

**Bills Committee on Administration of Justice
(Miscellaneous Provisions) Bill 2014**

**Responses to Follow-up Actions arising from
the Third Meeting on 15 October 2014**

PURPOSE

This paper responds to the issues raised at the third meeting on 15 October 2014.

RESPONSES

(a) **To refine the presentation of the figures provided in Annex B to the paper titled “Provision of Information requested at the Meeting on 3 June 2014” to show the breakdown of figures for as of right appeals and non-as of right appeals disposed of in the Court of Final Appeal ("CFA") since 2001.**

2. As the requisite breakdown of the statistics relating to civil substantive appeals disposed of in the CFA into as of right cases and other cases is not maintained electronically, the Judiciary has to compile the information manually. Given the efforts involved, the Judiciary can only provide the breakdown for the recent five years (i.e. from 2009 to 2013). The breakdown is at **Appendix I**.

(b) **To refine the presentation of the figures provided in Annex C to the paper titled “Provision of Information requested at the Meeting on 3 June 2014” to show the actual final outcome of the substantive appeals for civil cases with leave allowed by the CFA since 2001.**

3. Similar to item (a) above, the requisite refinement of statistics tracing the actual final outcome of the substantive appeals for civil cases with leave applications disposed of by the CFA is not maintained in the Judiciary’s computer system. As such, the Judiciary can only provide the information for the recent five years (i.e. from 2009 to 2013) after manual analysis. The requisite information is at **Appendix II**.

4. Separately, it was suggested at the meeting on 15 October 2014 that the leave application process for civil appeals to the CFA was not easy and legal costs would need to be incurred. Hence, if the as of right appeal arrangement were abolished, litigants would in general bear more costs for the appeal process. We would like to clarify that at present, for the as of right appeals, leave applications are still required to be lodged with the Court of Appeal or the CFA as the appellant has to satisfy the courts that the case concerned falls squarely within the scope of section 22(1)(a) of the Hong Kong Court of Final Appeal Ordinance (Cap. 484) (“CFAO”). So, unless the claims underlying the appeals are straight-forward (such as liquidated claims with an amount above the threshold of \$1 million), legal costs would need to be incurred inevitably during the leave application process for the as of right appeals. Further, such leave applications will most probably include other ground(s) as provided under section 22(1)(b) of the CFAO.

(c) To clarify in general whether administrative appeals, i.e. judicial reviews, may be submitted to the CFA as civil appeals (as against criminal appeals); if so, whether judicial reviews may be submitted to the CFA under the as of right appeal arrangements.

5. Depending on the nature of the cases, judicial reviews may be submitted to the CFA as civil or criminal appeals. Most judicial reviews touching upon the administrative decisions of the Administration will be considered as civil causes. However, if the judicial reviews concern matters arising out of criminal proceedings (such as reviewing refusals by the Magistrates or District Judges to stay criminal trials and choice of venue for trials), these will be considered as criminal causes and appeals.

6. As judicial review cases rarely involve claims for liquidated sum(s), our experience is that it is quite unlikely that these cases will involve the “as of right” grounds. But, the Judiciary does not have any handy statistics in this regard.

(d) To propose specific legislative changes to reflect the agreed arrangement that any facilities to be used for the evidence-taking process by live television links for criminal proceedings should be approved by the Chief Justice.

7. At the meeting, the Bills Committee agreed with the proposal that approval from the Chief Justice would be required for any facilities to be used for the evidence-taking process by live television links for criminal proceedings. The Chief Justice would, in consultation with the relevant Committee administratively, ensure that the facilities would be secure.

8. To implement this proposal, we propose to introduce the Committee Stage Amendments at **Appendix III** which are shown in marked-up mode (for both the English and Chinese provisions). We have also taken the opportunity to refine the legislative provisions, having regard to Members' earlier comments.

(e) To propose specific legislative changes to reflect the agreed arrangement about the dissemination arrangements for the reasons for verdict delivered directly in writing and reduced to writing for criminal cases in the District Court.

9. At the meeting, the Bills Committee agreed with the proposal to amend the new section 80 of the District Court Ordinance (Cap. 336) to provide that –

(a) a copy of the reasons for verdict delivered directly in writing should be made available to the public through the Internet; and

(b) the reasons for verdict reduced to writing should be disseminated in similar ways as those directly delivered in writing, i.e. by delivering a copy to each of the parties, lodging a copy in the High Court Library, making a copy available for public inspection in the Registry of the District Court, and making a copy available to the public through the Internet.

10. The proposed Committee Stage Amendments in marked-up mode (for both the English and Chinese provisions) are set out at **Appendix IV**.

**Administration Wing
Chief Secretary for Administration's Office**

Judiciary Administration

November 2014

**Breakdown of Civil Substantive Appeals disposed of in the Court of Final Appeal
into As of Right Cases and Other Cases (2009-2013)**

Disposal Year	Substantive Appeals	Number of Civil Substantive Appeals disposed of (% against Total)			
		No. of Appeals Allowed (a)	No. of Appeals Dismissed (b)	No. of Appeals Withdrawn (c)	Total (a+b+c)
2009	Appeals heard purely on “As of Right” grounds	2 (33%)	4 (67%)		
	Other ground(s)	9 (50%)	9 (50%)		
	Total	11 (42%)	13 (50%)	2 (8%)	26
2010	Appeals heard purely on “As of Right” grounds	0 (0%)	2 (100%)		
	Other ground(s)	6 (67%)	3 (33%)		
	Total	6 (46%)	5 (39%)	2 (15%)	13
2011	Appeals heard purely on “As of Right” grounds	3 (25%)	9 (75%)		
	Other ground(s)	5 (50%)	5 (50%)		
	Total	8 (35%)	14 (61%)	1 (4%)	23
2012	Appeals heard purely on “As of Right” grounds	1 (33%)	2 (67%)		
	Other ground(s)	3 (25%)	9 (75%)		
	Total	4 (27%)	11 (73%)	0 (0%)	15
2013	Appeals heard purely on “As of Right” grounds	4 (50%)	4 (50%)		
	Other ground(s)	12 (50%)	12 (50%)		
	Total	16 (48.5%)	16 (48.5%)	1 (3%)	33

Remarks :

- (1) Some of the appeal cases might have been submitted to the Court of Final Appeal under both limbs of section 22(1)(a) (as of right mechanism) and section 22(1)(b) (after obtaining leave) of the Hong Kong Court of Final Appeal Ordinance (Cap 484). The figures for “Appeals heard purely on ‘As of Right’ grounds” in the above table only captures the results of those appeals heard solely under section 22(1)(a).
- (2) The above table is prepared on the basis of the year of disposing the cases, not the year of filing the cases. This is different from the basis used in Annex A of the paper titled “Provision of Information requested at the Meeting on 3 June 2014” issued by the Administration/Judiciary Administration.
- (3) The breakdown above has been prepared with manual efforts. As cases withdrawn are not important for the present analysis, we have not provided a breakdown for these cases.

**Number of Civil Leave Applications
Disposed of by the Court of Final Appeal and the Subsequent Outcome of the related Substantive Appeals
(2009-2013)**

Year of Disposal of Leave Applications	2009	2010	2011	2012	2013
Breakdown					
Number of leave applications allowed	8 (9%)	5 (12%)	12 (24%)	15 (32%)	11 (22%)
<i>Number of subsequent substantive appeals allowed</i>	4 [50%]	4 [80%]	4 [33%]	9 [60%]	4 [36%]
<i>Number of subsequent substantive appeals dismissed</i>	3 [38%]	1[20%]	8 [67%]	5 [33%]	5 [46%]
<i>Number of subsequent substantive appeals withdrawn</i>	1 [12%]	---	---	---	---
<i>Number of leave applications with NO substantive appeal filed</i>	---	---	---	1[7%]	2 [18%]
Number of leave applications dismissed	77 (90%)	36 (88%)	36 (73%)	29 (62%)	38 (76%)
Number of leave applications withdrawn	1 (1%)	---	1 (2%)	3 (6%)	1 (2%)
Total number of leave applications disposed of by the Court of Final Appeal	86	41	49	47	50

Remarks :

- (1) The year in the table above refers to the year when the leave applications (not the substantive appeals) were disposed of by the Court of Final Appeal (“CFA”).
- (2) The percentages in round brackets show the respective percentages of leave applications allowed/dismissed/withdrawn among the total number of leave applications disposed of by the CFA.
- (3) The percentages in square brackets show the respective percentages of substantive appeals eventually allowed/dismissed/withdrawn/not filed among the total number of leave applications allowed by the CFA.

**Draft Committee Stage Amendments for the
Amendments to the Criminal Procedure Ordinance (Cap. 221)**

3. Section 79A amended (interpretation)

Section 79A, definition of *live television link*—

Repeal the definition

~~“a closed circuit television system”~~

Substitute

~~“audio-visual facilities”.~~

“*live television link* (電視直播聯繫) means a system—

(a) in which a courtroom and another room located in the same premises as the courtroom are equipped with, and linked by, audio-visual facilities that are capable of allowing—

(i) persons in the courtroom to see and hear persons in the other room; and

(ii) persons in the other room to hear, or see and hear, persons in the courtroom; and

(b) installed for allowing persons in the other room to give evidence in the proceedings taking place in the courtroom,

and includes a similar system linking a room in which a magistrate is taking a deposition in writing under section 79E with another room from which the person gives evidence for the purpose of the deposition;”.

3A. Section 79B amended (evidence by live television link)

After section 79B(5)—

Add

“(6) The audio-visual facilities used in a live television link must be approved by the Chief Justice.”.

3. 修訂第 79A 條(釋義)

第 79A 條 ~~“電視直播聯繫的定義”~~ —

廢除 ~~電視直播聯繫的定義~~

在“~~並包括~~”之前的所有字句

代以

~~“電視直播聯繫 (live television link) 指一套符合以下說明的系統：在該系統中，某法庭和與該法庭位於同一處所的另一房間裝設了一套視聽設施系統，並藉該系統聯繫，而”~~

(a) ~~在該系統中，某法庭及與該法庭位於同一處所的另一房間，均設有視聽設施，並以該等設施相聯繫，而該等設施視聽設施系統能夠讓~~ —

(i) ~~讓該法庭內的人，看見和並聽到該房間內的人；及~~

(ii) ~~讓該房間內的人，聽到或看見並聽到該法庭內的人；及~~

(b) ~~裝設該視聽設施系統的目的，是讓在該房間內的人，於在該法庭進行的法律程序中，提供證據，~~

~~並包括一套相類的系統，而該相類的系統將裁判官在根據第 79E 條錄取書面供詞時所在的房間，與正為作出該書面供詞而提供證據的人所在的另一房間，聯繫起來；”~~。

3A. 修訂第 79B 條(藉電視直播聯繫提供的證據)

在第 79B(5)條之後 —

加入

“(6) 用於電視直播聯繫的視聽設施，須經終審法院首席法官批准。”。

**Draft Committee Stage Amendments for the
Amendments to District Court Ordinance (Cap. 336)**

5. Section 80 amended (verdict)

Section 80—

**Repeal subsection (2)
Substitute**

- “(2) The reasons for the verdict must be delivered—
- (a) together with the verdict; and
 - (b) either orally or in writing.
- (3) The reasons for any sentence must be delivered—
- (a) together with the sentence; and
 - (b) orally.
- (4) Reasons delivered orally under subsection (2) or (3) must be reduced to writing within 21 days after the hearing or the trial.
- (5) The reasons reduced to writing must be signed by the judge.
- (6) For reasons delivered in writing under subsection (2) or reasons reduced to writing under subsection (4), the Court must—
- (a) deliver a copy of the reasons to each of the parties;
 - (b) lodge a copy of the reasons in the High Court Library;
and
 - (c) make a copy of the reasons available for public inspection in the Registry of the Court; and
 - (d) make a copy of the reasons available to the public through the Internet.”.

5. 修訂第 80 條(裁決)

第 80 條 —

廢除第(2)款

代以

“(2) 裁決的理由 —

(a) 須連同該裁決一併宣告；及

(b) 須只以口述方式宣告，或只以書面方式宣告。

(3) 任何判刑的理由 —

(a) 須連同該判刑一併宣告；及

(b) 須以口述方式宣告。

(4) 根據第(2)或(3)款以口述方式宣告的理由，須在聆訊或審訊後 21 天內，轉為文字紀錄。

(5) 轉為文字紀錄的理由，須由有關法官簽署。

(6) 就如屬根據第(2)款以書面方式宣告的理由，或根據第(4)款轉為文字紀錄的理由而言，區域法院須 —

(a) 將該等理由的文本，交付每一方；

(b) 將該等理由的文本，交存高等法院圖書館；
及

(c) 在區域法院登記處備有該等理由的文本，以供公眾查閱；及

(d) 透過互聯網向公眾提供該等理由的文本。”。