

EVIDENCE (MISCELLANEOUS  
AMENDMENTS) BILL 2002

## 65. Privilege against incrimination of self or spouse

(1) The right of a person in any legal proceedings other than criminal proceedings to refuse to answer any question or produce any document or thing if to do so would tend to expose that person to proceedings for an offence or for the recovery of a penalty —

- (a) shall apply only as regards criminal offences under the law of Hong Kong and penalties provided for by such law; and  
(b) shall include a like right to refuse to answer any question or produce any document or thing if to do so would tend to expose the husband or wife of that person to proceedings for any such criminal offence or for the recovery of any such penalty.

(2) In so far as any existing enactment conferring (in whatever words) powers of inspection or investigation confers on a person (in whatever words) any right otherwise than in criminal proceedings to refuse to answer any question or give any evidence tending to incriminate that person, subsection (1) shall apply to that right as it applies to the right described in that subsection; and every such existing enactment shall be construed accordingly.

(3) In so far as any existing enactment provides (in whatever words) that in any proceedings other than criminal proceedings a person shall not be excused from answering any question or giving any evidence on the ground that to do so may incriminate that person, that enactment shall be construed as providing also that in such proceedings a person shall not be excused from answering any question or giving any evidence on the ground that to do so may incriminate the husband or wife of that person.

(4) Where any existing enactment (however worded) that —

- (a) confers powers of inspection or investigation; or  
(b) provides as mentioned in subsection (3),

further provides (in whatever words) that any answer or evidence given by a person shall not be admissible in evidence against that person in any proceedings or class of proceedings (however described, and whether criminal or not), that enactment shall be construed as providing also that any answer or evidence given by that person shall not be admissible in evidence against the husband or wife of that person in the proceedings or class of proceedings in question.

(5) In this section "existing enactment" (現行成文法則) means any enactment made before the commencement of the Evidence (Amendment) Ordinance 1969 (25 of 1969); and the references to giving evidence are references to giving evidence in any manner, whether by furnishing information, making discovery, producing documents or otherwise.

 65A. Privilege against incrimination of self or spouse in criminal proceedings

The right of a person in criminal proceedings to refuse to answer any question or produce any document or thing if to do so would tend to expose that person to proceedings for an offence or for the recovery of a penalty or for a forfeiture shall include a like right to refuse to answer any question or produce any document or thing if to do so would tend to expose the husband or wife of that person to any such proceedings.

## 54. Competency of witnesses in criminal cases

~~(1) Every person charged with an offence, and the wife or husband as the case may be of the person so charged, shall be a competent witness for the defence at every stage of the proceedings, whether the person so charged is charged solely or jointly with any other person.~~

Provided as follows—

- (a) a person so charged shall not be called as a witness in pursuance of this section except upon his own application;
- (b) ~~the failure of any person charged with an offence, or of the wife or husband as the case may be of the person so charged, to give evidence shall not be made the subject of any comment by the prosecution;~~
- (c) ~~the wife or husband of the person charged shall not, save as in this section mentioned, be called as a witness in pursuance of this section except upon the application of the person so charged;~~
- (d) ~~nothing in this section shall make a husband compellable to disclose any communication made to him by his wife during the marriage, or a wife compellable to disclose any communication made to her by her husband during the marriage;~~
- (e) a person charged and being a witness in pursuance of this section may be asked any question in cross-examination notwithstanding that it would tend to criminate him as to the offence charged;
- (f) a person charged and called as a witness in pursuance of this section shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed or been convicted of or been charged with any offence other than that wherewith he is then charged, or is of bad character, unless—
- (i) the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence wherewith he is then charged; or

△ (1) Every person charged with an offence, whether charged solely or jointly with any other person, shall be a competent witness for the defence at every stage of the proceedings:

- (ii) he has personally or by his advocate asked questions of the witnesses for the prosecution with a view to establish his own good character, or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or the witnesses for the prosecution; or
- (iii) he has given evidence against any other person charged in the same proceedings. (*Amended 50 of 1981 s. 2*)
- (g) ~~every person~~ called as a witness in pursuance of this section shall, unless otherwise ordered by the court, give his evidence from the witness box or other place from which the other witnesses give their evidence. (*14 of 1906 s. 2 incorporated. Amended 20 of 1948 s. 4*)
- (2) Notwithstanding any rule of law, the right of a person charged to make a statement without being sworn is hereby abolished. (*Added 34 of 1972 s. 9*)

↑ a person charged and

[*cf. 1898 c. 36 s. 1 U.K.*]

## 57. Calling of wife or husband

(1) The wife or husband of a person charged with an offence under any enactment mentioned in Schedule 2 may be called as a witness either for the prosecution or defence and without the consent of the person charged. (*Amended 50 of 1911 s. 4; 20 of 1948 s. 4; 58 of 1994 s. 4*)

(2) Nothing in section 54 shall affect a case where the wife or husband of a person charged with an offence may at common law be called as a witness

- (a) to give evidence for the prosecution but only in respect of any specified offence with which the accused or a co-accused is charged; or
- (b) to give evidence on behalf of a co-accused but only in respect of any specified offence with which the co-accused is charged.

(3A) An offence is a specified offence for the purposes of subsection (3) if—

- (a) it involves an assault on, or an injury or threat of injury to, the husband or wife of the accused;
- (b) it involves causing the death of, an assault on, or an injury or threat of injury to, a child of the family who—
- at the material time was under the age of 16 years or was a mentally incapacitated person; or
  - at the time when the evidence is given is a mentally incapacitated person;
- (c) it is a sexual offence alleged to have been committed in respect of a child of the family who—
- at the material time was under the age of 16 years or was a mentally incapacitated person; or
  - at the time when the evidence is given is a mentally incapacitated person; or
- (d) it consists of attempting or conspiring to commit, or of aiding, abetting, counselling, procuring or inciting the commission of, an offence falling within paragraph (a), (b) or (c).

(4) Subject to subsection (4A), where an accused and the husband or wife of the accused are standing trial together, neither spouse shall at the trial be competent to give evidence for the prosecution under subsection (1), or be compellable to give evidence under subsection (2) or (3).

(4A) Subsection (4) shall not apply to either spouse who is no longer liable to be convicted of any offence in the trial (whether as a result of pleading guilty or for any other reason).

## 57. Competence and compellability of accused's spouse or former spouse

(1) The husband or wife of an accused shall be competent to give evidence on behalf of the accused or a co-accused and, subject to subsection (4), shall be competent to give evidence for the prosecution.

(2) Subject to subsection (4), the husband or wife of an accused shall be compellable to give evidence on behalf of the accused.

(3) Subject to subsection (4), the husband or wife of an accused shall be compellable to give evidence for the prosecution, and shall be compellable to give evidence on behalf of a co-accused, if the offence charged—

- involves an assault on, or an injury or threat of injury to, the husband or wife of the accused;
- involves causing the death of, an assault on, or an injury or threat of injury to, a child of the family who was at the material time under the age of 16 years;
- is a sexual offence alleged to have been committed in respect of a child of the family who was at the material time under the age of 16 years; or
- consists of attempting or conspiring to commit, or of aiding, abetting, counselling, procuring or inciting the commission of, an offence falling within paragraph (a), (b) or (c).

(4) Where a person and the husband or wife of the person are jointly charged with an offence and are standing trial together for the offence, neither spouse shall at the trial be competent to give evidence for the prosecution under subsection (1), or be compellable to give evidence under subsection (2) or (3).

(5) Section 7 of the Evidence Ordinance (Cap. 8) (privilege of husband and wife) and section 8(2) of that Ordinance (evidence of access) shall not apply to the husband or wife of an accused, where the husband or wife is giving evidence for the prosecution, or on behalf of the accused or a co-accused, in circumstances in which he or she is compellable to do so under subsection (2) or (3), as the case may be.

(6) Section 65A of the Evidence Ordinance (Cap. 8) (privilege against incrimination of self or spouse in criminal proceedings) shall not apply to the husband or wife of an accused, where the husband or wife is giving evidence for the prosecution, or on behalf of a co-accused, in circumstances in which he or she is compellable to do so under subsection (3).

(7) Subject to subsection (8), a former husband or wife of an accused shall be competent and compellable to give evidence as if he or she had never been married to the accused.

(8) A former husband or wife of an accused shall not, as regards matters that occurred during his or her marriage to the accused, be compellable to give evidence for the prosecution, or on behalf of a co-accused, unless the former husband or wife would be so compellable under subsection (3) if he or she were still married to the accused.

(9) The failure to call the husband or wife of an accused to give evidence on behalf of the accused or a co-accused shall not be made the subject of any question or comment by the prosecution.

(10) In this section—

“accused” (被控人) means a person charged with an offence;

“child of the family” (家庭子女) means—

(a) a natural or adopted child of the accused or the husband or wife of the accused, or

(b) a person to whom the accused or the husband or wife of the accused stands in loco parentis;

“co-accused” (同案被控人), in relation to an accused, means a person standing trial together with the accused;

“sexual offence” (性罪行) means an offence under Part VI or XII of the Crimes Ordinance (Cap. 200).

(11) For the purposes of subsection (3), the age of a child of the family at the material time shall be deemed to be or to have been that which appears to the court to be or to have been his age at that time.

“mentally incapacitated person” (精神上無行為能力的人) means a mentally disordered person within the meaning of section 2(1) of the Mental Health Ordinance (Cap. 136) or a mentally handicapped person within the meaning of that section;

**57A. Right to apply for exemption from obligation to give evidence**

(1) Where the husband or wife of an accused is called to give evidence for the prosecution, or on behalf of a co-accused, in circumstances in which he or she is compellable to give evidence under section 57(3), the husband or wife may apply to the court for an exemption from the obligation to give evidence.

(2) Where an application for an exemption is made to a court under subsection (1) and the court is satisfied—

(a) that, if the husband or wife were to give evidence for the prosecution or on behalf of the co-accused, as the case may be, there would be a substantial risk of—

(i) serious harm being caused to the relationship between the husband or wife and the accused; or  
(ii) serious emotional, psychological or economic consequences for the husband or wife; and

(b) that, having regard to the nature and gravity of the offence charged and the importance at the trial of the evidence that the husband or wife is in a position to give, there is insufficient justification for exposing the husband or wife to that risk,

the court may exempt the husband or wife, wholly or in part, from the obligation to give evidence.

(3) Where a court is constituted by a judge and jury, an application for an exemption made under subsection (1) shall be heard and determined by the judge in the absence of the jury.

(4) The fact that the husband or wife of an accused has applied for, or been granted or refused, an exemption under this section shall not be made the subject of any question or comment by the prosecution.

(5) Where the husband or wife of an accused is called to give evidence for the prosecution, or on behalf of a co-accused, in circumstances in which he or she is compellable to give evidence under section 57(3), the court must be satisfied that the husband or wife is aware of his or her right to apply for an exemption under subsection (1).

(6) In this section, the terms "accused" (被告人) and "co-accused" (同案被告人) have the same meaning as in section 57.

X at any time

58. Application

Sections 54 to 57 shall apply to all criminal proceedings, notwithstanding any other provision in force at the time of their enactment.  
*(14 of 1906 s. 6 incorporated. Amended 20 of 1948 s. 4 [cf. 1898 c. 36 s. 6 U.K.]*

↑ 57A

57A, "court" (法庭) includes the District Court and a magistrate.

## 83V. Evidence

(1) For the purposes of this Part, the Court of Appeal may, if it thinks it necessary or expedient in the interests of justice—

- (a) order the production of any document, exhibit or other thing connected with the proceedings, the production of which appears to it necessary for the determination of the case;
- (b) order any witness who would have been a compellable witness in the proceedings from which the appeal lies to attend for examination and be examined before the Court of Appeal whether or not he was called in those proceedings; and
- (c) subject to subsection (3), receive the evidence, if tendered, of any witness.

(2) Without prejudice to subsection (1), where evidence is tendered to the Court of Appeal thereunder the Court of Appeal shall, unless it is satisfied that the evidence, if received, would not afford any ground for allowing the appeal, exercise its powers of receiving it if—

- (a) it appears to it that the evidence is likely to be credible and would have been admissible in the proceedings from which the appeal lies on an issue which is the subject of the appeal; and
- (b) it is satisfied that it was not adduced in those proceedings but there is a reasonable explanation for the failure to adduce it.

(3) Subsection (1)(c) applies to any witness (including the appellant) who is competent but not compellable, and applies also to the appellant's husband or wife where the appellant makes an application for that purpose and the evidence of the husband or wife could not have been given in the proceedings from which the appeal lies except on such an application.

(4) For the purposes of this Part, the Court of Appeal may, if it thinks it necessary or expedient in the interests of justice, order the examination of any witness whose attendance might be required under subsection (1)(b) to be conducted, in manner provided by rules and orders made under section 9, before any judge or officer of the Court of Appeal or other person appointed by the Court of Appeal for the purpose, and allow the admission of any depositions so taken as evidence before the Court of Appeal.

(5) In no case shall any sentence be increased by reason of or in consideration of any evidence which was not given at the trial.

(Added 34 of 1972 s. 18)  
(cf. 1968 c. 19 s. 23 U.K.)

↑ a competent but not a compellable witness.

(6) Where the husband or wife of an appellant or respondent is required to be examined under subsection (1)(b) or (4), other than on behalf of the appellant or respondent concerned, the husband or wife may apply to the Court of Appeal for an exemption from the requirement to be so examined.

(7) Where the husband or wife of an appellant or respondent has the right to apply to the Court of Appeal for an exemption under subsection (6), the Court of Appeal must be satisfied that the husband or wife is aware of such a right.

(8) Where the husband or wife of an appellant or respondent applies to the Court of Appeal for an exemption under subsection (6), the Court of Appeal may exercise the same powers that a court may exercise under section 57A(2), and that section shall apply with such modifications as the circumstances require.

(9) Section 7 of the Evidence Ordinance (Cap. 8) (privilege of husband and wife) and section 8(2) of that Ordinance (evidence of access) shall not apply to the husband or wife of an appellant or respondent, where the husband or wife is being examined under subsection (1)(b) or (4).

(10) Section 65A of the Evidence Ordinance (Cap. 8) (privilege against incrimination of self or spouse in criminal proceedings) shall not apply to the husband or wife of an appellant or respondent, where the husband or wife is being examined under subsection (1)(b) or (4), other than on behalf of the appellant or respondent concerned.



(11) Where a child is required to be examined before the Court of Appeal under subsection (1)(b) in proceedings in respect of an offence specified in section 79B(2), the Court of Appeal may exercise the same powers that a court may exercise under section 79B(2).

(12) Where a mentally incapacitated person is required to be examined before the Court of Appeal under subsection (1)(b) in proceedings in respect of an offence specified in section 79B(3), the Court of Appeal may exercise the same powers that a court may exercise under section 79B(3).

(13) Where a witness in fear is required to be examined before the Court of Appeal under subsection (1)(b) in proceedings in respect of any offence, the Court of Appeal may exercise the same powers that a court may exercise under section 79B(4).

(14) Where a person outside Hong Kong is required to be examined before the Court of Appeal under subsection (1)(b) in proceedings in respect of any offence, the Court of Appeal may exercise the same powers that a court may exercise under section 79I.

(15) Section 79B(5) shall apply in relation to the exercise of the powers referred to in subsection (11), (12) or (13) as it applies in relation to the exercise of the powers under section 79B.

(16) Sections 79J and 79K shall apply in relation to the exercise of the powers referred to in subsection (14) as they apply in relation to the exercise of the powers under section 79I.

(17) In subsections (11) to (13)—  
"child" (兒童) means a person—  
(a) who, in the case of an offence specified in section 79B(2)(a), is under 17 years of age; or  
(b) who, in the case of an offence specified in section 79B(2)(b) or (c), is under 14 years of age;  
"mentally incapacitated person" (精神上無行為能力的人) means a person who is mentally disordered or mentally handicapped within the meaning of section 2 of the Mental Health Ordinance (Cap. 136);  
"witness in fear" (在恐懼中的證人) means a witness in respect of whom the Court of Appeal is satisfied, on reasonable grounds, is apprehensive as to the safety of himself or any member of his family if he gives evidence.

SCHEDULE 3  
(Amended 58 of 1994 s. 4)

Chapter of Ordinance	Short title	Enactments referred to
Cap. 16	Separation and Maintenance Orders Ordinance	The whole Ordinance.
Cap. 200	Crimes Ordinance	Part VI (Incest) and Part XII (Sexual and related offences).
Cap. 212	Offences against the Person Ordinance	ss. 26, 27, 43, 44 and 45 and, in the case of any offence involving bodily injury to a child or young person under the age of 16 years, any other enactment in the Ordinance.

(14 of 1906 Schedule incorporated. Amended 29 of 1952 s. 4; 21 of 1970 Second Schedule; 1 of 1978 s. 8.)  
[of 1908 c. 67 s. 27 & 1st Sch. U.K.; 1914 c. 58 s. 28(3) U.K.]

~~20. Person charged may give evidence~~

Any person charged with the offence of libel before any court of criminal jurisdiction, and the wife or husband of the person so charged, shall be competent, but not compellable, witnesses on every hearing at every stage of such charge.

(9 of 1901 s. 9 incorporated)  
[cf. 1888 c. 64 s. 9 U.K.]

52. Evidence

~~(1) The evidence of a husband or wife shall be admissible in any proceedings to prove that marital intercourse did or did not take place between them during any period; but a husband or wife shall not be compellable in criminal proceedings to give evidence of the matters aforesaid. (Amended 25 of 1969 s. 8)~~

(2) The parties to any proceedings instituted in consequence of adultery and the husbands and wives of the parties shall be competent to give evidence in the proceedings. ~~(Amended 25 of 1969 s. 8)~~

(3) In any proceedings for nullity of marriage, evidence on the question of sexual capacity shall be heard in camera unless in any case the judge is satisfied that in the interests of justice any such evidence ought to be heard in open court.  
[cf. 1963 c. 72 s. 43 U.K.]

## 31. Husband and wife

(1) This Ordinance shall apply in relation to the parties to a marriage, and to property belonging to the wife or husband whether or not by reason of an interest derived from the marriage, as it would apply if they were not married and any such interest subsisted independently of the marriage.

(2) Subject to subsection (4), a person shall have the same right to bring proceedings against that person's wife or husband for any offence (whether under this Ordinance or otherwise) as if they were not married, and a person bringing any such proceedings shall be competent to give evidence for the prosecution at every stage of the proceedings.

(3) Where a person is charged in proceedings not brought by that person's wife or husband with having committed any offence with reference to that person's wife or husband or to property belonging to the wife or husband, the wife or husband shall be competent to give evidence at every stage of the proceedings, whether for the defence or for the prosecution, and whether the accused is charged solely or jointly with any other person:

Provided that—

(a) the wife or husband (unless compellable at common law) shall not be compellable either to give evidence or, in giving evidence, to disclose any communication made to her or him during the marriage by the accused; and

(b) her or his failure to give evidence shall not be made the subject of any comment by the prosecution.

(4) Proceedings shall not be instituted against a person for any offence of stealing or doing unlawful damage to property which at the time of the offence belongs to that person's wife or husband, or for any attempt, incitement or conspiracy to commit such an offence, unless the proceedings are instituted by or with the consent of the Secretary for Justice: (*Amended L.N. 362 of 1997*)

Provided that—

(a) this subsection shall not apply to proceedings against a person for an offence—

(i) if that person is charged with committing the offence jointly with the wife or husband; or

(ii) if by virtue of any judicial decree or order (wherever made) that person and the wife or husband are at the time of the offence under no obligation to cohabit; and

(b) this subsection shall not prevent the arrest, or the issue of a warrant for the arrest, of a person for an offence, or the remand in custody or admission to bail of a person charged with an offence, where the arrest (if without a warrant) is made, or the warrant of arrest issues on an information laid, by a person other than the wife or husband.

[*cf. 1968 c. 60 s. 30 U.K.*]

74. Interpretation

In this Part, unless the context otherwise requires—

"civil proceedings" (民事法律程序), in relation to the requesting court, means proceedings in any civil or commercial matter;  
"requesting court" (提出請求的法院) has the meaning given in section 75;  
"request" (請求、請求書) includes any commission, order or other process issued by or on behalf of the requesting court.

[cf. 1975 c. 34 s. 9(1) U.K.]

△ "live television link" (電視直播聯繫) means a system in which two places are equipped with, and linked by, audio visual facilities that enable persons at one place to see and hear persons at the other place, and vice versa, at the same time;

**76. Power of a court in Hong Kong to give effect to an application for assistance**

- (1) Subject to this section, the Court of First Instance shall have power, on any such application as is mentioned in section 75, by order to make such provision for obtaining evidence in Hong Kong as may appear to the court to be appropriate for the purpose of giving effect to the request in pursuance of which the application is made; and any such order may require a person specified therein to take such steps as the court considers appropriate for that purpose. (*Amended 25 of 1998 s. 2*)
- (2) Without prejudice to the generality of subsection (1) but subject to this section, an order under this section may, in particular, make provision—
- (a) for the examination of witnesses ~~either orally or in writing~~;
  - (b) for the production of documents;
  - (c) for the inspection, photographing, preservation, custody or detention of any property;
  - (d) for the taking of samples of any property and the carrying out of any experiments on or with any property;
  - (e) for the medical examination of any person.
- (3) An order under this section shall not require any particular steps to be taken unless they are steps which can be required to be taken by way of obtaining evidence for the purposes of civil proceedings in the court making the order (whether or not proceedings of the same description as those to which the application for the order relates); but this subsection shall not preclude the making of an order requiring a person to give ~~testimony~~ ~~either orally or in writing~~ otherwise than on oath where this is asked for by the requesting court.
- (4) An order under this section shall not require a person—
- (a) to state what documents relevant to the proceedings to which the application for the order relates are or have been in his possession, custody or power; or
  - (b) to produce any documents other than particular documents specified in the order as being documents appearing to the court making the order to be, or to be likely to be, in his possession, custody or power.
- (5) A person who, by virtue of an order under this section, is required to attend at any place shall be entitled to the like conduct money and payment for expenses and loss of time as on attendance as a witness in civil proceedings before the Court of First Instance. (*Amended 25 of 1998 s. 2*)

[*cf. 1975 c. 34 s. 2 U.K.*]

↑ by any means, including by way of a live television link

^ evidence

## 77. Privilege of witnesses

(1) A person shall not be compelled by virtue of an order under section 76 to give any evidence which he could not be compelled to give—

- (a) in civil proceedings in Hong Kong; or  
 (b) subject to subsection (2), in civil proceedings in the country or territory in which the requesting court exercises jurisdiction.

(2) Subsection (1)(b) shall not apply unless the claim of the person in question to be exempt from giving the evidence is either—

- (a) supported by a statement contained in the request (whether it is so supported unconditionally or subject to conditions that are fulfilled); or

(b) conceded by the applicant for the order;

and where such a claim made by any person is not supported or conceded as aforesaid he may (subject to the other provisions of this section) be required to give the evidence to which the claim relates but that evidence shall not be transmitted to the requesting court if that court, on the matter being referred to it, upholds the claim.

(3) Without prejudice to subsection (1), a person shall not be compelled by virtue of an order under section 76 to give any evidence if his doing so would be prejudicial to the security of the United Kingdom, Hong Kong, or any other territory for which the United Kingdom is responsible under international law; and a certificate signed by or on behalf of the Chief Secretary for Administration to the effect that it would be so prejudicial for that person to do so shall be conclusive evidence of that fact. (*Amended 30 of 1978 s. 2; L.N. 362 of 1997*)

(4) In this section references to giving evidence include references to answering any question and to producing any document and the reference in subsection (2) to the transmission of evidence given by a person shall be construed accordingly.

[cf. 1975 c. 34 s. 3 U.K.]

subsections (2) and (2A)

Where a person is giving evidence by any means other than by way of a live television link, subsection

(2A) Where a person is giving evidence by way of a live television link, subsection (1)(b) shall not apply unless—

- (a) the claim of the person in question to be exempt from giving the evidence is supported or conceded as mentioned in subsection (2); or  
 (b) the requesting court, on the matter being referred to it by way of a live television link, upholds the claim.



77B. Power of Hong Kong court to assist in obtaining evidence for criminal proceedings in an overseas court

(1) The provisions of sections 75, 76 and 77 shall have effect in relation to the obtaining of evidence for the purposes of criminal proceedings as they have effect in relation to the obtaining of evidence for the purposes of civil proceedings except that—

(a) section 75(b) shall apply only to proceedings which have been instituted or whose institution is likely if the evidence is obtained; and (*Amended 37 of 1984 s. 9*)

~~(b) no order under section 76 shall make provision otherwise than for the examination of witnesses, either orally or in writing, or for the production of documents.~~

(2) In its application by virtue of subsection (1), section 77(1)(a) and (b) shall have effect as if for the words "civil proceedings" there were substituted the words "criminal proceedings".

(3) Nothing in this section applies in the case of criminal proceedings of a political character.

[*cf. 1975 c. 34 s. 5 U.K.*]

△ (b) an order under section 76 shall not make provision for any matter other than a matter referred to in section 76(2)(a) or (b).

**77E. Issue of letter of request to obtain evidence in criminal proceedings**

(1) Where it appears to the Court of First Instance that any criminal proceedings--

- (a) have been instituted in Hong Kong, or
- (b) are likely to be instituted in Hong Kong if evidence is obtained for the purposes of those criminal proceedings by virtue of an order made under this section,

the Court of First Instance may order that a letter of request shall be issued and transmitted in such manner as the Court of First Instance may direct to a court or tribunal specified in the order and exercising jurisdiction in a place outside Hong Kong, requesting such court or tribunal to assist in obtaining evidence for the purposes of those criminal proceedings.

(2) An order under this section shall specify the evidence to be obtained and, in the case of evidence to be obtained--

- (a) by the examination of any person as a witness, the name and particulars of such person or such other particulars by reference to his office or employment as may be sufficient to ascertain his identity; or
- (b) by the production of any document or thing, the nature of such document or thing or a description thereof.

↑ by any means (including by way of a live television link)

(3) An application to the Court of First Instance for an order under this section may be made *ex parte* supported by affidavit—

- (a) in respect of criminal proceedings referred to in subsection (1)(a), by the Secretary for Justice or any person charged with an offence to which such criminal proceedings relate; or
- (b) in respect of criminal proceedings referred to in subsection (1)(b), by the Secretary for Justice. *(Amended L.N. 362 of 1997)*

(4) A letter of request ordered to be issued by the Court of First Instance under this section shall be issued by the Registrar of the High Court (in this Part referred to as "the Registrar") under the seal of the High Court in such form as may be prescribed by rules of court, or if no such form is prescribed in such form as the Court of First Instance may direct.

(5) The power to make rules of court under section 54 of the High Court Ordinance (Cap. 4) shall include power to make rules of court with respect to this section (including the procedure to be followed) and for supplementing its provisions.

(6) A letter of request may be issued under this section in respect of an investigation or ancillary criminal matter as if the investigation or ancillary criminal matter, as the case may be, were criminal proceedings referred to in subsection (1)(a) and, in such a case, the provisions of sections 77F and 77G shall, with all necessary modifications, operate in relation to any such request as if any references in those provisions to criminal proceedings were references to—

- (a) where paragraph (a) of the definition of "investigation" is applicable, a prosecution arising out of the investigation to which the request relates;
- (b) where paragraph (b) of the definition of "investigation" is applicable, the ancillary criminal matter to which the request relates;
- (c) in the case of an ancillary criminal matter, the ancillary criminal matter,

and the other provisions of this Ordinance, or of any other Ordinance, which relates, whether directly or indirectly, to the provisions of this Part shall be construed accordingly. *(Added 87 of 1997 s. 36)*

(7) In subsection (6)—

"ancillary criminal matter" (附帶刑事事宜) means ancillary criminal matter within the meaning of section 2 of the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525);

"investigation" (偵查) means an investigation—

- (a) into an offence against a law of Hong Kong; or
- (b) for the purposes of an ancillary criminal matter. *(Added 87 of 1997 s. 36)*

*(Amended 25 of 1998 s. 2)*

△ (6A) In subsection (2), "live television link" (電視直播聯繫) has the same meaning as in Part VIII.

79G. Application for dismissal of charges contained in a notice of transfer

(1) Where a notice of transfer has been served, any person to whom the notice relates may, at any time before he is arraigned (and whether or not an indictment has been preferred against him), apply orally or in writing to the Court of First Instance to be discharged. (*Amended 25 of 1998 s. 2*)

(2) The court shall, if it appears to it that the evidence against the applicant would not be sufficient for a jury properly to convict him, direct that he not be arraigned on the charge and direct that he be discharged.

(3) No oral application may be made under subsection (1) unless the applicant has given the court written notice of his intention to make the application.

(4) Oral evidence may be given on such an application only with the leave of the court or by its order; and the court shall grant leave or make an order only if it appears to it, having regard to any matters stated in the application for leave, that the interests of justice require it to do so.

(5) No leave or order under subsection (4) shall be granted or made in relation to oral evidence from a child or mentally incapacitated person who is alleged— (*Amended 81 of 1997 s. 59*)

(a) to be a person against whom an offence to which the notice of transfer relates was committed; or

(b) to have witnessed the commission of such an offence.

(6) If the court grants leave permitting, or makes an order requiring, a person to give oral evidence, but that person does not do so, the court may disregard any document indicating the evidence that he might have given.

(7) Subject to section 81E(3), a discharge under this section shall be deemed to be an acquittal.

(8) The Chief Justice may make rules or give directions for the purposes of this section and, without prejudice to the generality of this subsection, the rules or directions may make provision—

(a) as to the time or stage in the proceedings at which anything required to be done is to be done (unless the court grants leave to do it at some other time or stage);

(b) as to the contents and form of notices or other documents;

(c) as to the manner in which evidence is to be submitted; and

(d) as to persons to be served with notices or other material.

(9) Rules or directions made under subsection (8) shall not have effect until approved by the Legislative Council and published in the Gazette.

(*Part IIIA added 69 of 1995 s. 3*)

## PART IIIB

TAKING EVIDENCE FROM WITNESSES OUTSIDE HONG KONG BY LIVE TELEVISION LINK

## 79H. Interpretation

In this Part, unless the context otherwise requires—  
 "court" (法庭) includes the District Court and a magistrate;  
 "live television link" (實時直播聯繫) means a system in which two places are equipped with, and linked by, audio visual facilities that enable persons at one place to see and hear persons at the other place, and vice versa, at the same time.

## 79I. Court may take evidence by live television link from person outside Hong Kong

(1) A court may, on the application of a party to any criminal proceedings, permit a person, other than a person who is a defendant in the proceedings concerned, to give evidence to the court by way of a live television link from a place outside Hong Kong, subject to such conditions as the court considers appropriate in the circumstances.

(2) A court shall not give permission under subsection (1) unless it is satisfied that—

- (a) the person concerned is outside Hong Kong;
- (b) the evidence cannot more conveniently be given in Hong Kong; and
- (c) a live television link is available or can reasonably be made available.

Subject to subsection (2), a

(2) The court shall not give permission under subsection (1) if—

- (a) the person concerned is in Hong Kong;
- (b) the evidence can more conveniently be given in Hong Kong;
- (c) a live television link is not available and cannot reasonably be made available;
- (d) measures to ensure that the person will be giving evidence without coercion cannot reasonably be taken; or
- (e) it is not in the interests of justice to do so.

**79J. Place from which person gives evidence to be deemed part of courtroom**

(1) Where a person is giving evidence in proceedings by way of a live television link pursuant to permission given under section 79I, the place from which the person is giving evidence shall, for all purposes in connection with the proceedings concerned, be deemed to be part of the courtroom in Hong Kong in which the proceedings concerned are taking place.

(2) Without prejudice to the generality of subsection (1), that subsection has effect for the purposes of the laws in force in Hong Kong relating to evidence, procedure, contempt of court and perjury.

**79K. Administration of oaths and affirmations**

An oath to be sworn or affirmation to be made by a person who is to give evidence by way of a live television link under this Part may be administered—

- (a) by way of a live television link, as nearly as practicable in the same way as oaths or affirmations are administered in a court in Hong Kong; or
- (b) by a person authorized by the court, acting at the direction of and on behalf of the court, at the place where the person is to give evidence.

**79L. Chief Justice to make rules or give directions**

The Chief Justice may make rules or give directions respecting the giving of evidence by way of a live television link under this Part.

## 9. Requests by Hong Kong for taking of evidence, etc.

(1) The Secretary for Justice may request an appropriate authority of a place outside Hong Kong to arrange for—

- (a) evidence to be taken in the place and the transmission of the evidence to Hong Kong; or  
 (b) a thing (including a thing belonging to a class of things) in the place to be produced and the transmission of the thing to Hong Kong.

for the purposes of a criminal matter in Hong Kong.

(2) The provisions of sections 77F and 77G of the Evidence Ordinance (Cap. 8) shall, with all necessary modifications, apply to and in relation to any deposition, together with any thing exhibited or annexed thereto, which is received by the Secretary for Justice pursuant to a request under subsection (1) as if—

- (a) that request were a letter of request issued by the Registrar of the High Court under section 77E of that Ordinance; (*Amended 25 of 1998 s. 2*)  
 (b) that deposition, together with any thing exhibited or annexed thereto, were received by that Registrar pursuant to such letter; and  
 (c) any references in those provisions to criminal proceedings were references to—  
 (i) where the criminal matter concerned is an investigation to which paragraph (a) of the definition of "investigation" is applicable, a prosecution arising out of the investigation;  
 (ii) where the criminal matter concerned is an investigation to which paragraph (b) of the definition of "investigation" is applicable, the ancillary criminal matter to which the investigation relates;  
 (iii) where the criminal matter concerned is an ancillary criminal matter, the ancillary criminal matter.

and the other provisions of that Ordinance, or of any other Ordinance, which relate, whether directly or indirectly, to sections 77F and 77G of the Evidence Ordinance (Cap. 8) shall be construed accordingly.

(*Amended L.N. 362 of 1997*)

△ (aa) evidence to be taken by way of a live television link from a person at the place; or

□ (3) In subsection (1), "live television link" (電視直播聯繫) means a system in which two places are equipped with, and linked by, audio visual facilities that enable persons at one place to see and hear persons at the other place, and vice versa, at the same time.

10. Requests to Hong Kong for taking of evidence, etc.

(1) Where a request is made by an appropriate authority of a place outside Hong Kong that—  
(a) evidence be taken in Hong Kong; or  
(b) a thing (including a thing belonging to a class of things) in Hong Kong be produced,

for the purposes of a criminal matter in the place, then the Secretary for Justice may authorize in writing the taking of evidence or the production of the thing, and the transmission of the evidence or, subject to subsection (14), thing to that place. (Amended L.N. 362 of 1997)

(2) Where the Secretary for Justice authorizes the taking of evidence or the production of a thing under subsection (1)—

(a) in the case of the taking of evidence, a magistrate may take the evidence on oath of each witness appearing before the magistrate to give evidence in relation to the matter, and a magistrate who takes any such evidence shall—

(i) cause the evidence to be put in writing and certify that the evidence was taken by the magistrate; and

(ii) cause the writing so certified to be sent to the Secretary for Justice; or—

(b) in the case of the production of a thing, a magistrate may require the production of the thing and, where the thing is produced, the magistrate shall send the thing (which, in the case of a document, may be a copy of the document certified by the magistrate to be a true copy) to the Secretary for Justice. (Amended L.N. 362 of 1997)

or otherwise than on oath

(2A) A magistrate may only take the evidence of a witness under subsection (2)(a) otherwise than on oath where this is asked for by the appropriate authority of the place outside Hong Kong.

(1) Where a request is made by an appropriate authority of a place outside Hong Kong that—

- (a) evidence be taken in Hong Kong;
(b) evidence be taken by way of a live television link from a person in Hong Kong; or
(c) a thing (including a thing belonging to a class of things) in Hong Kong be produced.

for the purposes of a criminal matter in the place, the Secretary for Justice may authorize in writing—

- (i) where paragraph (a) applies, the taking of evidence and the transmission of the evidence to that place;
(ii) where paragraph (b) applies, the taking of evidence by way of a live television link from the person concerned; or
(iii) where paragraph (c) applies, the production of the thing and, subject to subsection (14), the transmission of the thing to that place.

under subsection (1)(i)

(aa) in the case of the taking of evidence under subsection (1)(ii), a magistrate shall be present during the taking of the evidence and the magistrate shall—

- (i) identify the witness;
(ii) upon the conclusion of the taking of the evidence, draw up minutes indicating the date on which the evidence is taken, the place where the evidence is taken, and whether or not an oath or affirmation has been administered to the witness;
(iii) certify that the minutes were drawn up by the magistrate; and
(iv) cause the minutes so certified to be sent to the Secretary for Justice; or—

under subsection (1)(iii)

certify that the thing was produced to the magistrate and shall

(3) A proceeding under subsection (2) shall be held in open court except where—

- (a) the magistrate is satisfied that it is necessary for the proceeding to be held in camera in order to comply with any prescribed arrangements relating to the proceeding;
- (b) the magistrate exercises a power pursuant to the provisions of any other Ordinance whereby he may hold the proceeding in camera; or
- (c) the criminal matter outside Hong Kong to which the proceeding relates is an investigation and the magistrate is satisfied that there are reasonable grounds for believing that—
  - (i) it is in the interest of the person required to give evidence, or produce a thing, for the purposes of that matter that the proceeding be held in camera; or
  - (ii) that matter would be substantially prejudiced if the proceeding were held in open court.

↑ or

|| □ >

(4) The magistrate conducting a proceeding under subsection (2) shall permit—

- (a) the person to whom the criminal matter in the place outside Hong Kong concerned relates;
- (b) any other person giving evidence or producing a thing at the proceeding before the magistrate; and
- (c) the appropriate authority of that place to appear, or have legal representation, or both, at the proceeding before the magistrate.

(5) The certificate by the magistrate under subsection (2) shall state whether, when the evidence was taken or the thing was produced, any of the following persons were present—

- (a) the person to whom the criminal matter in the place outside Hong Kong concerned relates or his legal representative, if any;
- (b) any other person giving evidence or producing a thing or his legal representative, if any.

□

(d) in the case of the taking of evidence under subsection (1)(i)—

- (i) the criminal matter outside Hong Kong to which the proceeding relates is a prosecution;
- (ii) the appropriate authority of the place concerned requests that the proceeding be held in camera; and
- (iii) the proceedings in the place concerned in which the evidence is to be received will be held in camera.



(6) For the purposes of this section, the person to whom the criminal matter in the place outside Hong Kong concerned relates is competent but not compellable to give evidence.

(7) For the purposes of this section, a person who is required to give evidence, or produce a thing, for the purposes of a criminal matter in a place outside Hong Kong, is not compellable to answer a question, or produce a thing, that the person is not compellable to answer or produce, as the case may be, in the criminal matter in that place.

(8) A duly certified external law immunity certificate is admissible in proceedings under this section as evidence of the facts stated in the certificate.

(9) Subsection (7) does not apply in a case where its application would be inconsistent with any provision of prescribed arrangements, if any, between Hong Kong and the prescribed place concerned.

(10) For the purposes of this section, a person who is required to give evidence, or produce a thing, for the purposes of a criminal matter in a place outside Hong Kong, is not compellable to give evidence, or produce a thing, that the person could not be compelled to give or produce, as the case may be, in Hong Kong—

- (a) if that matter were a trial of a person for a Hong Kong offence or proceedings to determine whether a person should be tried for such an offence; or
- (b) without prejudice to the generality of paragraph (a)—
  - (i) on the ground that to do so might tend to incriminate him; and
  - (ii) if—
    - (A) the provisions of any Ordinance which qualify a person's right not to incriminate himself had never been enacted; and
    - (B) that matter were a trial of a person for a Hong Kong offence or proceedings to determine whether a person should be tried for such an offence.

(11) Without prejudice to the generality of subsection (10), for the purposes of this section, a tax adviser or relevant auditor who is required to give evidence, or produce a thing, for the purposes of a criminal matter in a place outside Hong Kong which is an investigation into an external offence relating to taxation, is not compellable to give evidence, or produce a thing, to the extent that the evidence or thing, as the case may be, relates to, or is, a tax document which—

- (a) is the property of that tax adviser or relevant auditor, as the case may be; and
- (b) in the case of a tax adviser, originates from him, or from his client or another tax adviser of the client, for or in connection with the giving or obtaining of advice about the tax affairs of the client.

(12) For the purposes of this section, and without prejudice to the operation of subsection (6), (7), (9), (10) or (11), a person who is required to give evidence, or produce a thing, for the purposes of a criminal matter in a place outside Hong Kong, shall not be required—

- (a) to state what things relevant to that matter are or have been in his possession or control; or
- (b) to produce any things other than particular things specified by the magistrate conducting the proceedings concerned under subsection (2), or things belonging to a particular class of things specified by that magistrate, as being things, or a class of things, as the case may be, appearing to that magistrate to be, or to be likely to be, in his possession or control.

(13) It is hereby declared that evidence taken for the purposes of this section shall not be admissible in evidence, or otherwise used, for the purposes of any criminal matter, civil proceedings, disciplinary proceedings, or other proceedings, in Hong Kong except any prosecution of the person who gave that evidence for the offence of perjury, or contempt of court, in respect of that evidence.

(14) The Secretary for Justice shall not authorize under subsection (1) the transmission of the original of a thing to a place outside Hong Kong unless—

- (a) the appropriate authority of the place has, not more than 1 month after the thing was produced, given the Secretary for Justice a notice in writing setting out the grounds on which the original of the thing is required for the purposes of the criminal matter concerned in that place; and
- (b) in any case where the Secretary for Justice is of the opinion, after considering all the circumstances, that the original of the thing should be returned to Hong Kong upon the conclusion of the proceedings relating to that criminal matter, the appropriate authority has given an unqualified undertaking to the Secretary for Justice that the original of the thing will be so returned.

(Amended L.N. 362 of 1997)

△ (15) In this section, "live television link" (電視實時聯線) means a system in which two places are equipped with, and linked by, audio visual facilities that enable persons at one place to see and hear persons at the other place, and vice versa, at the same time.

32A. False unsworn statement under section 76 of Evidence Ordinance

If any person, in giving <sup>↑</sup>any testimony (either orally or in writing) otherwise than on oath, where required to do so by an order under section 76 of the Evidence Ordinance (Cap. 8), makes a statement—

- (a) which he knows to be false in a material particular; or
- (b) which is false in a material particular and which he does not believe to be true,

he commits an offence and is liable on conviction on indictment to imprisonment for 2 years and to a fine of \$5,000.

(Added 2 of 1977 s. 4)  
[cf. 1975 c. 34 s. 8(1) U.K.]

↑ evidence

evidence otherwise than on oath pursuant to section 10 of the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525), or where required to do so by an order under section 76 of the Evidence Ordinance (Cap. 8) or that section 76 as extended by section 77B of the Evidence Ordinance (Cap. 8)

**81. Taking of evidence at hearing**

(1) At a preliminary inquiry where the accused is present at the hearing, the magistrate shall, before committing the accused to prison for trial or before admitting him to bail to take his trial, in the presence of the accused proceed to take evidence for and on behalf of the prosecutor and his witnesses in the same manner, subject to subsection (3), as is hereinbefore provided for the taking of the evidence of the complainant or informant and his witnesses on a complaint or information for an offence punishable on summary conviction. (See Form 19) (Amended 49 of 1965 s. 14, 48 of 1983 s. 3)

(2) The accused or his counsel shall be at liberty to put questions to any witnesses produced against him, and, subject to subsection (3), the depositions or evidence of the prosecutor and his witnesses shall, in the presence of the accused, be read over to and signed respectively by the witnesses who have been so examined, and shall also be signed by the magistrate taking the same.

(3) The magistrate may cause the deposition or evidence of a witness who is examined under subsection (2) to be recorded by way of shorthand note or mechanical or electrical recording device and, thereafter, reduced into writing; and where—

- (a) that writing is made available to the accused or his counsel; and
- (b) the witness thereafter, on oath and in the presence of the accused, confirms the accuracy of that writing,

the deposition or evidence of that witness shall be treated, for all purposes, including section 70 of the Evidence Ordinance (Cap. 8), as if it had been reduced into writing immediately, read over to the witness and signed by him in the presence of the accused. (Added 75 of 1984 s. 2)

(Amended 75 of 1984 s. 2)  
[cf. 1843 c. 42 s. 17 U.K.]

(4) Where the evidence of a witness is taken by way of a live television link under Part IIIB of the Criminal Procedure Ordinance (Cap. 221)—

- (a) the requirement in subsection (2) that the deposition or evidence of the witness shall be signed by the witness in the presence of the accused shall be deemed to have been complied with if, in the presence of the accused, the witness confirms on oath the accuracy of the deposition or evidence by way of a live television link; and
- (b) where subsection (3) applies, paragraph (b) of that subsection shall be deemed to have been complied with if, after the writing concerned is made available to the accused or his counsel, and in the presence of the accused, the witness confirms on oath the accuracy of the writing concerned by way of a live television link.

(5) In subsection (4), "live television link" (電視直播聯繫) has the meaning assigned to it by section 79H of the Criminal Procedure Ordinance (Cap. 221).

(2) A document is duly certified for the purposes of subsection (1) if it purports to be authenticated by the oath of a witness or an officer of the government of the place outside Hong Kong concerned or to be sealed with an official or public seal of the place or of a minister of state, or of a department or officer of the government, of the place.

(3) Nothing in this section prevents the proof of any matter, or the admission in evidence of any document, in accordance with any other provision of this Ordinance or law of Hong Kong.

### 33. Regulations

The Chief Executive in Council may make regulations— (*Amended 71 of 1999 s. 3*)

- (a) prescribing anything that is required or permitted to be prescribed under this Ordinance;
- (b) generally for the better and more effectual carrying out of the provisions of this Ordinance, including incidental, consequential, evidential and supplemental provisions,

and, in particular—

- (i) prescribing the practice and procedure in relation to the performance by magistrates of functions under this Ordinance, including the summoning of witnesses, the production of documents, the taking of evidence on oath, the administering of oaths, the payment of expenses and allowances of witnesses and the protection and immunity of magistrates, of barristers and solicitors appearing before magistrates and of witnesses; and
- (ii) prescribing penalties not exceeding a fine at level 3 or imprisonment for 6 months for offences against the regulations.

or otherwise than on oath

### 34. Chief Executive to give notice to Central People's Government in relation to Hong Kong requests and external requests

(1) The Chief Executive shall cause the Central People's Government to be given notice of every Hong Kong request and external request.

(2) Where the Central People's Government issues an instruction to the Chief Executive to take, or not to take, an action—

- (a) in relation to a Hong Kong request or external request; and
- (b) on the ground that if the instruction were not complied with the interests of the People's Republic of China in matters of sovereignty, security or public order would be significantly affected,

in relation to any such recognizance as they apply to such recognizances as are mentioned therein, but any condition for the appearance of the appellant at the hearing of the appeal shall be deemed to be performed if he duly surrenders himself.

(3) The payment of any costs ordered to be paid under subsection (2) may be enforced as a civil debt recoverable on a magistrate's summons by the party to whom they are ordered to be paid, and shall not be enforced in any other manner.

(Replaced 24 of 1949 s. 39)  
(cf. 1933 c. 38 s. 4 U.K.)

#### 118. Procedure on hearing appeal

- (1) In the case of any appeal to which section 105 or 113 applies—
- (a) the depositions taken before the magistrate or a certified copy thereof shall, without prejudice to any other method of proof, be admissible as evidence of the evidence which was given and of the statements which were made before the magistrate, and generally that the proceedings therein recorded took place;
  - (b) when the appeal comes on for hearing the appellant shall be first heard in support of the appeal, the respondent if present and if he so desires shall be heard against it and the appellant thereafter shall be entitled to reply. If the judge thinks additional evidence to be necessary he may receive such evidence, and for that purpose shall have the like powers under ~~paragraphs (4) and (5) of~~ section 83V of the Criminal Procedure Ordinance (Cap. 221) that the Court of Appeal would have had if the appeal had been an appeal to which that section applied, and the judge may issue any process necessary for enforcing the exercise of such powers; (Amended 34 of 1972 s. 22)
  - (c) the appeal shall not operate as a stay of execution except in the case of—
    - (i) (Repealed 13 of 1995 s. 2)
    - (ii) an order for payment of compensation; (Replaced 36 of 1976 s. 14)
  - (d) the judge may reserve the appeal, or any point in the appeal for the consideration of the Court of Appeal, or may direct the appeal, or point in the appeal, to be argued before the Court of Appeal; and the Court of Appeal shall have power to hear and determine any such appeal or point so reserved or so directed to be argued and may in connection therewith exercise all or any of the powers conferred on a judge by this Part or may remit the matter to the judge with the opinion or decision of the Court of

subsections (1) and (6) to (17)

[Subsidiary]

- (i) the summons was served on the person, either personally or by leaving the summons for him with some person at his last or most usual place of abode; and
  - (ii) a reasonable sum (where, in the opinion of the magistrate, necessary) was paid or tendered to the person for his costs or expenses to attend before the magistrate,
- the magistrate may issue a warrant in accordance with Form 2 to have the person—
- (A) apprehended and informed, at the time of apprehension, of the reason therefor;
  - (B) brought, as soon as practicable, before the magistrate—
    - (I) to give evidence, answer questions and produce to the magistrate such things in the person's possession or control as are referred to in the summons; and
    - (II) to show cause why he should not be punished under subsection (2) for the failure to attend; and
  - (C) detained in custody until released by order of the magistrate.
- (2) A person brought before a magistrate pursuant to a warrant under subsection (1) who fails to satisfy the magistrate that he had a reasonable excuse for the failure to attend as required by the summons commits an offence and the magistrate may impose upon the person a fine at level 3 and order the person to be imprisoned for 3 months.

**5. Failure of witness to answer questions, etc.**

A person attending before a magistrate as a witness as required by section 3, or a warrant under section 4, who—

- (a) refuses to be sworn as a witness, ~~without lawful or reasonable excuse, to answer a question when required to do so by the magistrate; or~~
- (b) without lawful or reasonable excuse, refuses or fails to produce a thing that the person was required to produce by the summons, commits an offence and the magistrate may—
  - (i) by issuing a warrant in accordance with Form 3, order the person to be imprisoned for 3 months unless the person in the meantime consents to be so sworn to answer the question or to produce the thing, as the case may be; or
  - (ii) impose upon the person a fine at level 3.

**6. Witnesses' allowances**

The Criminal Procedure (Witnesses' Allowances) Rules (Cap. 221 sub. leg.) shall, with all necessary modifications, apply to and in relation to proceedings before a magistrate under the Ordinance as if—

or refuses to take any other step to similar effect in accordance with the law of the place outside Hong Kong the appropriate authority of which has made the request concerned;

(aa) without lawful or reasonable excuse, refuses to answer a question when required to do so by the magistrate, or

, to take the step

[Subsidiary]

FORM 3

[A 5]

WARRANT FOR COMMITMENT OF WITNESSES REFUSING TO BE SWORN, GIVE EVIDENCE OR PRODUCE THINGS

In the matter of proceedings relating to .....  
Under the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525):  
To each and all of the police officers of Hong Kong and to the Commissioner of Correctional Services.

WHEREAS ..... how  
attending before me at ..... in Hong Kong on ..... day, the ..... day of ..... 19..... at ..... as required by section 3(a) warrant under section 4\* of the Mutual Legal Assistance in Criminal Matters Regulation (Cap. 525 sub. leg.) and being required by me to take oath or make an affirmation as a witness now refuse so to do\* (or being sworn or affirmed as a witness) refuse to answer a question when required by me to do so\* (refuses or fails to produce a thing referred to in a summons under section 2 of the Mutual Legal Assistance in Criminal Matters Regulation (Cap. 525 sub. leg.)\*, without offering any lawful or reasonable excuse for such his refusal\* (failure)\*.

YOU, THE SAID POLICE OFFICERS, ARE HEREBY COMMANDED to take the said ..... and to safely convey him to a prison, and there to deliver him to the Commissioner of Correctional Services, together with this warrant.

YOU, THE SAID COMMISSIONER OF CORRECTIONAL SERVICES, ARE HEREBY COMMANDED to receive the said ..... into custody in a prison, and there imprison him for such his contempt for the space of ..... days\* (months)\*, unless he shall in the meantime consent to being sworn (or affirmed) as a witness\* (answer the question\* (produce the thing required)\*, and for your so doing this shall be sufficient\* (arrant).

Dated this ..... day of ..... 19.....

Magistrate

\* Delete whichever is inapplicable.

be sworn (or affirmed) as a witness (or to take any other step to similar effect in accordance with the law of the place outside Hong Kong concerned) now refuses so to do\* (or being a witness)

or take the step in accordance with the law of the place outside Hong Kong concerned