

10 March 2003

Mrs Percy Ma
Clerk to the Bill Committee
Legislative Council
Legislative Council Bldg.
8 Jackson Road
Central Hong Kong

Bills Committee on Evidence (Miscellaneous Amendments) Bill

I refer your letter dated 18 February 2003 addressed to the Chairman of the Hong Kong Bar Association. I have been asked to reply.

The Hong Kong Bar Association is broadly in favor of the proposal to introduce legislation to permit the reception of evidence in criminal proceedings in Hong Kong via live television link as set out in the Evidence (Miscellaneous Amendments) Bill.

However, we have a number of concerns which we think ought be addressed. These are:

- We are concerned that the threshold for permitting such evidence to be given is too low. The proposed section 79I of the Criminal Procedure Ordinance, Cap 221 speaks of the court permitting a person to give evidence by way of live television link but that permission for this to be undertaken would not be given unless, amongst other things, the evidence 'cannot more conveniently' be given in Hong Kong. We think that the legislation should contain an explicit requirement for the judge to consider the interests of justice. These would ensure consideration of matters such as the possibility that the witness may be giving evidence in a place where, despite the protections in the Bill, there is little or no possibility of any real sanction for untruthful testimony.

- We think that the current proposal can be improved to make it explicit that such evidence might be taken by live video link and recorded and that it is not necessary that the evidence be given live before the jury. While it is possible to construe the current draft of the bill to permit this, we think that the drafting should be strengthened to put this beyond doubt.

We hope that this legislation will be a means whereby the taking of evidence from witnesses who would not otherwise be available to either the prosecution or to an accused person can be presented in court in Hong Kong. We hope that the prohibitive cost of setting up a live television link will not be an obstacle to accused persons (who do not have the resources, including financial resources, available to the government) taking advantage of this technology.

Andrew Bruce, SC

CC Margaret Lam, Hong Kong Bar Association