

**Legislative Council Bills Committee on  
Statute Law (Miscellaneous Provisions) Bill 2014**

**Follow-up to the 3rd meeting on 23 June 2014**

**Purpose**

This paper sets out the Administration's response to the issues raised at the third meeting of the Bills Committee held on 23 June 2014.

**Part 6**

*Question (a) - advise on the prevailing arrangements, if any, for mutual legal assistance in criminal matters between Hong Kong and the Mainland (such as by way of any memorandum of understanding);*

2. There is currently no arrangement (including memorandum of understanding) in place between the HKSAR and the Mainland China for mutual legal assistance in criminal matters. Currently, the sole mechanism under which the HKSAR may seek and render assistance in obtaining evidence for use in criminal proceedings instituted in the HKSAR and the Mainland China is the mechanism under Parts VIII and VIIIA of the Evidence Ordinance (Cap. 8).

Clause 48

*Question (b) –mark reference to other Ordinances and advise whether the expressions of “宗教式誓章” and “非宗教式誓詞” are standardized expressions in the Chinese text for “affidavit” and “affirmation” respectively;*

3. “宗教式誓章” and “非宗教式誓詞” are also used in the Oaths and Declarations Ordinance (Cap. 11) (see sections 7(4) and 9) and the Legal Practitioners Ordinance (Cap. 159) (see section 7A) as the Chinese equivalents to “affidavit” and “affirmation”. We consider that “宗教式誓章” and “非宗教式誓詞” are the appropriate Chinese equivalents to “affidavit” and “affirmation” under the context.

*Question (c) - explain, with reference to cases (if any), what constitutes “unfairness” under the proposed section 77F(2)(c)(iii) of the Evidence Ordinance (Cap. 8);*

4. The term “unfairness” is not defined in the proposed section 77F(2)(c)(iii). In considering the term under the proposed provision, the principles applicable to the criminal court’s power to exclude evidence at common law when seeking to preserve a fair trial would be relevant.

5. It is trite law that the Judge is under an overriding duty to ensure a fair trial for the accused according to law. The requirement of a fair trial for the accused involves the observance of a number of principles including the accused’s right of silence, and also the principle that no one can be convicted except upon the probative effect of admissible evidence. To ensure a fair trial for the accused, the court may exclude admissible evidence the reception of which will compromise these principles, such as evidence which is unreliable, and evidence the prejudicial effect of which is out of proportion to its probative value.

6. As observed in the case of Secretary for Justice v Lam Tat-ming & Anor [2000] 2 HKLRD 431:-

*“.....The test of unfairness is not that of a game governed by a sportsman’s code of fair play ..... Unfairness in this respect is to be judged against and only **against what is required to secure a fair trial for the accused**.....However, it is important to observe that in a just society, the conviction of the guilty is in the public interest, as is the acquittal of the innocent.....*

*The requirement of a fair trial for the accused involves the observance of principles including the following which are relevant in this appeal: (1) No man is to be compelled to incriminate himself; his right of silence should be safeguarded. (2) No one can be convicted except upon the probative effect of admissible evidence. To **ensure a fair trial for the accused, the court will exclude admissible evidence the reception of which will compromise these principles** .....*

*..... The Judge may in his discretion **exclude admissible evidence where its prejudicial effect is out of proportion to its probative value. And he may in his discretion exclude admissible evidence where it is so unreliable that no jury (or a judge when sitting alone as a judge of fact) properly directed may convict.**” [Emphasis added]*

7. What is more, the courts may also exclude evidence obtained in breach of rights contained in the Basic Law. In the case of HKSAR v Chan Kau-tai [2006] 1 HKLRD 400, the court pointed out that the discretion to admit or exclude evidence involved a balancing exercise involving two facets of the public interest: namely, protecting constitutionally guaranteed rights, and ensuring detection of crimes and bringing criminals to justice. The court

considered that breach of constitutional rights was an important factor whose weight would depend mainly on the nature of the right involved and the extent of the breach.

*Question (d) – provide the proposed Committee Stage Amendment to substitute “該書面供詞或該文件” by “該書面供詞及該文件” in the Chinese text of the proposed section 77F(2)(c)(iii);*

8. We will provide the proposed Committee Stage Amendment in due course.

## **Part 10**

*Question (e) – provide the proposed Committee Stage Amendment to delete Part 10 of the Bill;*

9. We will provide the proposed Committee Stage Amendment in due course.

## **Part 12**

### Clause 63

*Question (f) – provide the proposed Committee Stage Amendment to the proposed Schedule to the Specification of Public Offices (Cap.1 sub.leg.C) with regard to the Companies Ordinance (Cap.622) which has commenced operation on 3 March 2014;*

10. We will provide the proposed Committee Stage Amendment in due course.

## **Part 15**

### Clause 165

*Question (g) – make reference to other Ordinances and advise whether it was in order to use “信號”, instead of “訊號”, as the Chinese rendition of the term “signals” in Regulation 2(1) of the Road Traffic (Registration and Licensing Vehicles) Regulation (Cap.374 sub leg E).*

11. “信號” is generally used as the Chinese equivalent to “signal” in the context of traffic-related legislation. We therefore propose to use this term in the Road Traffic (Registration and Licensing of Vehicles) Regulations (Cap. 374 sub. leg. E). Examples in other legislation include section 2 of the Road Traffic Ordinance (Cap. 374), regulations 26 and 92(3) of the Road Traffic (Construction and Maintenance of Vehicles) Regulations (Cap. 374 sub. leg. A) and regulation 29(d) of the Road Traffic (Parking) Regulations (Cap. 374 sub. leg. C).

**Department of Justice**  
**July 2014**

Doc # 410470 v1