in civil proceedings, either by the production of that document or a copy of that document, authenticated in such manner as the court might approve. It should be immaterial how many removes there are between a copy and the original.

12. The present rules governing the admissibility of records are based on the assumption that there is a person who supplied the information contained in the record. Problems may arise when it is sought to prove the absence of an entry from the records since there cannot be a supplier of non-existent information. The LRC suggested that the absence of an entry should be capable of being formally proved by the oral evidence or affidavit of an officer of the business or public body to which the records belong.

13. The present rules governing the admissibility of computer records are out-dated and cumbersome. The LRC recommended that computer

records of a business should be admissible in civil proceedings in the same way as other business records. No special provisions should be made in respect of the manner of proof of computerized records.

## **THE BILL**

14. **Clause 2** of the Bill amends the EO by repealing sections 46 to 55 and substituting new sections 46 to 55B which abolishes the rule against the admission of hearsay evidence in civil proceedings and provides a new system for its admission. The clause provides for -

- (a) the definitions of terms such as “civil proceedings” and “hearsay” which allow for simple and multiple hearsay to be admissible in all civil proceedings to which the strict rules of evidence apply (new section 46);
- (b) safeguards in relation to hearsay evidence, including provision for the parties to call for cross-examination of a person whose statements have been tendered as hearsay evidence (new section 48), guidelines for the court to estimate the weight of hearsay evidence adduced (new section 49), and provision for a party to call evidence to attack or support the credibility of the person who makes the hearsay statement (new section 50);
- (c) the admissibility of a copy of a document as evidence in civil proceedings, notwithstanding how many removes there are between the copy and the original (new section 53); and
- (d) the manner of proof of records and the absence of a record of a business or a public body and a wide definition of “records” that focuses on the form in which they are kept (new sections 54

and 55).

15. **Clauses 3, 4 and 5** make consequential amendments to the EO. **Clause 6** makes consequential amendments to other enactments including the Rules of the High Court.

#### **LEGISLATIVE TIMETABLE**

16. The legislative timetable will be -

Publication in the Gazette	3 July 1998
First Reading and commencement of Second Reading Debate	15 July 1998
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

#### **HUMAN RIGHTS IMPLICATIONS**

17. The Department of Justice advises that the proposed legislation has no human rights implications.

#### **FINANCIAL AND STAFFING IMPLICATIONS**

18. Implementation of the Bill will improve the efficiency of civil proceedings and achieve some savings for the Judiciary and the Department of Justice. There are no additional financial and staffing implications arising from the Bill.

## **PUBLIC CONSULTATION**

19. The majority of those who responded to the LRC's consultation paper in 1992 supported the abolition of the hearsay rule in civil proceedings. Supporters included Judges, the Bar Association and the Law Society.

20. A draft of the Bill was sent to the Judiciary, the Bar Association and the Law Society for comments. The Judiciary has no comment on the Bill except the drafting of some provisions of the Bill. The Bar Association is in general agreement with the Bill, except that it takes the view that the Bill should vest a residual discretion in the court to exclude hearsay evidence in cases where its admission would be unfair and would cause severe prejudice. We think that this concern can properly be addressed by the court attaching minimal or even no weight to such evidence. Besides, the court has inherent common law powers to regulate its proceedings and to exclude such evidence. The rights of the Court to exclude evidence on grounds other than that it is hearsay are not affected by the Bill.

21. The Law Society is content with the Bill except that it is not convinced that the issue of notice should be determined on an informal basis. We think that a formal notice requirement would be duplicative of the judicial case management procedures that have been established by the practice directions of the High Court. We maintain that a formal notice provision is unnecessary for the reasons stated in paragraph 10 above. In fact, the Law Society, in response to the LRC's consultation, expressed the view that abolition of the rule would merely reflect the reality of the present situation and dispense with the need for what are regarded generally as artificial procedural requirements.

## **PUBLICITY**

22. A press release explaining the main points of the Bill will be issued on 3 July 1998.

LEGAL POLICY DIVISION

DEPARTMENT OF JUSTICE

June 1998

**Evidence (Amendment) Bill 1998**

A BILL

To

Amend the Evidence Ordinance.

Enacted by the Legislative Council.

**1. Short title and commencement**

(1) This Ordinance may be cited as the Evidence (Amendment) Ordinance 1998.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Justice by notice in the Gazette.

**2. Sections substituted**

Sections 46 to 55 of the Evidence Ordinance (Cap. 8) are repealed and the following substituted -

**“46. Interpretation**

In this Part, unless the context otherwise requires -

“civil proceedings” (民事法律程序) means civil proceedings, before any court, in relation to which strict rules of evidence apply, whether as a matter of law or by agreement of the parties, and references to “the court” (法院、法庭) and “rules of court” (法院規規則) shall be construed accordingly;

“copy” (副本), in relation to a document, means anything onto which information recorded in the document has been copied, by whatever means and whether directly or indirectly;

“court” (法院、庭) includes any tribunal;

“document” (文件) means anything in which information of any description is recorded;

“hearsay” (傳聞) -

(a) means a statement made otherwise than by a person while giving oral evidence in the proceedings which is tendered as evidence of the matters stated;

(b) includes hearsay of whatever degree;

“oral evidence” (口頭證據) includes evidence which, by reason of a defect of speech or hearing, a person called as a witness gives in writing or by signs;

“original statement” (原陳述), in relation to hearsay evidence, means the underlying statement, if any, made by -

(a) in the case of evidence of fact, a person having personal knowledge of that fact;

(b) in the case of evidence of opinion, the person whose opinion it is;

“statement” (陳述) means any representation of fact or opinion, however made.

*[cf. 1995 c. 38 ss. 1(2), 9(4), 11 & 13 U.K.]*

#### **47. Admissibility of hearsay evidence**

(1) In civil proceedings evidence shall not be excluded on the ground that it is hearsay.

(2) Nothing in this Part shall affect the admissibility of evidence admissible apart from this section.

(3) The provisions of sections 48 to 51 shall not apply in relation to hearsay evidence admissible apart from this section, notwithstanding that it may also be admissible by virtue of this section.

*[cf. 1995 c. 38 s. 1(1), (3) & (4) U.K.]*

**48. Power to call witness for cross-examination on hearsay statement, etc.**

Rules of court may provide that where a party to civil proceedings adduces hearsay evidence of a statement made by a person and does not call that person as a witness -

- (a) any other party to the proceedings may, with the leave of the court, call that person as a witness and cross-examine him on the statement as if he had been called by the first-mentioned party and as if the hearsay statement were his evidence in chief;
- (b) any party to the proceedings may call additional evidence to attack or support the reliability of the hearsay statement or to attack or support the reliability of that additional evidence.

*[cf. 1995 c. 38 s. 3 U.K.]*

**49. Considerations relevant to weighing of hearsay evidence**

(1) In estimating the weight, if any, to be given to hearsay evidence in civil proceedings the court shall have regard to any circumstances from which any inference can reasonably be drawn as to the reliability or otherwise of the evidence.

(2) For the purposes of subsection (1), regard may be had, in particular, to the following -

- (a) whether it would have been reasonable and practicable for the party by whom the evidence was adduced to have produced the maker of the original statement as a witness;
- (b) whether the original statement was made contemporaneously with the occurrence or existence of the matters stated;
- (c) whether the evidence involves multiple hearsay;
- (d) whether any person involved had any motive to conceal or misrepresent matters;
- (e) whether the original statement was an edited account, or was made in collaboration with another or for a particular purpose;
- (f) whether the circumstances in which the evidence is adduced as hearsay are such as to suggest an attempt to prevent proper evaluation of its weight;
- (g) whether or not the evidence adduced by the party is consistent with any evidence previously adduced by the party.

*[cf. 1995 c. 38 s. 4 U.K.]*

## **50. Competence and credibility**

(1) Hearsay evidence shall not be admitted in civil proceedings if or to the extent that it is -

- (a) shown to consist of; or

(b) to be proved by means of,  
a statement made by a person who at the time he made the statement was not  
competent as a witness.

(2) Subject to subsection (3), where in civil proceedings hearsay evidence is  
adduced and the maker of the original statement, or of any statement relied upon to  
prove another statement, is not called as a witness -

- (a) evidence which if he had been so called would be admissible for  
the purpose of attacking or supporting his credibility as a witness  
is admissible for that purpose in the proceedings; and
- (b) evidence tending to prove that, whether before or after he made  
the statement, he made any other statement inconsistent with it is  
admissible for the purpose of showing that he had contradicted  
himself.

(3) Evidence shall not be given under subsection (2) of any matter of which,  
if the maker referred to in that subsection had been called as a witness and had denied  
that matter in cross-examination, evidence could not have been adduced by the cross-  
examining party.

(4) In subsection (1), “not competent as a witness” (沒有資格作證人)  
means suffering from such mental or physical incapacity, or lack of understanding, as  
would render a person incompetent as a witness in civil proceedings.

[*cf. 1995 c. 38 s. 5 U.K.*]

**51. Previous statements of witnesses**

(1) Subject to subsections (2) to (7), the provisions of this Part as to hearsay evidence in civil proceedings shall apply equally, but with any necessary modifications, in relation to a previous statement made by a person called as a witness in the proceedings.

(2) Subject to subsection (3), a party who has called or intends to call a person as a witness in civil proceedings shall not in those proceedings adduce evidence of a previous statement made by that person, except -

- (a) with the leave of the court; or
- (b) for the purpose of rebutting a suggestion that his evidence has been fabricated.

(3) Subsection (2) shall not be construed as preventing a witness statement (that is, a written statement of oral evidence which a party to the proceedings intends to lead) from being adopted by a witness in giving evidence or treated as his evidence.

(4) Subject to subsection (5), where in the case of civil proceedings section 12, 13 or 14 applies, this Part shall not authorize the adducing of evidence of a previous inconsistent or contradictory statement otherwise than in accordance with those sections.

(5) Subsection (4) is without prejudice to any provision made by rules of court under section 48.

(6) Nothing in this Part shall affect any of the rules of law as to the circumstances in which, where a person called as a witness in civil proceedings is cross-examined on a document

used by him to refresh his memory, that document may be made evidence in the proceedings.

(7) Nothing in this section shall be construed as preventing a statement of any description referred to above from being admissible by virtue of section 47 as evidence of the matters stated.

[*cf. 1995 c. 38 s. 6 U.K.*]

## **52. Evidence formerly admissible at common law**

(1) The common law rule effectively preserved by section 54(1) and (2)(a) of this Ordinance (admissibility of admissions adverse to a party) as in force immediately before the relevant day is superseded by the provisions of this Part.

(2) The common law rules effectively preserved by section 54(1) and (2)(b) to (d) of this Ordinance as in force immediately before the relevant day, that is, any rule of law whereby in civil proceedings -

- (a) published works dealing with matters of a public nature (for example, histories, scientific works, dictionaries and maps) are admissible as evidence of facts of a public nature stated therein;
- (b) public documents (for example, public registers, and returns made under public authority with respect to matters of public interest) are admissible as evidence of facts stated therein; or
- (c) records (for example, the records of certain courts, treaties, Crown grants or Government

grants, pardons and commissions) are admissible as evidence of facts stated therein,

shall continue to have effect.

(3) The common law rules effectively preserved by section 54(3) and (4) of this Ordinance as in force immediately before the relevant day, that is, any rule of law whereby in civil proceedings -

- (a) evidence of a person's reputation is admissible for the purpose of proving his good or bad character; or
- (b) evidence of -
  - (i) reputation or family tradition is admissible for the purpose of proving or disproving pedigree or the existence of a marriage; or
  - (ii) reputation is admissible for the purpose of proving or disproving the existence of any public or general right or of identifying any person or thing,

shall continue to have effect in so far as they authorize the court to treat such evidence as proving or disproving that matter:

Provided that where any such rule applies, reputation or family tradition shall be treated for the purposes of this Part as a fact and not as a statement or multiplicity of statements about the matter in question.

(4) The words in which a rule of law mentioned in this section is described are intended only to identify the rule and shall not be construed as altering it in any way.

(5) In this section, “relevant day” (有關日期) means the day on which section 2 of the Evidence (Amendment) Ordinance 1998 ( of 1998) comes into operation.

[*cf. 1995 c. 38 s. 7 U.K.*]

### **53. Proof of statements contained in documents**

(1) Where a statement contained in a document is admissible as evidence in civil proceedings, it may be proved -

- (a) by the production of that document; or
- (b) whether or not that document is still in existence, by the production of a copy of that document or of the material part of it,

authenticated in such manner as the court may approve.

(2) It is immaterial for the purpose of subsection (1) how many removes there are between a copy and the original.

[*cf. 1995 c. 38 s. 8 U.K.*]

### **54. Proof of records of business or public body**

(1) A document which is shown to form part of the records of a business or public body may be received in evidence in civil proceedings without further proof.

(2) A document shall be taken to form part of the records of a business or public body if there is produced to the court a certificate of that effect signed by an officer of the business or body to which the records belong.

(3) For the purposes of subsection (2) -

- (a) a document purporting to be a certificate signed by an officer of a business or public body shall be deemed to have been duly given by such an officer and signed by him; and
- (b) a certificate shall be treated as signed by a person if it purports to bear his signature or a facsimile of his signature.

(4) In this section -

“business” (業務) includes any activity regularly carried on over a period of time, whether for profit or not, by any body (whether corporate or not) or by an individual;

“officer” (高級人員) includes any person occupying a responsible position in relation to the relevant activities of the business or public body or in relation to its records;

“public body” (公共機構) includes any executive, legislative, municipal, or urban council, any Government department or undertaking, any local or public authority or undertaking, any board, commission, committee or other body whether paid or unpaid appointed by the Chief Executive or the Government or which has power to act in a public capacity under or for the purposes of any enactment;

“records” (紀錄) means records in whatever form, and includes computer-generated records.

(5) The court may, having regard to the circumstances of the case, direct that all or any of the provisions of this section

do not apply in relation to a particular document or record, or description of documents or records.

*[cf. 1995 c. 38 s. 9 U.K.]*

**55. Statement not contained in business records**

(1) In any civil proceedings, the evidence of an officer of a business or public body that any particular statement is not contained in the records of the business or body shall be admissible as evidence of that fact whether or not the whole or any part of the records have been produced in the proceedings.

(2) The evidence referred to in subsection (1) may, unless the court otherwise directs, be given by means of the affidavit of the officer.

(3) Section 54(4) shall apply to the interpretation of this section as it applies to the interpretation of section 54.

*[cf. 1988 c. 32 s. 9 U.K.]*

**55A. Provisions as to rules of court**

Any power to make rules of court regulating the practice or procedure of the court in relation to civil proceedings includes power to make such provision as may be necessary or expedient for carrying into effect the provisions of this Part.

*[cf. 1995 c. 38 s. 12(1) U.K.]*

**55B. Savings**

(1) Nothing in this Part affects any rights of the court to exclude evidence on grounds other than that it is hearsay.

(2) Nothing in this Part affects the proof of documents by means other than those specified in section 53, 54 or 55.

[*cf. 1995 c. 38 s. 14(1) & (2) U.K.*].

**3. Sections repealed**

Sections 56 and 57 are repealed.

**4. Interpretation, application to arbitrations, etc. and savings**

Section 60(3) is amended by repealing “sections 57 and 59” and substituting “section 59”.

**5. Interpretation and savings of Part VI**

Section 68 is amended -

- (a) in subsections (1), (2) and (3), by repealing “Part IV and”;
- (b) in subsections (4), (5) and (6), by repealing “Part IV or”.

**6. Consequential amendments**

The enactments specified in the Schedule are amended as set out in the Schedule.

**7. Transitional arrangements**

The principal Ordinance, and the other Ordinances (including subsidiary legislation) amended by this Ordinance, shall apply to civil proceedings which have commenced before the commencement of this section as if sections 2 to 6 and the Schedule had never been enacted.

SCHEDULE

[ss. 6 & 7]

CONSEQUENTIAL AMENDMENTS

**High Court Ordinance**

1. **Rules as to proof of facts and admission  
of statements in civil proceedings**

Section 55B of the High Court Ordinance (Cap. 4) is amended -

- (a) by repealing subsections (2), (3), (4), (5) and (7);
- (b) in subsection (8)(b), by repealing “section 47” and substituting “Part IV”.

**Inheritance (Provision for Family  
and Dependants) Ordinance**

2. **Admissibility as evidence of statements  
made by deceased**

Section 23 of the Inheritance (Provision for Family and Dependants) Ordinance (Cap. 481) is repealed.

**Hong Kong Red Cross Ordinance**

3. **Evidence: books and documents**

Section 12A(2) of the Hong Kong Red Cross Ordinance (Cap. 1129) is amended by repealing “55” and substituting “46”.

### **Standard Chartered Asia Limited Ordinance**

4. **Evidence and records and documents**

Section 9(2) of the Standard Chartered Asia Limited Ordinance (Cap. 1136) is amended by repealing “55” and substituting “46”.

### **Lloyds Bank (Merger) Ordinance**

5. **Evidence: books and documents**

Section 9(2) of the Lloyds Bank (Merger) Ordinance (Cap. 1137) is amended by repealing “55” and substituting “46”.

### **Royal Bank of Scotland Ordinance**

6. **Records and other documents to remain evidence**

Section 13(2) of the Royal Bank of Scotland Ordinance (Cap. 1138) is amended by repealing “55” and substituting “46”.

### **Deutsche Bank (Merger) Ordinance**

7. **Evidence: books and documents**

Section 9(2) of the Deutsche Bank (Merger) Ordinance (Cap. 1142) is amended by repealing “55” and substituting “46”.

**Rainier International Bank (Transfer of Hong Kong Undertaking) Ordinance**

**8. Evidence: books and documents**

Section 8(2) of the Rainier International Bank (Transfer of Hong Kong Undertaking) Ordinance (Cap. 1144) is amended by repealing “55” and substituting “46”.

**First Pacific Bank Limited Ordinance**

**9. Evidence: books and documents**

Section 10(2) of the First Pacific Bank Limited Ordinance (Cap. 1146) is amended by repealing “55” and substituting “46”.

**Dao Heng Bank Limited Ordinance**

**10. Evidence: books and documents**

Section 11(2) of the Dao Heng Bank Limited Ordinance (Cap. 1152) is amended by repealing “55” and substituting “46”.

**Middle East Finance International Limited (Transfer of Undertaking) Ordinance**

**11. Evidence: books and documents**

Section 11(2) of the Middle East Finance International Limited (Transfer of Undertaking) Ordinance (Cap. 1154) is amended by repealing “55” and substituting “46”.

**The Christian and Missionary Alliance (Transfer of Hong Kong Immovable Property) Ordinance**

**12. Evidence: title deeds and documents**

Section 6(2) of The Christian and Missionary Alliance (Transfer of Hong Kong Immovable Property) Ordinance (Cap. 1155) is amended by repealing “55” and substituting “46”.

**Bank of Tokyo-Mitsubishi Ordinance**

**13. Evidence: books and documents**

Section 10(2) of the Bank of Tokyo-Mitsubishi Ordinance (Cap. 1160) is amended by repealing “55” and substituting “46”.

**The Bank of Tokyo-Mitsubishi (Merger of Subsidiaries) Ordinance**

**14. Evidence: books and documents**

Section 12(2) of The Bank of Tokyo-Mitsubishi (Merger of Subsidiaries) Ordinance (Cap. 1161) is amended by repealing “55” and substituting “46”.

**Patents Ordinance**

**15. Register of patents**

Section 51(12) of the Patents Ordinance (52 of 1997) is repealed and the following substituted -

“(12) This section is without prejudice to section 22A or 22B or Part IV of the Evidence Ordinance (Cap. 8) or any provision made by virtue of that section or Part.”.

### **Registered Designs Ordinance**

**16. Register is prima facie evidence**

Section 65(4) of the Registered Designs Ordinance (64 of 1997) is repealed and the following substituted -

“(4) This section is without prejudice to section 22A or 22B or Part IV of the Evidence Ordinance (Cap. 8) or any provision made by virtue of that section or Part.”.

### **Hong Kong St. John Ambulance Incorporation Ordinance**

**17. Execution of documents**

Section 9(3)(b) of the Hong Kong St. John Ambulance Incorporation Ordinance (85 of 1997) is amended by repealing “55” and substituting “46”.

### **Rules of the High Court**

**18. Rules substituted**

Order 38, rules 20 to 34 of the Rules of the High Court (Cap. 4 sub. leg.) are repealed and the following substituted -

**“20. Application and interpretation (O. 38, r. 20)**

(1) In this Part of this Order “the Ordinance” (條例) means the Evidence Ordinance (Cap. 8) and any expressions used in this Part and in Part IV of the Ordinance have the same meanings in this Part as they have in the said Part IV.

(2) This Part of this Order shall apply in relation to the trial or hearing of an issue or question arising in a cause or

matter, and to a reference, inquiry and assessment of damages, as it applies in relation to the trial or hearing of a cause or matter.

(3) In this Part -

“hearsay evidence” (傳聞證據) means evidence consisting of hearsay within the meaning of section 46 of the Ordinance.

**21. Power to call witness for cross-examination on hearsay evidence and to call additional evidence to attack or support hearsay evidence (O. 38, r. 21)**

(1) Where a party tenders as hearsay evidence a statement made by a person but does not propose to call the person who made the statement to give evidence, the Court may, on application -

- (a) allow another party to call and cross-examine the person who made the statement on its contents;
- (b) allow any party to call -
  - (i) additional evidence to attack or support the reliability of the statement;
  - (ii) additional evidence to attack or support that first-mentioned additional evidence.

(2) Where the Court allows another party to call and cross-examine the person who made the statement, it may give such directions as it thinks fit to secure the attendance of that person and as to the procedure to be followed.

22. **Powers exercisable in chambers** (O. 38, r. 22)

The jurisdiction of the Court under rules 20 and 21 may be exercised in chambers.”.

19. **Further provisions with respect to evidence** (O. 75, r. 32) Order 75 is amended by repealing rule 32(3).

### **Land Registration Regulations**

20. **Interpretation**

Regulation 2 of the Land Registration Regulations (Cap. 128 sub. leg.) is amended, in the definition of “computer”, by repealing “50” and substituting “22A”.

### **Matrimonial Causes Rules**

21. **Hearsay evidence**

Rule 42A of the Matrimonial Causes Rules (Cap. 179 sub. leg.) is repealed.

### **Explanatory Memorandum**

The object of this Bill is to amend the Evidence Ordinance (Cap. 8) in order to give effect to the recommendations contained in the Report on Hearsay Rule in Civil Proceedings (Topic 3) issued by the Law Reform Commission of Hong Kong. It should be noted that the amendments are largely based on provisions of the Civil Evidence Act 1995 (1995 c. 38) of the U.K.

2. Clause 2 repeals sections 46 to 55 of the Evidence Ordinance and substitutes new sections 46 to 55B. New section 46 defines the terms used in the Bill. The definitions of “civil proceedings” and “hearsay” should, in particular, be noted.
3. New section 47 abolishes the rule against hearsay evidence in civil proceedings and provides that existing statutory provisions making hearsay evidence admissible are not affected by new sections 48 to 51.
4. New section 48 makes provision enabling parties to call for cross-examination of a person whose statement has been tendered as hearsay evidence.
5. New section 49 contains guidelines to assist the court in estimating the weight to be given to hearsay evidence adduced, and specifies a number of factors relevant to the evidence to which the court should particularly have regard.
6. New section 50 provides that hearsay evidence may not be admitted if the maker of the statement was, on the date on which the statement was made, not competent as a witness. That section also provides for the continuing admissibility of evidence to impeach or support the credibility of a person not called as a witness, and of evidence tending to show that a person not called as a witness made previous or later inconsistent statements and has thereby contradicted himself.
7. New section 51 provides for previous consistent and inconsistent statements of a person called as a witness to continue to be admissible as evidence of the matters stated.
8. New section 52(1) provides for the supersession of the common law rule effectively preserved by section 54(1) and (2)(a) of the Evidence Ordinance. New section 52(2) and (3) provides that the common law rules

effectively preserved by section 54(1), (2)(b) to (d), (3) and (4) of the Evidence Ordinance shall continue to have effect notwithstanding the repeal of section 54 by the Bill.

9. New section 53 provides for a statement contained in a document admissible as evidence in civil proceedings to be capable of being proved by the production of that document or by the production of a copy (or of a copy of a copy, notwithstanding how many removes there are between the copy and the original) thereof, authenticated in such matter as the court might approve.

10. New section 54 makes provision for the manner of proof of records of a business or a public body, providing for such records to be received in evidence without further proof and introducing a wide definition of “records” that focuses on the form in which they are kept.

11. New section 55 makes admissible the evidence of an officer of a business or public body that any particular statement is not contained in the records of the business or body whether or not the whole or any part of the records have been produced in the proceedings.

12. New section 55A enables rules of court to make such provision as may be necessary or expedient for carrying into effect the new provisions relating to hearsay evidence.

13. New section 55B provides that none of those new provisions affect the exclusion of evidence on grounds other than that it is hearsay.

14. Clauses 3, 4 and 5 make consequential amendments to the Evidence Ordinance whilst clause 6 and the Schedule provide for consequential amendments to other enactments. (It should be noted that the amendment to the Rules of the High Court (Cap. 4 sub. leg.) made by section 18 of the Schedule are to some extent based on similar amendments made

by rule 8 of the Rules of the Supreme Court (Amendment) 1996 of the U.K. (1996 No. 3219 (L. 18)).

15. Clause 7 is transitional and provides that the amendments shall not apply to civil proceedings commenced before the commencement of the Bill after it is enacted.