

L.N. 145 of 2015

**Live Television Link (Witnesses outside Hong Kong)
Rules**

(Made by the Chief Judge under section 79L of the Criminal
Procedure Ordinance (Cap. 221))

1. Commencement

These Rules come into operation on the day on which section 17 of the Evidence (Miscellaneous Amendments) Ordinance 2003 (23 of 2003) comes into operation.

2. Interpretation

In these Rules—

court (法庭) includes the District Court and a magistrate;

live television link (電視直播聯繫) means a system in which 2 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;

officer of the court (法院人員) means—

- (a) in relation to proceedings in the High Court, the Registrar of the High Court;
- (b) in relation to proceedings in the District Court, the Registrar of the District Court; or
- (c) in relation to proceedings before a magistrate, the first clerk of the magistracy.

3. Making applications

- (1) An application under section 79I of the Ordinance for permission for a witness to give evidence by way of a live television link from a place outside Hong Kong must be made by giving a notice in the form specified by the Chief Judge to—
 - (a) the officer of the court; and
 - (b) all other parties to the proceedings.
- (2) If the application is made for a witness to give evidence for a preliminary inquiry before a magistrate in respect of a charge, the application must be made within 42 days after the following date—
 - (a) the date on which the defendant elects, or is deemed to have elected, under section 80C of the Magistrates Ordinance (Cap. 227) to have the charge heard at a preliminary inquiry; or
 - (b) the date on which the defendant elects under section 77A(5) of the District Court Ordinance (Cap. 336) to have the charge heard at a preliminary inquiry.
- (3) If the application is made for a witness to give evidence for a trial in the Court of First Instance in respect of a charge, the application must be made within 42 days after the following date—
 - (a) if the charge has been heard at a preliminary inquiry before a magistrate, the date on which the defendant was committed for trial under section 85(2) of the Magistrates Ordinance (Cap. 227) in respect of the charge;
 - (b) if the defendant does not elect, and is not deemed to have elected, to have the charge heard at a preliminary inquiry before a magistrate—

- (i) the date on which the defendant is committed for trial under section 80C(4) of the Magistrates Ordinance (Cap. 227) in respect of the charge; or
 - (ii) the date on which an order of transfer of proceedings to the Court of First Instance is made under section 77A of the District Court Ordinance (Cap. 336) in respect of the charge;
 - (c) if an indictment is preferred under section 24A(1)(b) of the Ordinance by the direction or with the consent of a judge in respect of the charge, the date on which the judge gives the direction or consent;
 - (d) if the proceedings against the defendant are transferred to the Court of First Instance under an order made under section 4 of the Complex Commercial Crimes Ordinance (Cap. 394), the date on which the order is made;
 - (e) if the defendant is committed for trial in the Court of First Instance under an order made under section 79F(5) of the Ordinance, the date on which the order is made.
- (4) If the application is made for a witness to give evidence for a trial in the District Court in respect of a charge, the application must be made within 42 days after the following date—
- (a) if the proceedings against the defendant are transferred to the District Court under an order made under section 88 of the Magistrates Ordinance (Cap. 227), the date on which the order is made;

- (b) if the proceedings against the defendant are transferred to the District Court under an order made under section 65F of the Ordinance, the date on which the order is made.
- (5) If the application is made for a witness to give evidence for a trial before a magistrate in respect of a charge, the application must be made within 42 days after the following date—
 - (a) if the case is referred back to the magistrate by the Secretary for Justice under section 10 of the Ordinance, the date on which the Secretary for Justice refers the case back to the magistrate;
 - (b) if the proceedings against the defendant are transferred before the magistrate under an order made under section 77A of the District Court Ordinance (Cap. 336), the date on which the order is made;
 - (c) if the proceedings against the defendant are transferred before the magistrate under an order made under section 65F of the Ordinance, the date on which the order is made;
 - (d) in any other case, the date on which the case is set down for trial before the magistrate.

4. Parties may oppose applications

A party who is given a notice under rule 3(1) may, within 14 days after the date on which the notice is given, oppose the application concerned by—

- (a) notifying the officer of the court and all other parties to the proceedings in writing of the opposition; and
- (b) giving reasons for the opposition in the notice of opposition.

5. Determination

- (1) The court may determine an application under rule 3 without a hearing if the officer of the court is not notified of any opposition to the application under rule 4 in the period within which the opposition may be made.
- (2) If the court determines the application without a hearing, the officer of the court must notify all parties to the proceedings of the determination.
- (3) If the court grants the application without a hearing, the notification under subrule (2) must state—
 - (a) the country or territory in which the witness will give evidence;
 - (b) if known, the place from which the witness will give evidence;
 - (c) the name of the witness if—
 - (i) the witness is to give evidence for the prosecution (except where section 65DA(3) of the Ordinance applies); or
 - (ii) the witness is to give evidence for the defendant, and disclosure is required by section 65D or 65DA of the Ordinance or section 75A of the District Court Ordinance (Cap. 336); and
 - (d) the conditions, if any, imposed by the court under rule 6.
- (4) If the court decides to conduct a hearing in respect of the application (whether because an opposition is received or otherwise), the officer of the court must notify all parties to the proceedings of the time and place of the hearing.

- (5) The hearing must be conducted in open court unless the court, where it considers it necessary in the interests of justice, orders that all or part of the hearing is to be conducted in camera.

6. Court may impose conditions

- (1) If the court grants an application under rule 3, it may impose conditions on the permission given.
- (2) Without limiting subrule (1), the court may impose a condition that the witness is to give evidence in the presence of a person who is able and willing to answer under oath any question the court may put as to the circumstances in which the evidence is given, including any question about—
- (a) any person who is present when the evidence is given; and
 - (b) any matter which may affect the giving of the evidence.

7. Putting documents to witnesses

- (1) If it is necessary to put a document to a witness when the witness is giving evidence by way of a live television link from a place outside Hong Kong, the court may—
- (a) if the document is at the courtroom in Hong Kong, permit—
 - (i) the transmission by any means of a copy of the document to that place; and
 - (ii) the putting of the copy so transmitted to the witness; and
 - (b) if the document is at that place, permit—
 - (i) the putting of the document to the witness; and

- (ii) the transmission by any means of a copy of the document to the courtroom in Hong Kong.
- (2) If a document or a copy of it is put to a witness in accordance with subrule (1), the transmitted copy of the document is, until the contrary is proved, to be presumed to be a true copy of the document and to be admitted in evidence without further proof.

8. Extension of time

- (1) The court may—
 - (a) extend the period of 42 days specified in rule 3(2), (3), (4) or (5) on the application of a party to the proceedings, either before or after its expiry; or
 - (b) extend the period of 14 days specified in rule 4 on the application of a party who is given a notice under rule 3(1), either before or after its expiry.
- (2) The application must—
 - (a) be made in writing;
 - (b) specify the grounds on which it is made;
 - (c) in the case of an application under subrule (1)(b), be made within 28 days after the date on which the notice under rule 3(1) is given; and
 - (d) be given to—
 - (i) the officer of the court; and
 - (ii) all other parties to the proceedings.
- (3) The court may determine the application with or without a hearing.
- (4) If the court determines the application without a hearing, the officer of the court must notify all parties to the proceedings of the determination.

- (5) If the court decides to conduct a hearing in respect of the application, the officer of the court must notify all parties to the proceedings of the time and place of the hearing.
- (6) The hearing must be conducted in open court unless the court, where it considers it necessary in the interests of justice, orders that all or part of the hearing is to be conducted in camera.

9. Abridgement of time

The court may, on the application of a party to the proceedings, abridge the period of 42 days specified in rule 3(2), (3), (4) or (5), or the period of 14 days specified in rule 4, if it considers that it is fair and reasonable to do so in the circumstances of the case.

Andrew CHEUNG
Chief Judge

5 June 2015

Explanatory Note

These Rules set out the procedure respecting the giving of evidence to the court by way of a live television link from a place outside Hong Kong under Part IIIB of the Criminal Procedure Ordinance (Cap. 221).