

**Evidence Ordinance****(Cap. 8)****Contents**

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To consolidate the law of evidence.

[18 January 1889]

## Part I

### Preliminary

*(Format changes—E.R. 4 of 2018)*

#### 1. Short title

This Ordinance may be cited as the Evidence Ordinance.

*(Amended 5 of 1924 s. 6)*

#### 2. Interpretation

In this Ordinance, unless the context otherwise requires—

**bank** (銀行) means any corporation, company, or society established by charter or under or by virtue of any Act of Parliament or Ordinance, lawfully carrying on the business of bankers, or any foreign banking company carrying on business in Hong Kong; *(Amended 9 of 1950 Schedule; 37 of 1984 s. 11)*

**banker's record** (銀行紀錄) includes—

- (a) any document or record used in the ordinary business of a bank; and
- (b) any record so used which is kept otherwise than in a legible form and is capable of being reproduced in a legible form; *(Replaced 37 of 1984 s. 2)*

**court** (法院、法庭) includes the Chief Justice and any other judge, also every magistrate, justice, officer of any court,

commissioner, arbitrator, or other person having, by law or by consent of parties, authority to hear, receive, and examine evidence with respect to or concerning any action, suit, or other proceeding civil or criminal, or with respect to any matter submitted to arbitration or ordered to be inquired into or investigated under any commission; (*Amended 50 of 1911; 62 of 1911 Schedule; 27 of 1912*) [*cf. 1851 c. 99 s. 16 U.K.*]

**Government Chemist** (政府化驗師) means the person appointed as such by the Governor and such other person as the Governor may appoint in writing to carry out examinations or analyses of articles or substances and to sign certificates under section 25 in relation thereto. (*Added 31 of 1969 s. 2. Amended 42 of 1973 s. 2*)

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## Part II

### Admissible Witnesses and Evidence

*(Format changes—E.R. 4 of 2018)*

#### 3. Incompetency from immature age or unsoundness of mind

The following persons only shall be incompetent to give evidence in any proceedings—

\*(a) *(Repealed 70 of 1995 s. 2)*

(b) persons of unsound mind, who, at the time of their examination, appear incapable of receiving just impressions of the facts respecting which they are examined or of relating them truly; and no person who is known to be of unsound mind shall be liable to be summoned as a witness without the consent previously obtained of the court or person before whom his attendance is required.

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Editorial Note:

\* Section 3(a) was repealed by section 2 of 70 of 1995. Please note section 1(2) of 70 of 1995. It reads as follows—

“Sections 2 and 3 do not apply in relation to—

(a) any trial; or

(b) any committal proceedings within the meaning of section 71A of the Magistrates Ordinance (Cap. 227),

that commenced before the commencement<sup>#</sup> of this Ordinance.”.

<sup>#</sup>70 of 1995 commenced operation on 28 July 1995.

#### 4. Evidence given by children\*

(1) In this section, ***child*** (兒童) means a person under 14 years of

age.

- (2) A child's evidence in criminal proceedings shall be given unsworn and shall be capable of corroborating the evidence, sworn or unsworn, given by any other person.
- (3) A deposition of a child's unsworn evidence may be taken for the purposes of criminal proceedings as if that evidence had been given on oath.

*(Replaced 70 of 1995 s. 3)*

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Editorial Note:

\* Section 4 was replaced by section 3 of 70 of 1995. Please note section 1(2) of 70 of 1995. It reads as follows—

“Sections 2 and 3 do not apply in relation to—

- (a) any trial; or
- (b) any committal proceedings within the meaning of section 71A of the Magistrates Ordinance (Cap. 227),

that commenced before the commencement<sup>#</sup> of this Ordinance.”.

<sup>#</sup>70 of 1995 commenced operation on 28 July 1995.

**4A. Abolition of corroboration rule in respect of evidence given by a child\***

- (1) Any requirement whereby at a trial by and before a judge and jury it is obligatory for the judge to give the jury a warning about convicting the accused on the uncorroborated evidence of a child is hereby abrogated in relation to cases where such a warning is required by reason only that the evidence is the evidence of a child.
- (2) Any requirement that is applicable at a trial by a judge or magistrate and corresponds to the requirement mentioned in subsection (1) is hereby abrogated.

*(Added 70 of 1995 s. 3)*

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Editorial Note:

\* Section 4A was added by section 3 of 70 of 1995. Please note section 1(2) of 70 of 1995. It reads as follows—

“Sections 2 and 3 do not apply in relation to—

- (a) any trial; or
- (b) any committal proceedings within the meaning of section 71A of the Magistrates Ordinance (Cap. 227),

that commenced before the commencement<sup>#</sup> of this Ordinance.”.

<sup>#</sup>70 of 1995 commenced operation on 28 July 1995.

**4B. Abolition of corroboration rule in respect of sexual offences**

- (1) Any requirement whereby at a trial by and before a judge and jury it is obligatory for the judge to give the jury a warning about convicting the accused of an offence under Part VI or XII of the Crimes Ordinance (Cap. 200) on the uncorroborated evidence of a person merely because that person is the person in respect of whom that offence is alleged to have been committed is hereby abrogated.
- (2) Any requirement that is applicable at a trial by a judge or magistrate and corresponds to the requirement mentioned in subsection (1) is hereby abrogated.
- (3) This section shall not apply to—
  - (a) any trial; or
  - (b) any committal proceedings within the meaning of section 71A of the Magistrates Ordinance (Cap. 227),  
that commenced before the commencement\* of this section.

*(Added 43 of 2000 s. 2)*

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Editorial Note:

\* Commencement date: 30 June 2000

**5. Evidence of parties**

In all proceedings before the court, the parties and the husbands and wives of the parties thereto, and the persons in whose behalf any proceedings may be brought, or instituted, or opposed, or defended, and the husbands and wives of such persons shall, except as hereinafter excepted, be competent and compellable to give evidence, either viva voce or by deposition, according to the practice of the court, on behalf of either or any of the parties to the proceedings.

*(Amended 27 of 1937 Schedule)*

*[cf. 1851 c. 99 s. 2 U.K.; 1853 c. 83 s. 1 U.K.]*

**6. Evidence of husband and wife**

Nothing in this Ordinance shall render any husband competent or compellable to give evidence for or against his wife, or any wife competent or compellable to give evidence for or against her husband, in any criminal proceedings.

*[cf. 1851 c. 99 s. 3 U.K.; 1853 c. 83 s. 2 U.K.]*

**7. Privilege of husband and wife**

In criminal proceedings, a husband shall not be compellable to disclose any communication made to him by his wife during the marriage nor shall a wife be compellable to disclose any communication made to her by her husband during the marriage.

*(Amended 9 of 1908 s. 2; 25 of 1969 s. 2)*

*[cf. 1853 c. 83 s. 3 U.K.]*

**8. Evidence of access**

- (1) Notwithstanding any rule of law, 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 at any period.

- (2) Notwithstanding anything in this section or any rule of law, a husband or wife shall not be compellable in any proceedings to give evidence of the matters aforesaid.

*(Added 37 of 1950 Schedule)*

*[cf. 1949 c. 100 U.K.]*

**9. No incapacity from crime or interest**

No person offered as a witness in any proceedings shall be excluded by reason of incapacity from crime or interest from giving evidence, either in person or by deposition, according to the practice of the court, on the trial or hearing of any proceedings or at any stage thereof.

*(Amended 50 of 1911 s. 4)*

*[cf. 1843 c. 85 s. 1 U.K.]*

**10. Exception as to defendant in criminal proceedings**

Nothing in this Ordinance shall render any person who in any criminal proceedings is charged with an indictable offence or any offence punishable on summary conviction compellable to give evidence for or against himself, or shall render any person in any proceedings compellable to answer any question tending to criminate himself.

*(Amended 50 of 1911; 62 of 1911 Schedule)*

*[cf. 1851 c. 99 s. 3 U.K.]*

**11. Evidence of parties and their husbands and wives in proceedings for adultery**

In any proceedings instituted in consequence of adultery, the parties to such proceedings and the husbands and wives of such



parties shall be competent to give evidence in relation thereto.

*(Amended 25 of 1969 s. 3)*

*[cf. 1869 c. 68 s. 3 U.K.]*

## **12. Discrediting a witness**

A party producing a witness in any proceedings shall not be allowed to impeach his credit by general evidence of bad character, but he may, in case the witness, in the opinion of the court, proves adverse, contradict him by other evidence or, by leave of the court, prove that he has made at other times a statement inconsistent with his present testimony, but, before such last-mentioned proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement.

*[cf. 1854 c. 125 s. 22 U.K.; 1865 c. 18 s. 3 U.K.]*

## **13. Proof of contradictory statement of adverse witness**

If a witness in any proceedings, on cross-examination as to a former statement made by him relative to the subject-matter of the proceedings and inconsistent with his present testimony, does not distinctly admit that he has made such statement, proof may be given that he did in fact make it; but, before such proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement.

*[cf. 1865 c. 18 s. 4 U.K.]*

## **14. Cross-examination as to previous statement in writing**

A witness in any proceedings may be cross-examined as to previous statements made by him in writing or reduced into writing

relative to the subject-matter of the proceedings, without such writing being shown to him; but if it is intended to contradict such witness by the writing, his attention must, before such contradictory proof can be given, be called to those parts of the writing which are to be used for the purpose of so contradicting him:

Provided always that it shall be competent for the court, at any time during the trial or hearing of the proceedings, to require the production of the writing for its inspection, and the court may thereupon make such use of it for the purposes of the trial or hearing as it may think fit.

*[cf. 1854 c. 125 s. 24 U.K.; 1865 c. 18 s. 5 U.K.]*

**15. Proof of conviction and previous conviction for indictable offence**

A witness in any proceedings may be questioned as to whether he has been convicted of any indictable offence, and, on being so questioned, if he either denies or does not admit the fact or refuses to answer, it shall be lawful for the cross-examining or opposite party to prove such conviction, and in such case, and also whenever it may be necessary to prove the trial and conviction or acquittal of any person charged with an indictable offence, a certificate, record, or extract of the conviction containing the substance and effect only (omitting the formal part) of the conviction for such offence, purporting to be signed by the clerk of the court or other officer having the custody of the records of the court where the offender was convicted, or acquitted, or by the deputy of such clerk or officer, shall, on proof of the identity of the person, be sufficient evidence of such conviction or acquittal, without proof of the signature or official character of the person appearing to have signed the same.

*(Amended 50 of 1991 s. 4)*

*[cf. 1851 c.99 s. 13 U.K.; 1854 c. 125 s. 25 U.K.; 1865 c. 18 s. 6 U.K.; 1871 c. 112 s. 18 U.K.]*

**16. Attesting witness need not be called**

It shall not be necessary in any proceedings to prove by the attesting witness any instrument to the validity of which attestation is not requisite; and such instrument may be proved by admission or otherwise as if there had been no attesting witness thereto.

*[cf. 1854 c. 125 s. 26 U.K.; 1865 c. 18 s. 7 U.K.]*

**17. Comparison of disputed with genuine writing**

Comparison of a disputed writing with any writing proved to the satisfaction of the court to be genuine shall be permitted to be made by witnesses in any proceedings, and such writings, and the evidence of witnesses respecting the same, may be submitted to the court and to the jury, if any, as evidence of the genuineness or otherwise of the writing in dispute.

*[cf. 1854 c. 125 s. 27 U.K.]*

**17A. Evidence in criminal proceedings to prove unrecorded event did not happen**

- (1) Where in any criminal proceedings the happening of an event of any description is relevant, and it is proved that a system has been followed whereby a person acting under a duty has compiled a record of the happening of all events of that description, evidence that there is no record of the happening of the event in question shall be admitted as prima facie evidence to prove that the event did not happen.
- (2) This section shall not apply to any record compiled in connexion with any criminal proceedings or with any investigation relating or leading to any criminal proceedings.

- (3) Where evidence is tendered under this section, the court may require that the whole or part of the record concerned be produced and, in default, may reject the evidence or, if it has been received, exclude it.
- (4) Any reference in this section to a person acting under a duty includes a reference to a person acting in the course of any occupation in which he is engaged or employed or for the purposes of any paid or unpaid office held by him.

*(Added 37 of 1984 s. 3)*

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## Part III

### Admissible Documents

*(Format changes—E.R. 1 of 2015)*

#### 18. Copy of document of public nature

Whenever any book or other document is of such a public nature as to be admissible in evidence on its mere production from the proper custody, and no enactment exists which renders its contents provable by means of a copy, any copy thereof or extract therefrom shall be admissible in evidence in the court, provided it is proved to be an examined copy or extract or provided it purports to be signed and certified as a true copy or extract by the officer to whose custody the original is entrusted, and which officer is hereby required to furnish such certified copy or extract to any person applying at a reasonable time for the same, on payment of a reasonable sum for the same, not exceeding 50 cents for every folio of 72 words.

*(Amended 51 of 1911; 63 of 1911 Schedule; 9 of 1950 Schedule; L.N. 54 of 1989)*

*[cf. 1851 c. 99 s. 14 U.K.]*

#### 19. Official documents

Whenever, by any enactment, any certificate, official or public document, or proceeding of any corporation or joint-stock or other company, or any certified copy of any document, by-law, entry in any register or other book, or of any other proceeding is receivable in evidence of any particular in the court or before the Legislative Council or any committee thereof, the same shall respectively be admitted in evidence, provided they respectively purport to be sealed or impressed with a stamp, or sealed and signed, or signed

alone, as required, or impressed with a stamp and signed, as directed by the enactment, without any proof of the seal or stamp where a seal or stamp is necessary, or of the signature or of the official character of the person appearing to have signed the same, and without any further proof thereof, in every case in which the original record could have been received in evidence.

*(Amended 51 of 1911; 63 of 1911 Schedule)*

*[cf. 1845 c. 113 s. 1 U.K.]*

**19A. Certificate in criminal proceedings in respect of foreign documents**

- (1) Any document purporting to be signed by the Chief Secretary for Administration and certifying that any foreign document attached thereto has been received by him in connexion with any criminal proceedings shall be admitted in evidence in those proceedings together with the document attached thereto, on production without further proof, as prima facie evidence of the facts contained in such documents. *(Amended L.N. 362 of 1997)*
- (2) In this section ***foreign document*** (外地文件) means a document purporting to be—
  - (a) a true copy or extract from—
    - (i) any record, book or document of a public nature kept or maintained in any place outside Hong Kong; or
    - (ii) any document filed in or issued out of an office kept or maintained in any place outside Hong Kong for the purpose (whether the sole purpose or not) of registering companies or business names or the ownership of property; and

- (b) signed and certified as a true copy of or extract from any such record, book or document by a person having custody or control thereof.
- (3) In relation to a document tendered in evidence under this section and purporting to be signed and certified as a true copy of or extract from any record, book or document by a person having custody or control thereof, it shall be presumed, unless the contrary is proved, that such record, book or document is—
  - (a) a record, book or document of a public nature kept or maintained in a place outside Hong Kong; or
  - (b) a document filed in or issued out of an office kept or maintained in a place outside Hong Kong for the purpose of registering companies or business names or the ownership of property,if there is endorsed on the document a statement purporting to be signed by that person to that effect.
- (4) Unless the court otherwise orders, a document shall not be admitted in evidence under this section unless 14 days' notice in writing of the intention to tender such document in evidence, together with a copy thereof and of the certificate of the Chief Secretary for Administration in respect thereof, has been served—
  - (a) where the document is tendered by the prosecution, on the defendant (or, if more than one, on each defendant) or his solicitor;
  - (b) where the document is tendered by a defendant, on the Secretary for Justice,

but nothing in this subsection shall affect the admissibility of a document in respect of which notice has not been served in accordance with the requirements of this subsection if

no person entitled to be so served objects to its being so admitted. (*Amended L.N. 362 of 1997*)

(*Added 37 of 1984 s. 4*)

**19AA. Evidence of signature or fiat, etc.\***

Where the fiat, authorization, sanction, consent or authority of the Governor or any other public officer is necessary before any prosecution or action is commenced, or for any purpose whatsoever in connection with any proceeding, any document purporting to bear the fiat, authorization, sanction, consent or authority of the Governor, or such public officer, as the case may be, shall, until the contrary is proved, be received as evidence in any proceeding without proof being given that the signature to such fiat, authorization, sanction, consent or authority is that of the Governor or such public officer.

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Editorial Note:

\* This provision previously appeared in section 91 of Cap. 1. By 89 of 1993 s. 27, it was re-enacted as s. 19AA of this Ordinance.

**19B. Certificate in criminal proceedings of designation of foreign bank**

- (1) The Financial Secretary may, for the purposes of any criminal proceedings, designate any body formed or established outside Hong Kong which carries on the business of banking outside Hong Kong, and a certificate purporting to be signed by the Financial Secretary and certifying that any such body described therein has been designated by him under this section for the purposes of those proceedings shall, on its production without further proof, be admitted in those proceedings as prima facie evidence of the facts contained therein. (*Amended 67 of 1986 s. 2*)



- (2) The power conferred by subsection (1) may be exercised in respect of any body formed or established outside Hong Kong notwithstanding that it has ceased to carry on the business of banking or is being or has been wound up or dissolved. *(Added 67 of 1986 s. 2)*

*(Added 37 of 1984 s. 4)*

### **19C. Privilege relating to sections 19A and 19B**

The Chief Secretary for Administration or the Financial Secretary shall not be compelled to attend as a witness in any criminal proceedings in which a certificate purporting to have been signed by him is tendered in evidence under section 19A or 19B, as the case may be, if the matter in respect of which his attendance is required relates solely to that certificate.

*(Added 37 of 1984 s. 4. Amended L.N. 362 of 1997)*

### **20. Copy of entry in banker's record**

- (1) Subject to this section, a copy of any entry or matter recorded in a banker's record shall, on its production without further proof, be admitted in any proceedings as prima facie evidence of the matters, transactions and accounts therein recorded if—
- (a) it is proved—
    - (i) that such entry was made or matter recorded in the ordinary course of business; and
    - (ii) that such record is in the custody or control of the bank; and
  - (b) except in the case of a copy made by any photographic process and subject to subsection (3), it is proved by some person who has examined the copy with the original entry, that the copy has been examined with the original entry and is correct.

- (2) A bank or officer of a bank shall not, in any proceedings other than proceedings instituted by or against the bank, be compelled to produce any banker's record the contents of which can be proved under this section, or to appear as a witness to prove the matters, transactions or accounts therein recorded, except—
- (a) in civil proceedings, by order of a judge made for special cause;
  - (b) in criminal proceedings, by order of the court of trial.
- (3) In the case of a banker's record kept by means of a computer, it shall not be necessary to prove the matters referred to in subsection (1)(b) in relation to a document produced by the computer which is tendered in evidence under this section as a copy of a matter recorded therein if (subject, in the case of civil proceedings, to any rules of court made under section 54 of the High Court Ordinance (Cap. 4) with respect to this subsection) it is proved— (*Amended 25 of 1998 s. 2*)
- (a) that the document was so produced under the direction of a person having practical knowledge of and experience in the use of computers as a means of storing, processing or retrieving information;
  - (b) that during the period when the computer was used for the purpose of keeping such record, appropriate measures were in force for preventing unauthorized interference with the computer; and
  - (c) that during that period, and at the time that the document was produced by the computer, the computer was operating properly or, if not, that any respect in which it was not operating properly or was out of operation was not such as to affect the production of the document or the accuracy of its contents,

and for the purposes of this subsection **computer** (電腦) has the same meaning as in section 22A.

- (4) In any proceedings, the matters referred to in subsection (1)(a) and (b) and subsection (3)(a), (b) and (c) in relation to a banker's record may be proved, orally or by affidavit, by any officer of the bank, and any such affidavit shall, on its production without further proof, be admitted in evidence and may include an explanation of the contents of the copy of any entry or matter recorded in such banker's record which is tendered in evidence or any abbreviations, symbols or other markings appearing in such copy that may be relevant in the proceedings, and a description of the banker's record, its nature and use, and the procedures followed in keeping it; and for the purposes of this subsection it shall be sufficient for a matter referred to in subsection (1)(a)(i) or (3)(c) to be stated in an affidavit to the best of the knowledge and belief of the person making the affidavit.
- (5) In relation to any criminal proceedings—
- (a) this section shall apply to any document or record used in the ordinary business of a body designated by the Financial Secretary under section 19B(1) for the purposes of such criminal proceedings as it applies to a banker's record, and a reference in this section to a bank shall, in its application to such document or record, be construed as a reference to the body so designated; but (*Amended 67 of 1986 s. 3*)
- (b) this section shall not apply to any document or record used—
- (i) by a deposit-taking company or restricted licence bank which is a company registered under Part I or IX of the Companies Ordinance (Cap. 32) as in force from time to time before the commencement date\* of section 2 of Schedule 9 to the Companies

Ordinance (Cap. 622) or under Part 3 or 17 of the Companies Ordinance (Cap. 622);

- (ii) by a deposit-taking company or restricted licence bank which is a non-Hong Kong company as defined by section 2(1) of the Companies Ordinance (Cap. 622) if such document or record is used in its ordinary business in Hong Kong,

and for the purposes of this paragraph ***deposit-taking company or restricted licence bank*** (接受存款公司或有限制牌照銀行) means a company which is required by the Banking Ordinance (Cap. 155) to be authorized thereunder as a deposit-taking company or restricted licence bank. (*Amended 27 of 1986 s. 137; 3 of 1990 s. 55; 49 of 1995 s. 53; 28 of 2012 ss. 912 & 920*)

*(Replaced 37 of 1984 s. 5)*

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Editorial Note:

\* Commencement date : 3 March 2014.

## **20A. Application of section 20 to banks that have ceased business**

- (1) Section 20 shall apply to a copy of an entry or matter recorded in a record used in the ordinary course of business of a former bank which is tendered in evidence in criminal proceedings as it applies to a copy of an entry or matter recorded in a banker's record, but with the following modifications—
  - (a) subsection (1)(a)(ii) thereof shall be construed as if for “the bank” there were substituted “any person duly authorized in that behalf or otherwise responsible for administering the affairs of the former bank”; and
  - (b) a reference therein to an officer of a bank shall in relation to the former bank be construed as a reference

to any person who is, or is an officer of, a person responsible for administering the affairs of the former bank.

- (2) Section 20 shall apply to a copy of an entry or matter recorded in a record used in the ordinary course of business of a body designated by the Financial Secretary under section 19B(2) for the purposes of criminal proceedings which is tendered in evidence in those criminal proceedings as it applies to a copy of an entry or matter recorded in a banker's record, but with the following modifications—
- (a) a reference therein to a bank shall be construed as a reference to any person responsible for administering the affairs of that body;
  - (b) a reference therein to an officer of a bank shall be construed as a reference to any person who is, or is an officer of, a person responsible for administering the affairs of that body.
- (3) For the purposes of subsection (1) ***former bank*** (前有銀行) means a bank which is being or has been wound up or dissolved or has otherwise ceased to carry on business as a bank.

*(Added 67 of 1986 s. 4)*

**21. Court or judge may direct copies of entries in banker's record to be taken**

- (1) On the application of any party to any proceedings, the court or a judge may order that such party be at liberty to inspect and take copies of any entries in a banker's record for any of the purposes of such proceedings. *(Amended 37 of 1984 s. 6)*
- (2) An order under this section may be made either with or without summoning the bank or any other party, and shall

be served on the bank 3 clear days before the same is to be obeyed, unless the court or judge otherwise directs.

- (3) The costs of any application to the court or judge under or for the purposes of this section, and the costs of anything done or to be done under an order of the court or judge made under or for the purposes of this section, shall be in the discretion of the court or judge, who may order the same or any part thereof to be paid to any party by the bank, where the same have been occasioned by default or delay on the part of the bank.
- (4) Any such order against a bank may be enforced as if the bank were a party to the proceeding.

*[cf. 1879 c. 11 ss. 7 & 8 U.K.]*

## **22. Evidence in criminal proceedings from documentary records**

- (1) Subject to this section and section 22B, a statement contained in a document shall be admitted in any criminal proceedings as prima facie evidence of any fact stated therein if—
  - (a) direct oral evidence of that fact would be admissible in those proceedings; and
  - (b) the document is or forms part of a record compiled by a person acting under a duty from information supplied by a person (whether acting under a duty or not) who had, or may reasonably be supposed to have had, personal knowledge of the matters dealt with in that information; and
  - (c) the person who supplied the information—
    - (i) is dead or by reason of his bodily or mental condition unfit to attend as a witness;
    - (ii) is outside Hong Kong and it is not reasonably practicable to secure his attendance;

- (iii) cannot be identified and all reasonable steps have been taken to identify him;
  - (iv) his identity being known, cannot be found and all reasonable steps have been taken to find him;
  - (v) cannot reasonably be expected (having regard to the time which has elapsed since he supplied or acquired the information and to all the circumstances) to have any recollection of the matters dealt with in that information; or
  - (vi) having regard to all the circumstances of the case, cannot be called as a witness without his being so called being likely to cause undue delay or expense.
- (2) A statement made in connexion with any criminal proceedings or with any investigation relating or leading to any criminal proceedings shall not be admissible under this section.
- (3) Subsection (1) applies whether the information was supplied directly or indirectly but, if it was supplied indirectly, only if each person through whom it was supplied was acting under a duty; and that subsection applies also where the person who compiled the record also supplied the information.
- (4) Where in any criminal proceedings a statement based on information supplied by any person is given in evidence by virtue of this section—
  - (a) any evidence which, if that person had been called as a witness, would have been admissible as relevant to his credibility as a witness shall be admissible for that purpose in those proceedings; and
  - (b) evidence tending to prove that that person has, whether before or after supplying the information, made a statement (whether oral or otherwise) which is



inconsistent with that information shall be admissible for the purpose of showing that he has contradicted himself:

Provided that nothing in this subsection shall enable evidence to be given of any matter of which, if the person in question had been called as a witness and had denied that matter in cross-examination, evidence could not have been adduced by the cross-examining party.

- (5) A statement which is admissible by virtue of this section shall not be capable of corroborating evidence given by the person who supplied the information on which the statement is based.
- (6) In deciding for the purposes of subsection (1)(c)(i) whether a person is unfit to attend as a witness the court may act on a certificate purporting to be signed by a medical practitioner registered or deemed to be registered under the Medical Registration Ordinance (Cap. 161).
- (7) Any reference in this section to a person acting under a duty includes a reference to a person acting in the course of any occupation in which he is engaged or employed or for the purposes of any paid or unpaid office held by him.
- (8) This section does not apply to any document to which section 22A applies.

*(Replaced 37 of 1984 s. 7)*

**22A. Documentary evidence in criminal proceedings from computer records**

- (1) Subject to this section and section 22B, a statement contained in a document produced by a computer shall be admitted in any criminal proceedings as prima facie evidence of any fact stated therein if—
  - (a) direct oral evidence of that fact would be admissible in those proceedings; and



- (b) it is shown that the conditions in subsection (2) are satisfied in relation to the statement and computer in question.
- (2) The conditions referred to in subsection (1)(b) are—
  - (a) that the computer was used to store, process or retrieve information for the purposes of any activities carried on by any body or individual;
  - (b) that the information contained in the statement reproduces or is derived from information supplied to the computer in the course of those activities; and
  - (c) that while the computer was so used in the course of those activities—
    - (i) appropriate measures were in force for preventing unauthorized interference with the computer; and
    - (ii) the computer was operating properly or, if not, that any respect in which it was not operating properly or was out of operation was not such as to affect the production of the document or the accuracy of its contents.
- (3) Notwithstanding subsection (1), a statement contained in a document produced by a computer used over any period to store, process or retrieve information for the purposes of any activities (*the relevant activities*) carried on over that period shall be admitted in any criminal proceedings as prima facie evidence of any fact stated therein if—
  - (a) direct oral evidence of that fact would be admissible in those proceedings;
  - (b) it is shown that no person (other than a person charged with an offence to which such statement relates) who occupied a responsible position during that period

in relation to the operation of the computer or the management of the relevant activities—

- (i) can be found; or
- (ii) if such a person is found, is willing and able to give evidence relating to the operation of the computer during that period;
- (c) the document was so produced under the direction of a person having practical knowledge of and experience in the use of computers as a means of storing, processing or retrieving information; and
- (d) at the time that the document was so produced the computer was operating properly or, if not, any respect in which it was not operating properly or was out of operation was not such as to affect the production of the document or the accuracy of its contents,

but a statement contained in any such document which is tendered in evidence in criminal proceedings by or on behalf of any person charged with an offence to which such statement relates shall not be admissible under this subsection if that person occupied a responsible position during that period in relation to the operation of the computer or the management of the relevant activities.

- (4) Where over a period the function of storing, processing or retrieving information for the purposes of any activities carried on over that period was performed by computer, whether—
  - (a) by a combination of computers operating over that period; or
  - (b) by different computers operating in succession over that period; or

- (c) by different combinations of computers operating in succession over that period; or
  - (d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers, all the computers used for that purpose whether by one or more persons or bodies during that period shall be treated for the purposes of this section as constituting a single computer.
- (5) Subject to subsection (6), in any criminal proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate—
  - (a) identifying the document containing the statement and describing the manner in which it was produced, and explaining, so far as may be relevant in the proceedings, the nature and contents of the document;
  - (b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer;
  - (c) dealing with any of the matters to which the conditions mentioned in subsection (2) relate,and purporting to be signed by a person occupying a responsible position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall, on its production without further proof, be admitted in those proceedings as prima facie evidence of any matter stated in the certificate; and for the purposes of this subsection it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.
- (6) Unless the court otherwise orders, a certificate shall not be admitted in evidence under subsection (5) unless 14 days'

notice in writing of the intention to tender such certificate in evidence, together with a copy thereof and of the statement to which it relates, has been served—

- (a) where the certificate is tendered by the prosecution, on the defendant (or, if more than one, on each defendant) or his solicitor;
- (b) where the certificate is tendered by a defendant, on the Secretary for Justice, (*Amended L.N. 362 of 1997*)

but nothing in this subsection shall affect the admissibility of a certificate in respect of which notice has not been served in accordance with the requirements of this subsection if no person entitled to be so served objects to its being so admitted.

- (7) Notwithstanding subsection (5), a court may (except where subsection (3) applies) require oral evidence to be given of any of the matters mentioned in subsection (5).
- (8) Any person who in a certificate tendered in evidence under subsection (5) makes a statement which he knows to be false or does not believe to be true shall be guilty of an offence and shall be liable on conviction to a fine at level 5 and to imprisonment for 2 years. (*Amended E.R. 3 of 2021*)
- (9) For the purposes of this section—
  - (a) information shall be taken to be supplied to a computer if it is supplied to it in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;
  - (b) where, in the course of activities carried on by any individual or body, information is supplied with a view to its being stored, processed or retrieved for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall

be taken to be supplied to it in the course of those activities;

- (c) a document shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.
- (10) The Criminal Procedure Rules Committee constituted under section 9 of the Criminal Procedure Ordinance (Cap. 221) may make rules with respect to the procedure to be followed under this section. (*Amended 13 of 1995 s. 27*)
- (11) Nothing in this section affects the admissibility of a document produced by a computer where the document is tendered otherwise than for the purpose of proving a fact stated in it.
- (12) Subject to subsection (4), in this section **computer** (電腦) means any device for storing, processing or retrieving information, and any reference to information being derived from other information is a reference to its being derived therefrom by calculation, comparison or any other process.
- (13) The Legislative Council may by resolution amend subsection (12) so as to make it cover devices performing functions of a similar character to the functions performed by the devices mentioned in that subsection.

(*Added 37 of 1984 s. 7*)

## **22B. Provisions supplementary to sections 22 and 22A**

- (1) Where in any criminal proceedings a statement contained in a document is admissible in evidence by virtue of section 22 or 22A, it may be proved by the production of that document or (whether or not that document is still in existence) by the production of a copy of that document or of the material part thereof.

- (2) Where in any criminal proceedings a statement contained in a document is admitted in evidence by virtue of section 22 or 22A, the court may draw any reasonable inference from the circumstances in which the statement was made or otherwise came into being or from any other circumstances, including the form and contents of the document in which the statement is contained.
- (3) In estimating the weight, if any, to be attached to a statement admitted in evidence by virtue of section 22 or 22A, regard shall be had to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement and, in particular—
- (a) in the case of a statement falling within section 22, to the question whether or not the person who supplied the information from which the record containing the statement was compiled did so contemporaneously with the occurrence or existence of the facts dealt with in that information, and to the question whether or not that person, or any person concerned with compiling or keeping the record containing the statement, had any incentive to conceal or misrepresent the facts; and
  - (b) in the case of a statement falling within section 22A, to the question whether or not the information which the information contained in the statement reproduces or is derived from was supplied to the relevant computer, or recorded for the purpose of being supplied to it, contemporaneously with the occurrence or existence of the facts dealt with in that information, and to the question whether or not any person concerned with the supply of information to that computer, or with the operation of that computer or any equipment by means of which the document containing the statement

was produced by it, had any incentive to conceal or misrepresent the facts.

- (4) In sections 22 and 22A and this section **document** (文件), **copy** (副本) and **statement** (陳述) have the same meaning as in Part IV.
- (5) Nothing in section 22 or 22A shall prejudice the admissibility of any evidence that would be admissible apart from that section.

*(Added 37 of 1984 s. 7)*

### 23. **Copy of records of Hong Kong Observatory**

A document purporting to be a copy of the records or part of the records kept by the Director of the Hong Kong Observatory and purporting to be certified by the officer having the custody of the records shall be admitted in evidence in criminal or civil proceedings before any court on its production without further proof, and— *(Amended L.N. 362 of 1997)*

- (a) until the contrary is proved, the court before which such document is produced shall presume—
  - (i) that the document is certified by such officer;
  - (ii) that the document is a true copy of the records or part of the records to which it refers; and
  - (iii) that the records were duly made and compiled at the time referred to in the document; and
- (b) such document shall be prima facie evidence of all matters contained therein.

*(Added 46 of 1967 s. 2. Amended 31 of 1969 s. 3)*

### 24. **Certificate of accuracy of chronometer**

A document purporting to be a record of the testing of and the accuracy of a chronometer and purporting to be certified by



an officer of the Hong Kong Observatory shall be admitted in evidence in criminal or civil proceedings before any court on its production without further proof, and— (*Amended L.N. 362 of 1997*)

- (a) until the contrary is proved the court before which such document is produced shall presume—
  - (i) that the document is certified by such officer;
  - (ii) that the facts stated in the document relating to the chronometer are true; and
  - (iii) that the record was made and compiled at the time referred to in the document; and
- (b) such document shall be prima facie evidence of all matters contained therein.

*(Added 46 of 1967 s. 2. Amended 31 of 1969 s. 4)*

**24A. Certificate of accuracy of apparatus designed and used for ascertaining the speed of a vessel**

A document purporting to be a record of the testing of and the accuracy of any apparatus designed and used for ascertaining the speed of a vessel and purporting to be certified by a person authorized in that behalf by the Director of Electrical and Mechanical Services shall be admitted in evidence in criminal or civil proceedings before any court on its production without further proof and—

- (a) in the absence of evidence to the contrary the court before which such document is produced shall presume—
  - (i) that the document is certified by such person;
  - (ii) that the facts stated in the document relating to such apparatus are true; and



- (iii) that the record was made and compiled at the time and place referred to in the document; and
- (b) such document shall be evidence of all matters contained therein.

*(Added 13 of 1995 s. 30)*

## **25. Government Chemist's certificates**

- (1) A document in the form set out in Form 1 of the Schedule purporting to be signed by the Government Chemist and purporting to be a certificate as to any article or substance submitted to him shall be admitted in evidence in criminal or civil proceedings before any court on its production without further proof, and—
  - (a) until the contrary is proved, the court before which such document is produced shall presume that the signature to the document is genuine and that the person signing it was the Government Chemist at the time when he signed it; and
  - (b) such document shall be prima facie evidence of all matters contained therein.
- (2) A document given for the purposes of subsection (1) may be signed by the Government Chemist when any examination or analysis has been made by a person acting under his supervision and direction and the Government Chemist is satisfied as to the examination or analysis.
- (3) Where any document is produced and admitted as evidence under subsection (1), the court may, if it thinks fit, on its own motion or on the application of any party to the proceedings, summon the person who signed the document and examine him as to the subject matter thereof.

*(Added 31 of 1969 s. 5. Amended 35 of 1972 s. 2)*

**26. Certificates as to photographic process**

- (1) A document in the form set out in Form 2 of the Schedule purporting to be signed by a person duly appointed under subsection (2) and purporting to be a certificate as to the processing of exposed film received and processed by him shall, together with the photographic prints or photographic enlargements referred to therein, be admitted in evidence in criminal proceedings before any court on its production without further proof, and—
  - (a) until the contrary is proved, the court before which such document is produced shall presume that the signature to the document is genuine and that the person signing it was duly appointed under subsection (2) at the time when he signed it; and
  - (b) such document shall be prima facie evidence of all matters contained therein.
- (2) The Commissioner of Police may appoint in writing such public officers as he thinks fit to carry out the processing of exposed film and to sign certificates under subsection (1) in relation thereto.
- (3) Where any document is produced and admitted as evidence under subsection (1), the court may, if it thinks fit, on its own motion or on the application of the prosecution or the defendant, summon the person who signed the document and examine him as to the subject matter thereof.

*(Added 31 of 1969 s. 5)*

**27. Certified translations of documents**

- (1) A document purporting—
  - (a) to be a translation of the whole or any part of a document written in a language other than the

English language or the Chinese language which has been admitted in evidence in any criminal or civil proceedings; and (*Amended 51 of 1995 s. 5*)

- (b) to be certified, by a person appointed under subsection (2) to certify translations of documents written in such other language, as an accurate translation,

shall be admitted in evidence in those proceedings on its production without further proof and, until the contrary is proved, the court before which such document is produced shall presume that—

- (i) the signature on the document of the person certifying it is genuine;
  - (ii) such person was at the time of certifying the document appointed under subsection (2) to certify translations of documents written in such other language; and
  - (iii) the document is an accurate translation of the whole or part of the document to which it purports to refer.
- (2) The Chief Justice may appoint in writing any person to make and to certify, for the purposes of this section, translations of documents written in any language specified in the terms of the appointment.
  - (3) A person appointed under subsection (2) may certify, for the purposes of this section, a translation of a document written in a language specified in the terms of his appointment notwithstanding that the translation was not made by him.
  - (4) Where any document is produced and admitted in evidence under subsection (1), the court may, if it thinks fit, on its own motion or on the application of any party to the proceedings, summon the person who certified the document and examine him as to the subject-matter thereof.

- (5) No document admitted in evidence in any criminal or civil proceedings prior to the commencement<sup>#</sup> of the Evidence (Amendment) Ordinance 1982 (47 of 1982) and purporting to have been so admitted under the provisions of this section in force immediately prior to such commencement, shall be held to have been wrongly admitted on the ground only that the document was made by a person other than the person who signed it if the person who signed it was a person appointed under those provisions to carry out the translation of documents and to sign certificates in relation thereto.
- (6) A person who immediately prior to the commencement<sup>#</sup> of the Evidence (Amendment) Ordinance 1982 (47 of 1982) was a person appointed under the provisions of this section in force prior to such commencement shall, as respects translations of documents written in any language specified in the terms of his appointment under those provisions, be deemed to be appointed under subsection (2) of this section.
- (7) In this section ***translation*** (譯本) means a translation in the English language or the Chinese language. (*Amended 51 of 1995 s. 5*)

*(Replaced 47 of 1982 s. 2)*

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Editorial Note:

<sup>#</sup> Commencement date : 16 July 1982.

## **28. Certificates of accuracy of speedometers and radar and weighing devices**

- (1) A document purporting—
- (a) to be a record of the testing of the accuracy, inspection and servicing of—
    - (i) the speedometer of the motor vehicle specified in the document;

- (ii) a radar device or any other apparatus specified in the document designed and used for the purpose of ascertaining the speed of a motor vehicle; or
  - (iii) a weighing device or any other apparatus specified in the document designed and used for the purpose of ascertaining the laden or unladen weight of a motor vehicle; and
- (b) to be certified—
  - (i) in the case of the speedometer, by a person authorized in this behalf by the Director of Electrical and Mechanical Services; (*Amended L.N. 76 of 1982; L.N. 298 of 1982*)
  - (ii) in the case of a radar device or any other apparatus designed and used for the purpose of ascertaining the speed of a motor vehicle, by a person authorized in this behalf by the Commissioner of Police; and
  - (iii) in the case of a weighing device or any other apparatus designed and used for the purpose of ascertaining the laden or unladen weight of a motor vehicle, by a person authorized in this behalf by the Commissioner for Transport,

shall be admitted in any criminal or civil proceedings before any court on its production without further proof.

- (2) On the production of a document under subsection (1)—
  - (a) the court before which it is produced shall, until the contrary is proved, presume—
    - (i) that it was signed at the time and place specified therein by a person authorized by the appropriate public officer specified in the document;

- (ii) that the facts stated in the document relating to the testing of the accuracy, inspection and servicing of the speedometer of the vehicle specified therein or the radar or weighing device or any other apparatus specified therein are true; and
  - (iii) that the record of the facts stated in the document was made and compiled at the time stated therein; and
- (b) the document shall be prima facie evidence of all matters contained therein.

*(Added 35 of 1972 s. 3. Amended 80 of 1990 s. 2)*

## **29. Certificate of posting of documents**

- (1) Where any Ordinance authorizes or requires any document to be served or any notice to be given by post or by registered post, a certificate purporting—
  - (a) to certify—
    - (i) that a specified document or notice, addressed to a person named in the certificate, was addressed to that person at a specified address;
    - (ii) that the appropriate postage on the said document or notice was prepaid; and
    - (iii) that the said document or notice was despatched by post or by registered post at a time and place specified in the certificate; and
  - (b) to be signed at the time and place specified in the certificate by the person who—
    - (i) ensured that the appropriate postage on the said document or notice was prepaid; and

- (ii) despatched the said document or notice by post or by registered post at the said specified time and place,

shall be admitted in any criminal or civil proceedings before any court on its production without further proof.

- (2) On the production of a certificate under subsection (1)—

- (a) the court before which it is produced shall, until the contrary is proved, presume—

- (i) that the facts stated therein relating to the posting of the document or notice specified therein are true;

- (ii) that the certificate was signed at the time and place specified therein by the person who posted the specified document or notice; and

- (b) the certificate shall be prima facie evidence of all of the matters contained therein.

*(Added 35 of 1972 s. 3)*

## **29A. Certified transcripts of tape recordings**

- (1) A document purporting—

- (a) to be a transcript of the whole or any part of a record in a language other than the English language or the Chinese language which has been admitted in evidence in any criminal or civil proceedings; and *(Amended 51 of 1995 s. 6)*

- (b) to be certified, by a person appointed under subsection (2) to certify transcripts of records in such other language, as an accurate transcript,

shall be admitted in evidence in those proceedings on its production without further proof and, until the contrary is



proved, the court before which such document is produced shall presume that—

- (i) the signature on the document of the person certifying it is genuine;
  - (ii) such person was at the time of certifying the document appointed under subsection (2) to certify transcripts of records in such other language; and
  - (iii) the document is an accurate transcript of the whole or part of the record to which it purports to refer.
- (2) The Chief Justice may appoint in writing any person to make and to certify, for the purposes of this section, transcripts of records in any language specified in the terms of the appointment.
- (3) A person appointed under subsection (2) may certify, for the purposes of this section, a transcript of a record in a language specified in the terms of his appointment notwithstanding that the transcript was not made by him.
- (4) Where any document is produced and admitted in evidence under subsection (1), the court may, if it thinks fit, on its own motion or on the application of any party to the proceedings, summon the person who certified the document and examine him as to the subject-matter thereof.
- (5) No document admitted in evidence in any criminal or civil proceedings prior to the commencement<sup>#</sup> of the Evidence (Amendment) Ordinance 1982 (47 of 1982) and purporting to have been so admitted under the provisions of this section in force immediately prior to such commencement, shall be held to have been wrongly admitted on the ground only that the document was made by a person other than the person who signed it if the person who signed it was a person appointed under those provisions to carry out the transcription of records and to sign certificates in relation thereto.



- (6) A person who immediately prior to the commencement<sup>#</sup> of the Evidence (Amendment) Ordinance 1982 (47 of 1982) was a person appointed under the provisions of this section in force prior to such commencement shall, as respects transcripts of records in any language specified in his appointment under those provisions, be deemed to be appointed under subsection (2) of this section.
- (7) In this section *record* (紀錄) means any disc, tape, sound track or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom.

*(Replaced 47 of 1982 s. 3)*

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Editorial Note:

<sup>#</sup> Commencement date : 16 July 1982.

### 30. Computation of time

General holidays, within the meaning of the General Holidays Ordinance (Cap. 149), shall be excluded from the computation of time under sections 20 and 21.

*(Amended 43 of 1912 Schedule; 35 of 1998 s. 5)*

*[cf. 1879 c. 11 s. 11 U.K.]*

### 31. Proof of foreign or colonial act of state, judgment, etc.

All proclamations, treaties, and other acts of state of any foreign state or of any Commonwealth Country, and all judgments, decrees, orders, and other judicial proceedings of any court of justice or any consulate in any foreign state or in any Commonwealth Country, and all affidavits, pleadings, and other legal documents filed or deposited in any such court or consulate may be proved in the courts of Hong Kong either by examined

copies or by copies authenticated as hereinafter mentioned: that is to say, if the document sought to be proved is a proclamation, treaty or other act of state, the authenticated copy to be admissible in evidence must purport to be sealed with the seal of the foreign state or Commonwealth Country to which the original document belongs, and if the document sought to be proved is a judgment, decree, order, or other judicial proceeding of any court of justice or any consulate in any foreign state or in any Commonwealth Country, or an affidavit, pleading, or other legal document filed or deposited in any such court or consulate, the authenticated copy to be admissible in evidence must purport either to be sealed with the seal of such court or consulate, or, in the event of such court having no seal, to be signed by the judge or, if there are more judges than one, by any one of the judges of such court, and such judge shall attach to his signature a statement in writing on the said copy that the court of justice whereof he is a judge has no seal; but if any of the aforesaid authenticated copies purport to be sealed or signed as hereinbefore respectively directed, the same shall respectively be admitted in evidence in every case in which the original document could have been received in evidence, without any proof of the seal, where a seal is necessary, or of the signature, or of the truth of the statement attached thereto, where such signature and statement are necessary, or of the judicial character of the person appearing to have made such signature and statement.

*(Amended 51 of 1911; 63 of 1911 Schedule; 8 of 1912 s. 34; 5 of 1924 Schedule; 69 of 1970 s. 2; 37 of 1984 s. 11)*

*[cf. 1851 c. 99 s. 7 U.K.]*

### **32. Proof of statutes of Commonwealth Country**

- (1) Copies of Acts, Ordinances and statutes passed by the legislature of any Commonwealth Country, and of orders, regulations, and other instruments issued or made under the authority of any such Act, Ordinance, or statute, if purporting

to be printed by the Government printer, shall be admitted in evidence in any criminal or civil proceedings on their production without any proof being given that the copies were so printed. (*Amended 50 of 1911; 62 of 1911 Schedule; 8 of 1912 s. 34; 69 of 1970 s. 3*)

- (2) A certificate purporting to be signed by the Chief Secretary for Administration and stating that the provisions of any such Act, Ordinance or statute, or of an order, regulation or other instrument issued or made under the authority of any such Act, Ordinance or statute set out therein were in force at the date specified in the certificate shall be admitted in evidence in any criminal or civil proceedings on its production without further proof, and— (*Amended L.N. 362 of 1997*)
- (a) until the contrary is proved, the court in which such certificate is produced shall presume that it is so signed; and
- (b) such certificate shall be prima facie evidence of all matters contained therein. (*Added 69 of 1970 s. 3*)
- (3) Any person who prints any copy or pretended copy of any such Act, Ordinance, statute, order, regulation, or instrument which falsely purports to have been printed by the Government printer, or tenders in evidence any such copy or pretended copy which falsely purports to have been so printed knowing that it was not so printed, shall be liable to imprisonment for 12 months. (*Amended 30 of 1911 s. 4; 51 of 1911; 63 of 1911 Schedule; 5 of 1924 Schedule*)
- (4) In this section, **Government printer** (政府印務局) means, as respects any Commonwealth Country, the printer purporting to be the printer authorized to print the Acts, Ordinances, or statutes of the legislature thereof, or otherwise to be the Government printer of that country. (*Amended 50 of 1911; 62 of 1911 Schedule; 8 of 1912 s. 34; 69 of 1970 s. 3*)

*(2 of 1908 ss. 2, 3 & 4 incorporated)*

*[cf. 1907 c. 16 s. 1 U.K.]*

**33. Swearing of answer, etc., in High Court in England, etc.**

- (1) All answers to interrogatories, disclaimers, examinations, affidavits, and attestations of honour, and all other documents required to be sworn in causes or matters depending in the High Court, and also acknowledgements required for the purpose of enrolling any deed in the said court, shall and may be sworn and taken in England, Scotland, or Northern Ireland, or the Channel Islands, or in any other colony or place under the dominion of Her Majesty before any court, judge, notary public or person lawfully authorized to administer oaths in such country, colony, or place respectively, or before any of Her Majesty's consular officers in any place out of Her Majesty's dominions. *(Amended 50 of 1911; 51 of 1911; 62 of 1911 Schedule; 63 of 1911 Schedule)*
- (2) The judges and officers of the High Court shall take judicial notice of the seal or signature, as the case may be, of any such court, judge, notary public, person, or consular officer attached, appended, or subscribed to any such document as aforesaid. *(Amended 50 of 1911; 51 of 1911; 62 of 1911 Schedule; 63 of 1911 Schedule)*

*[cf. 1852 c. 86 s. 22 U.K.]*

**34. Admissibility of document having seal and signature of British ambassador, etc.**

- (1) Any document purporting to have affixed, impressed, or subscribed thereon or thereto the seal and signature of any British ambassador, envoy, minister, chargé d'affaires, secretary of embassy or of legation, or consular officer in testimony of any such oath, affidavit, or act having been administered, sworn, had, or done by or before him under

section 6 of the Commissioners for Oaths Acts 1889 and 1891 shall be admitted in evidence without proof of any such seal and signature or of the official character of such person. (*Amended 9 of 1908 s. 2; 50 of 1911; 51 of 1911; 62 of 1911 Schedule; 63 of 1911 Schedule*) [*cf. 1855 c. 42 s. 3 U.K.*]

- (2) In this section, **consular officer** (領事館官員) includes every consul-general, consul, vice-consul, pro-consul, consular agent, acting consul-general, acting consul, acting vice-consul, and acting consular agent. (*Added 23 of 1915 s. 3*) [*cf. 1889 c. 10 s. 6(1) U.K.; 1891 c. 50 s. 2 U.K.*]

### 35. Proof of various matters in civil proceedings

In civil proceedings—

- (a) the Gazette and any Government Gazette of any Commonwealth Country may be proved by the production thereof; (*Amended 50 of 1911; 62 of 1911 Schedule; 8 of 1912 s. 34; 69 of 1970 s. 4*)
- (b) all proclamations, acts of state, whether legislative or executive, nominations, appointments, and other official communications of the Government appearing in any such Gazette may be proved by its production; (*Amended 50 of 1911; 51 of 1911; 62 of 1911 Schedule; 63 of 1911 Schedule*)
- (c) the court may, on matters of public history, literature, science, or art, refer, for the purposes of evidence, to such published books, maps, or charts as the court may consider to be of authority on the subject to which they relate;
- (d) (i) books printed or published under the authority of the Government of a foreign country, and purporting to contain the statutes, code, or other

written law of such country, and also printed and published books of reports of decisions of the courts of such country, and books proved to be commonly admitted in such courts as evidence of the law of such country, shall be admissible as evidence of the law of such foreign country; and

- (ii) maps made under the authority of any Government or of any public municipal body, and not made for the purpose of any litigated question,

shall prima facie be deemed to be correct, and shall be admitted in evidence without further proof. (*Amended 51 of 1911; 63 of 1911 Schedule*)

### **35A. Admissibility of notarial instruments in civil proceedings**

- (1) A notarial instrument may be received in evidence in civil proceedings, without further proof, as duly authenticated unless the contrary is proved.
- (2) A reference in subsection (1) to a notarial instrument is a reference to a document—
  - (a) evidencing and showing any notarial act of a notary public; and
  - (b) bearing the signature and the seal of the notary public.
- (3) In this section—

***notarial act*** (公證行為)—

- (a) means the exercise of any of the powers referred to in section 40B of the Legal Practitioners Ordinance (Cap. 159) by a notary public; but
- (b) does not include any notarial act done before a diplomatic or consular officer of the People's Republic of China outside the People's Republic of China as



referred to in section 10 of the Oaths and Declarations Ordinance (Cap. 11);

**notary public** (公證人) means a person who, at the material time, is qualified to practise as a notary public under section 40D of the Legal Practitioners Ordinance (Cap. 159).

*(Added 18 of 2014 s. 46)*

**36. Effect of notices in Gazette**

Where any notice, order or other document is required by any enactment to be published in the Gazette, or where any document referred to in section 35(b) appears in the Gazette, a copy of the Gazette in which it is so published or appears shall be prima facie evidence of the facts stated in such notice, order or document.

*(31 of 1911 s. 37 incorporated. Amended 8 of 1912 s. 82; 5 of 1924 Schedule; 1 of 1927 s. 3)*

**37. Admissibility of document filed in foreign court or consulate**

All documents whatsoever legally and properly filed or recorded in any foreign court of justice or consulate according to the law and practice of such court or consulate, and all copies of such documents, shall be admissible in evidence in the courts of Hong Kong on being proved in like manner as any documents filed or recorded in any foreign court are provable under this or any other Ordinance; and all documents whatsoever so filed or recorded in any foreign court or consulate, and all copies of such documents, shall, when so proved and admitted, be held authentic and effectual for all purposes of evidence as the same would be held in such foreign court or consulate.

*(Amended 51 of 1911; 63 of 1911 Schedule; 37 of 1984 s. 11)*

**38. Courts to take judicial notice of signature of judges, etc.**

All courts, judges, magistrates, officers of the courts,

commissioners acting judicially, and other judicial officers shall take judicial notice of the signature of the judges, provided such signature is attached or appended to any judgment, decree, order, certificate, or other judicial or official document.

*(Amended 50 of 1911; 62 of 1911 Schedule; 47 of 1997 s. 10)*

*[cf. 1845 c. 113 s. 2 U.K.]*

### **39. Prints of films of public documents**

- (1) A print, whether enlarged or not, purporting to be made from a film of a public document and purporting to be certified to be a print made from a film of a public document by the public officer or person who has custody of the film shall be admitted in evidence in any criminal or civil proceedings before any court on its production without further proof.
- (2) On the production of a print under subsection (1) the court before which it is produced shall, until the contrary is proved, presume—
  - (a) that a certificate purporting to be signed by the public officer or person having custody of the film has been signed by him; and
  - (b) that the print to which the certificate refers has been made from a film of the public document.

*(Added 6 of 1973 s. 2)*

### **40. Prints from films of Government documents, etc.**

- (1) A print, whether enlarged or not, purporting to be made from a film of a document in the possession of the Government or an authorized person shall be admitted in evidence in any civil proceedings before any court on its production, upon proof that— *(Amended 37 of 1984 s. 8)*



- (a) while the document was in the custody or control of the Government or authorized person the film was taken in order to keep a permanent record thereof; and
  - (b) the document photographed—
    - (i) was subsequently destroyed, whether deliberately or otherwise;
    - (ii) was so damaged as to be wholly or partly indecipherable;
    - (iii) was lost; or
    - (iv) had passed out of the custody or control of the Government or authorized person.
- (2) Proof—
  - (a) that a print is made from a film of a document in the possession of the Government or an authorized person; and
  - (b) of compliance with the conditions in subsection (1),  
may be given in respect of any document or groups of documents by a public officer, by an employee of an authorized person or by an authorized person, orally or by a certificate purporting to be signed by such public officer, employee or person.
- (3) A certificate under subsection (2) shall be admitted in evidence in any civil proceedings before any court on its production without further proof. (*Amended 37 of 1984 s. 8*)
- (4) On the production of a certificate under subsection (3) the court before which it is produced shall, until the contrary is proved, presume—
  - (a) that the facts stated in the certificate relating to the print and the compliance with the conditions in subsection (1) are true; and

- (b) that the certificate purporting to be signed by a public officer, an employee of an authorized person or an authorized person has been signed by him.
- (5) The Chief Secretary for Administration may, by order published in the Gazette, declare any person or class of persons to be authorized persons for the purposes of this section. (*Amended 15 of 1975 s. 4; L.N. 362 of 1997*)  
(*Added 6 of 1973 s. 2*)

#### 41. Interpretation

In this section and sections 39 and 40, unless the context otherwise requires— (*Amended 21 of 2024 s. 3*)

**authorized person** (獲授權人) means—

- (a) a bank;
- (b) a company authorized by any Ordinance to administer the estates of deceased persons or trust estates; and
- (c) any person declared by the Chief Secretary for Administration to be an authorized person under section 40(5); (*Amended 15 of 1975 s. 5; L.N. 362 of 1997*)

**film** (軟片) includes a photographic plate, microfilm (including one the production of which involves digital means) and machine-copy; (*Amended 21 of 2024 s. 3*)

**machine-copy** (機製副本) means a copy made of a document by any machine whereby an image of the contents of the document is reproduced from surface contact with the document or by the use of photo-sensitive material other than transparent photographic film;

**photograph** (照片) and **photographic copy** (攝影副本) include a machine-copy;

**public document** (公共文件) means any document to which the public have a right of access.

*(Added 6 of 1973 s. 2)*

**42. Proof of instrument to validity of which attestation is necessary**

Subject as hereinafter in this Part provided, in any proceedings, whether civil or criminal, an instrument to the validity of which attestation is requisite may, instead of being proved by an attesting witness, be proved in the manner in which it might be proved if no attesting witness were alive:

Provided that nothing in this section shall apply to the proof of wills or other testamentary documents.

*(Added 6 of 1939 s. 2)*

*[cf. 1938 c. 28 s. 3 U.K.]*

**43. Presumptions as to documents 20 years old**

In any proceedings, whether civil or criminal, there shall, in the case of a document proved, or purporting, to be not less than 20 years old, be made any presumption which immediately before 24 March 1939, would have been made in the case of a document of like character proved, or purporting, to be not less than 30 years old.

*(Added 6 of 1939 s. 2)*

*[cf. 1938 c. 28 s. 4 U.K.]*

**44. Power to order proof of specified facts by affidavit with or without attendance of deponent**

The court may at any stage of any proceedings by order direct that specified facts may be proved at the trial by affidavit with or without the attendance of the deponent for cross-examination, notwithstanding that a party desires his attendance for cross-examination and that he can be produced for that purpose.

*(Added 6 of 1939 s. 2)*

*[cf. 1938 c. 28 s. 5 U.K.]*

**45. Interpretation and savings**

- (1) In sections 42 to 44, unless the context otherwise requires, ***proceedings*** (法律程序) includes arbitrations and references.
- (2) Nothing in sections 42 to 44 shall prejudice the admissibility of any evidence which would apart from the provisions of those sections be admissible.

*(Replaced 25 of 1969 s. 5)*

*[cf. 1938 c. 28 s. 6 U.K.; 1968 c. 64 s. 20(2) U.K.]*

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**Editorial Note:**

Section 45 came into operation on 1 December 1970 for the purposes of the following civil proceedings—

- (a) proceedings (other than proceedings in bankruptcy) in the High Court and the District Court;
- (b) proceedings before any tribunal, other than a court, to which the strict rules of evidence apply;
- (c) arbitrations and references to which the strict rules of evidence apply;
- (d) applications and appeals arising out of the proceedings mentioned in paragraphs (a) to (c).

*(See L.N. 154 of 1970)*

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## Part IV\*

### Hearsay Evidence in Civil Proceedings

(*Format changes—E.R. 4 of 2018*)

#### 46. Interpretation

In this Part, unless the context otherwise requires—

***civil proceedings*** (民事法律程序) means civil proceedings, before any court, in relation to which strict rules of evidence apply, whether as a matter of law or by agreement of the parties, and references to ***the court*** (法院、法庭) and ***rules of court*** (法院規則) shall be construed accordingly;

***copy*** (副本), in relation to a document, means anything onto which information recorded in the document has been copied, by whatever means and whether directly or indirectly;

***court*** (法院、法庭) includes any tribunal;

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#### Editorial Note:

\* 1. Part IV came into operation on 1 December 1970 for the purposes of the following civil proceedings—

- (a) proceedings (other than proceedings in bankruptcy) in the High Court and the District Court;
- (b) proceedings before any tribunal, other than a court, to which the strict rules of evidence apply;
- (c) arbitrations and references to which the strict rules of evidence apply;
- (d) applications and appeals arising out of the proceedings mentioned in paragraphs (a) to (c).

(*See L.N. 154 of 1970*)

2. For the provision on transitional arrangements in the Evidence (Amendment) Ordinance 1999 (2 of 1999), see section 7 of that Ordinance.

**document** (文件) means anything in which information of any description is recorded;

**hearsay** (傳聞)—

- (a) means a statement made otherwise than by a person while giving oral evidence in the proceedings which is tendered as evidence of the matters stated;
- (b) includes hearsay of whatever degree;

**oral evidence** (口頭證據) includes evidence which, by reason of a defect of speech or hearing, a person called as a witness gives in writing or by signs;

**original statement** (原陳述), in relation to hearsay evidence, means the underlying statement, if any, made by—

- (a) in the case of evidence of fact, a person having personal knowledge of that fact;
- (b) in the case of evidence of opinion, the person whose opinion it is;

**statement** (陳述) means any representation of fact or opinion, however made.

*(Replaced 2 of 1999 s. 2)*

*[cf. 1995 c. 38 ss. 1(2), 9(4), 11 & 13 U.K.]*

#### 47. Admissibility of hearsay evidence

- (1) In civil proceedings evidence shall not be excluded on the ground that it is hearsay unless—
  - (a) a party against whom the evidence is to be adduced objects to the admission of the evidence; and
  - (b) the court is satisfied, having regard to the circumstances of the case, that the exclusion of the evidence is not prejudicial to the interests of justice.

- (2) The court may determine whether or not to exclude evidence on the ground that it is hearsay—
  - (a) in the case of civil proceedings before a jury, at the beginning of the proceedings and in the absence of the jury;
  - (b) in the case of any other civil proceedings, at the conclusion of the proceedings.
- (3) Nothing in this Part shall affect the admissibility of evidence admissible apart from this section.
- (4) The provisions of sections 48 to 51 shall not apply in relation to hearsay evidence admissible apart from this section, notwithstanding that it may also be admissible by virtue of this section.

*(Replaced 2 of 1999 s. 2)*

*[cf. 1995 c. 38 s. 1(1), (3) & (4) U.K.]*

#### **47A. Notice of proposal to adduce hearsay evidence**

- (1) Provision may be made by rules of court—
  - (a) specifying hearsay evidence in relation to which subsection (2) shall apply; and
  - (b) as to the manner in which (including the time within which) the duties imposed by that subsection shall be complied with in the cases where it does apply.
- (2) A party proposing to adduce in civil proceedings hearsay evidence which falls within subsection (1)(a) shall, subject to subsections (3) and (4), give to the other party or parties to the proceedings—
  - (a) such notice, if any, of that fact; and
  - (b) on request, such particulars of or relating to the evidence,

as is reasonable and practicable in the circumstances for the purpose of enabling him or them to deal with any matters arising from its being hearsay.

- (3) Subsection (2) may be excluded by agreement of the parties, and compliance with the duty to give notice may in any case be waived by the person to whom notice is required to be given.
- (4) A failure to comply with subsection (2), or with rules under subsection (1)(b), shall not affect the admissibility of the evidence but may be taken into account by the court—
  - (a) in considering the exercise of its powers with respect to the course of proceedings and costs; and
  - (b) as a matter adversely affecting the weight to be given to the evidence in accordance with section 49.

*(Added 2 of 1999 s. 2)*

*[cf. 1995 c. 38 s. 2 U.K.]*

**48. Power to call witness for cross-examination on hearsay statement, etc.**

Rules of court may provide that where a party to civil proceedings adduces hearsay evidence of a statement made by a person and does not call that person as a witness—

- (a) any other party to the proceedings may, with the leave of the court, call that person as a witness and cross-examine him on the statement as if he had been called by the first-mentioned party and as if the hearsay statement were his evidence in chief;
- (b) any party to the proceedings may call additional evidence to attack or support the reliability of the hearsay statement or to attack or support the reliability of that additional evidence.



*(Replaced 2 of 1999 s. 2)*

*[cf. 1995 c. 38 s. 3 U.K.]*

**49. Considerations relevant to weighing of hearsay evidence**

- (1) In estimating the weight, if any, to be given to hearsay evidence in civil proceedings the court shall have regard to any circumstances from which any inference can reasonably be drawn as to the reliability or otherwise of the evidence.
- (2) For the purposes of subsection (1), regard may be had, in particular, to the following—
  - (a) whether it would have been reasonable and practicable for the party by whom the evidence was adduced to have produced the maker of the original statement as a witness;
  - (b) whether the original statement was made contemporaneously with the occurrence or existence of the matters stated;
  - (c) whether the evidence involves multiple hearsay;
  - (d) whether any person involved had any motive to conceal or misrepresent matters;
  - (e) whether the original statement was an edited account, or was made in collaboration with another or for a particular purpose;
  - (f) whether the circumstances in which the evidence is adduced as hearsay are such as to suggest an attempt to prevent proper evaluation of its weight;
  - (g) whether or not the evidence adduced by the party is consistent with any evidence previously adduced by the party.

*(Replaced 2 of 1999 s. 2)*

[cf. 1995 c. 38 s. 4 U.K.]

## 50. Competence and credibility

- (1) Hearsay evidence shall not be admitted in civil proceedings if or to the extent that it is—
  - (a) shown to consist of; or
  - (b) to be proved by means of, a statement made by a person who at the time he made the statement was not competent as a witness.
- (2) Subject to subsection (3), where in civil proceedings hearsay evidence is adduced and the maker of the original statement, or of any statement relied upon to prove another statement, is not called as a witness—
  - (a) evidence which if he had been so called would be admissible for the purpose of attacking or supporting his credibility as a witness is admissible for that purpose in the proceedings; and
  - (b) evidence tending to prove that, whether before or after he made the statement, he made any other statement inconsistent with it is admissible for the purpose of showing that he had contradicted himself.
- (3) Evidence shall not be given under subsection (2) of any matter of which, if the maker referred to in that subsection had been called as a witness and had denied that matter in cross-examination, evidence could not have been adduced by the cross-examining party.
- (4) In subsection (1), ***not competent as a witness*** (沒有資格作證人) means suffering from such mental or physical incapacity, or lack of understanding, as would render a person incompetent as a witness in civil proceedings.

(Replaced 2 of 1999 s. 2)

*[cf. 1995 c. 38 s. 5 U.K.]*

## **51. Previous statements of witnesses**

- (1) Subject to subsections (2) to (7), the provisions of this Part as to hearsay evidence in civil proceedings shall apply equally, but with any necessary modifications, in relation to a previous statement made by a person called as a witness in the proceedings.
- (2) Subject to subsection (3), a party who has called or intends to call a person as a witness in civil proceedings shall not in those proceedings adduce evidence of a previous statement made by that person, except—
  - (a) with the leave of the court; or
  - (b) for the purpose of rebutting a suggestion that his evidence has been fabricated.
- (3) Subsection (2) shall not be construed as preventing a witness statement (that is, a written statement of oral evidence which a party to the proceedings intends to lead) from being adopted by a witness in giving evidence or treated as his evidence.
- (4) Subject to subsection (5), where in the case of civil proceedings section 12, 13 or 14 applies, this Part shall not authorize the adducing of evidence of a previous inconsistent or contradictory statement otherwise than in accordance with those sections.
- (5) Subsection (4) is without prejudice to any provision made by rules of court under section 48.
- (6) Nothing in this Part shall affect any of the rules of law as to the circumstances in which, where a person called as a witness in civil proceedings is cross-examined on a document used by him to refresh his memory, that document may be made evidence in the proceedings.

- (7) Nothing in this section shall be construed as preventing a statement of any description referred to above from being admissible by virtue of section 47 as evidence of the matters stated.

*(Replaced 2 of 1999 s. 2)*

*[cf. 1995 c. 38 s. 6 U.K.]*

**52. Evidence formerly admissible at common law**

- (1) The common law rule effectively preserved by section 54(1) and (2)(a) of this Ordinance (admissibility of admissions adverse to a party) as in force immediately before the relevant day is superseded by the provisions of this Part.
- (2) The common law rules effectively preserved by section 54(1) and (2)(b) to (d) of this Ordinance as in force immediately before the relevant day, that is, any rule of law whereby in civil proceedings—
- (a) published works dealing with matters of a public nature (for example, histories, scientific works, dictionaries and maps) are admissible as evidence of facts of a public nature stated therein;
  - (b) public documents (for example, public registers, and returns made under public authority with respect to matters of public interest) are admissible as evidence of facts stated therein; or
  - (c) records (for example, the records of certain courts, treaties, Crown grants or Government grants, pardons and commissions) are admissible as evidence of facts stated therein,
- shall continue to have effect.
- (3) The common law rules effectively preserved by section 54(3) and (4) of this Ordinance as in force immediately before

the relevant day, that is, any rule of law whereby in civil proceedings—

- (a) evidence of a person's reputation is admissible for the purpose of proving his good or bad character; or
- (b) evidence of—
  - (i) reputation or family tradition is admissible for the purpose of proving or disproving pedigree or the existence of a marriage; or
  - (ii) reputation is admissible for the purpose of proving or disproving the existence of any public or general right or of identifying any person or thing,

shall continue to have effect in so far as they authorize the court to treat such evidence as proving or disproving that matter:

Provided that where any such rule applies, reputation or family tradition shall be treated for the purposes of this Part as a fact and not as a statement or multiplicity of statements about the matter in question.

- (4) The words in which a rule of law mentioned in this section is described are intended only to identify the rule and shall not be construed as altering it in any way.
- (5) In this section, ***relevant day*** (有關日期) means the day on which section 2 of the Evidence (Amendment) Ordinance 1999 (2 of 1999) comes into operation\*.

*(Replaced 2 of 1999 s. 2)*

*[cf. 1995 c. 38 s. 7 U.K.]*

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Editorial Note:

\* Date of coming into operation : 1 June 1999.

### 53. Proof of statements contained in documents

- (1) Where a statement contained in a document is admissible as evidence in civil proceedings, it may be proved—
  - (a) by the production of that document; or
  - (b) whether or not that document is still in existence, by the production of a copy of that document or of the material part of it,  
authenticated in such manner as the court may approve.
- (2) It is immaterial for the purpose of subsection (1) how many removes there are between a copy and the original.

*(Replaced 2 of 1999 s. 2)*

*[cf. 1995 c. 38 s. 8 U.K.]*

#### **54. Proof of records of business or public body**

- (1) A document which is shown to form part of the records of a business or public body may be received in evidence in civil proceedings without further proof.
- (2) A document shall be taken to form part of the records of a business or public body if there is produced to the court a certificate of that effect signed by an officer of the business or body to which the records belong.
- (3) For the purposes of subsection (2)—
  - (a) a document purporting to be a certificate signed by an officer of a business or public body shall be deemed to have been duly given by such an officer and signed by him; and
  - (b) a certificate shall be treated as signed by a person if it purports to bear his signature or a facsimile of his signature.
- (4) In this section—

**business** (業務) includes any activity regularly carried on over a period of time, whether for profit or not, by any body (whether corporate or not) or by an individual;

**officer** (高級人員) includes any person occupying a responsible position in relation to the relevant activities of the business or public body or in relation to its records;

**public body** (公共機構) includes any executive, legislative, municipal, or urban council, any Government department or undertaking, any local or public authority or undertaking, any board, commission, committee or other body whether paid or unpaid appointed by the Chief Executive or the Government or which has power to act in a public capacity under or for the purposes of any enactment;

**records** (紀錄) means records in whatever form, and includes computer-generated records.

- (5) The court may, having regard to the circumstances of the case, direct that all or any of the provisions of this section do not apply in relation to a particular document or record, or description of documents or records.

*(Replaced 2 of 1999 s. 2)*

*[cf. 1995 c. 38 s. 9 U.K.]*

## **55. Statement not contained in business records**

- (1) In any civil proceedings, the evidence of an officer of a business or public body that any particular statement is not contained in the records of the business or body shall be admissible as evidence of that fact whether or not the whole or any part of the records have been produced in the proceedings.
- (2) The evidence referred to in subsection (1) may, unless the court otherwise directs, be given by means of the affidavit of the officer.

- (3) Section 54(4) shall apply to the interpretation of this section as it applies to the interpretation of section 54.

*(Replaced 2 of 1999 s. 2)*

*[cf. 1988 c. 32 s. 9 U.K.]*

**55A. Provisions as to rules of court**

Any power to make rules of court regulating the practice or procedure of the court in relation to civil proceedings includes power to make such provision as may be necessary or expedient for carrying into effect the provisions of this Part.

*(Added 2 of 1999 s. 2)*

*[cf. 1995 c. 38 s. 12(1) U.K.]*

**55B. Savings**

- (1) Nothing in this Part affects any powers of the court to exclude evidence on grounds other than that it is hearsay.
- (2) Nothing in this Part affects the proof of documents by means other than those specified in section 53, 54 or 55.

*(Added 2 of 1999 s. 2)*

*[cf. 1995 c. 38 s. 14(1) & (2) U.K.]*



## Part V

### Evidence of Opinion and Expert Evidence

*(Format changes—E.R. 4 of 2018)*

**56-57.** *(Repealed 2 of 1999 s. 3)*

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Editorial Note:

\* For the provision on transitional arrangements in the Evidence (Amendment) Ordinance 1999 (2 of 1999), see section 7 of that Ordinance.

**58. Admissibility of expert opinion and certain expressions of non-expert opinion**

- (1) Subject to any rules, where a person is called as a witness in any civil proceedings, his opinion on any relevant matter on which he is qualified to give expert evidence shall be admissible in evidence. *(Amended 65 of 1980 s. 6)*
- (2) Where a person is called as a witness in any civil proceedings a statement of opinion by him on any relevant matter on which he is not qualified to give expert evidence, if made as a way of conveying relevant facts personally perceived by him, is admissible as evidence of what he perceived.
- (3) In this section, **relevant matter** (有關聯的事宜) includes an issue in the proceedings in question.

*(49 of 1973 s. 4 incorporated)*

*[cf. 1972 c. 30 s. 3 U.K.]*

**59. Evidence of foreign law**

- (1) A person who is suitably qualified to do so on account of his knowledge or experience is competent to give, in civil

proceedings, expert evidence as to the law of any country or territory outside Hong Kong, irrespective of whether he has acted or is entitled to act as a legal practitioner there.

- \* (2) Where any question as to the law of any country or territory outside Hong Kong with respect to any matter has been determined (whether before or after the commencement of this Part) in any such proceedings as are mentioned in subsection (4), then in any civil proceedings (not being proceedings before a court which can take judicial notice of the law of that country or territory with respect to that matter)—
- (a) any finding made or decision given on that question in the first-mentioned proceedings shall, if reported or recorded in citable form, be admissible in evidence for the purpose of proving the law of that country or territory with respect to that matter; and
  - (b) if that finding or decision, as so reported or recorded, is adduced for that purpose, the law of that country or territory with respect to that matter shall be taken to be in accordance with that finding or decision unless the contrary is proved:

Provided that paragraph (b) shall not apply in the case of a finding or decision which conflicts with another finding or decision on the same question adduced by virtue of this subsection in the same proceedings.

- \* (3) Except with the leave of the court, a party to any civil proceedings shall not be permitted to adduce any such finding or decision as is mentioned in subsection (2) by virtue of that subsection unless he has in accordance with rules given to every other party to the proceedings notice that he intends to do so.

- \* (4) The proceedings referred to in subsection (2) are the following, whether civil or criminal, namely—
- (a) proceedings at first instance in the High Court or in the Supreme Court of England as constituted by section 1 of the Courts Act 1971 (1971 c. 23 U.K.);
  - (b) appeals arising out of proceedings as are mentioned in paragraph (a);
  - (c) proceedings before the Court of Final Appeal. (*Replaced 79 of 1995 s. 50*)
- \* (5) For the purposes of this section a finding or decision on any such question as is mentioned in subsection (2) shall be taken to be reported or recorded in citable form if, but only if, it is reported or recorded in writing in a report, transcript or other document which, if that question had been a question as to the law of Hong Kong, could be cited as an authority in legal proceedings in Hong Kong.

*(49 of 1973 s. 5 incorporated. Amended 37 of 1984 s. 11)*

*[cf. 1972 c. 30 s. 4 U.K.]*

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Editorial Note:

- \* Section 59(2) to (5) (formerly section 5(2) to (5) of the Civil Evidence Ordinance 1973) came into operation on 1 July 1979 for the purposes of any civil proceedings (other than proceedings in bankruptcy). (See *L.N. 155 of 1979*)

## 60. Interpretation, application to arbitrations etc. and savings

- (1) In this Part, unless the context otherwise requires, ***civil proceedings*** (民事法律程序) includes, in addition to civil proceedings in any court—
- (a) civil proceedings before any tribunal, being proceedings in relation to which the strict rules of evidence apply; and

(b) an arbitration or reference, whether under an enactment or not,

but does not include civil proceedings in relation to which the strict rules of evidence do not apply.

(2) In this Part, unless the context otherwise requires—

**court** (法庭、法院) does not include a court-martial, and, in relation to an arbitration or reference, means the arbitrator or umpire and, in relation to proceedings before a tribunal (not being a court), means the tribunal;

**legal proceedings** (法律訴訟程序) includes an arbitration or reference, whether under an enactment or not; (*Amended 65 of 1980 s. 7*)

**rules** (規則) means the Rules of the High Court (Cap. 4 sub. leg. A) made under section 54 of the High Court Ordinance (Cap. 4). (*Added 65 of 1980 s. 7. Amended 25 of 1998 s. 2*)

(3) For the purposes of the application of section 59 in relation to any such civil proceedings as are mentioned in subsection (1)(a) or (b), any rules made under section 54 of the High Court Ordinance (Cap. 4) shall (except in so far as their operation is excluded by agreement) apply, subject to such modifications as may be appropriate, in like manner as they apply in relation to civil proceedings in the Court of First Instance. (*Amended 65 of 1980 s. 7; 25 of 1998 s. 2; 2 of 1999 s. 4*)

(4) If any question arises as to what are, for the purposes of any such civil proceedings as are mentioned in subsection (1)(a) or (b), the appropriate modifications of any such rule as is mentioned in subsection (3), that question shall, in default of agreement, be determined by the tribunal or the arbitration or umpire, as the case may be.

(5) Nothing in this Part shall prejudice—

- (a) any power of a court, in any civil proceedings, to exclude evidence (whether by preventing questions from being put or otherwise) at its discretion;
- (b) the operation of any agreement (whenever made) between the parties to any civil proceedings as to the evidence which is to be admissible (whether generally or for any particular purpose) in those proceedings.

*(49 of 1973 s. 6 incorporated)*

*[cf. 1972 c. 30 s. 5 U.K.]*

**61.** *(Repealed 65 of 1980 s. 8)*

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## Part VI

### Convictions and Privilege

*(Format changes—E.R. 4 of 2018)*

#### Convictions, etc. as evidence in civil proceedings

#### 62. Convictions as evidence in civil proceedings

- (1) In any civil proceedings the fact that a person has been convicted of an offence by or before any court in Hong Kong shall, subject to subsection (3), be admissible in evidence for the purpose of proving, where to do so is relevant to any issue in those proceedings, that he committed that offence, whether he was so convicted upon a plea of guilty or otherwise and whether or not he is a party to the civil proceedings; but no conviction other than a subsisting one shall be admissible in evidence by virtue of this section. *(Amended 37 of 1984 s. 11)*
- (2) In any civil proceedings in which by virtue of this section a person is proved to have been convicted of an offence by or before any court in Hong Kong— *(Amended 37 of 1984 s. 11)*
  - (a) he shall be taken to have committed that offence, unless the contrary is proved; and
  - (b) without prejudice to the reception of any other admissible evidence for the purpose of identifying the facts on which the conviction was based, the contents of any document which is admissible as evidence of the conviction, and the contents of the information, complaint, indictment or charge on which the person in question was convicted, shall be admissible in evidence for that purpose.

- (3) Nothing in this section shall prejudice the operation of section 64 or any other enactment whereby a conviction or a finding of fact in any criminal proceedings is for the purposes of any other proceedings made conclusive evidence of any fact.
- (4) Where in any civil proceedings the contents of any document are admissible in evidence by virtue of subsection (2), a copy of that document, or of the material part thereof, purporting to be certified or otherwise authenticated by or on behalf of the court or authority having custody of that document shall be admissible in evidence and shall be taken to be a true copy of that document or part unless the contrary is shown.
- (5) Nothing in section 8 of the Probation of Offenders Ordinance (Cap. 298) (under which a conviction leading to probation or discharge is to be disregarded except as therein mentioned) shall affect the operation of this section.

*(Added 25 of 1969 s. 7)*

*[cf. 1968 c. 64 s. 11 U.K.]*

### **63. Findings of adultery as evidence in civil proceedings**

- (1) In any civil proceedings the fact that a person has been found guilty of adultery in any matrimonial proceedings shall, subject to subsection (3), be admissible in evidence for the purpose of proving, where to do so is relevant to any issue in those civil proceedings, that he committed the adultery to which the finding relates, whether or not he offered any defence to the allegation of adultery and whether or not he is a party to the civil proceedings; but no finding other than a subsisting one shall be admissible in evidence by virtue of this section.
- (2) In any civil proceedings in which by virtue of this section a person is proved to have been found guilty of adultery as mentioned in subsection (1)—



- (a) he shall be taken to have committed the adultery to which the finding relates, unless the contrary is proved; and
  - (b) without prejudice to the reception of any other admissible evidence for the purpose of identifying the facts on which the finding was based, the contents of any document which was before the court, or which contains any pronouncement of the court, in the matrimonial proceedings in question shall be admissible in evidence for that purpose.
- (3) Nothing in this section shall prejudice the operation of any enactment whereby a finding of fact in any matrimonial proceedings is for the purposes of any other proceedings made conclusive evidence of any fact.
- (4) Section 62(4) shall apply for the purposes of this section as if the reference to subsection (2) were a reference to subsection (2) of this section.
- (5) In this section ***matrimonial proceedings*** (婚姻法律程序) means any matrimonial cause in the High Court or any appeal arising out of any such cause. (*Amended 25 of 1998 s. 2*)

(*Added 25 of 1969 s. 7*)

[*cf. 1968 c. 64 s. 12 U.K.*]

**64. Conclusiveness of convictions for purposes of defamation actions**

- (1) In an action for libel or slander in which the question whether a person did or did not commit a criminal offence is relevant to an issue arising in the action, proof that, at the time when that issue falls to be determined, that person stands convicted of that offence shall be conclusive evidence that he committed that offence; and his conviction thereof shall be admissible in evidence accordingly.



- (2) In any such action in which by virtue of this section a person is proved to have been convicted of an offence, the contents of any document which is admissible as evidence of the conviction, and the contents of the information, complaint, indictment or charge on which that person was convicted, shall, without prejudice to the reception of any other admissible evidence for the purpose of identifying the facts on which the conviction was based, be admissible in evidence for the purpose of identifying those facts.
- (3) For the purposes of this section a person shall be taken to stand convicted of an offence if but only if there subsists against him a conviction of that offence by or before any court in Hong Kong. (*Amended 37 of 1984 s. 11*)
- (4) Section 62(4) and (5) shall apply for the purposes of this section as they apply for the purposes of that section, but as if in the said subsection (4) the reference to subsection (2) were a reference to subsection (2) of this section.
- (5) Subsections (1), (2), (3) and (4) shall apply for the purposes of any action begun after the commencement<sup>#</sup> of the Evidence (Amendment) Ordinance 1969 (25 of 1969), whenever the cause of action arose, but shall not apply for the purposes of any action begun before the commencement of that Ordinance or any appeal or other proceedings arising out of any such action.

(*Added 25 of 1969 s. 7*)  
[*cf. 1968 c. 64 s. 13 U.K.*]

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Editorial Note:

<sup>#</sup>Commencement date : 1 October 1969.

### Privilege

## 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<sup>#</sup> 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.

*(Added 25 of 1969 s. 7)*

*[cf. 1968 c. 64 s. 14 U.K.]*

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Editorial Note:

<sup>#</sup>Commencement date : 1 October 1969.

#### **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.

*(Added 23 of 2003 s. 2)*

**66. Abolition of certain privileges**

- (1) The following rules of law are abrogated except in relation to criminal proceedings, that is to say—
  - (a) the rule whereby, in any legal proceedings, a person cannot be compelled to answer any question or produce any document or thing if to do so would tend to expose him to a forfeiture; and
  - (b) the rule whereby, in any legal proceedings, a person other than a party to the proceedings cannot be compelled to produce any deed or other document relating to his title to any land.
- (2) The rule of law whereby, in any civil proceedings, a party to the proceedings cannot be compelled to produce any document relating solely to his own case and in no way tending to impeach that case or support the case of any opposing party is abrogated.
- (3) A witness in any proceedings instituted in consequence of adultery, whether a party to the proceedings or not, shall not be excused from answering any question by reason that it tends to show that he or she has been guilty of adultery.

*(Added 25 of 1969 s. 7)*

*[cf. 1968 c. 64 s. 16(1), (2) & (5) U.K.]*

**67. Consequential amendments relating to privilege**

- (1) Any existing enactment, however framed or worded, which in relation to any tribunal, investigation or inquiry (however described) confers on persons required to answer questions or give evidence any privilege described by reference to the privileges of witnesses in proceedings before any court shall, unless the contrary intention appears, be construed as

referring to the privileges of witnesses in civil proceedings before that court.

(2) *(Repealed 2 of 1977 s. 2)*

(3) Section 65(5) shall apply for the purposes of this section as it applies for the purposes of that section.

*(Added 25 of 1969 s. 7)*

*[cf. 1968 c. 64 s. 17 U.K.]*

### General

#### 68. Interpretation and savings of Part VI

(1) In this Part, unless the context otherwise requires, ***civil proceedings*** (民事法律程序) includes, in addition to civil proceedings in any court—

(a) civil proceedings before any other tribunal, being proceedings in relation to which the strict rules of evidence apply; and

(b) an arbitration or reference, whether under an enactment or not,

but does not include civil proceedings in relation to which the strict rules of evidence do not apply.

(2) In this Part, unless the context otherwise requires—

***court*** (法庭、法院) does not include a court-martial, and, in relation to an arbitration or reference, means the arbitrator or umpire and, in relation to proceedings before a tribunal (not being a court), means the tribunal;

***legal proceedings*** (法律訴訟程序) includes an arbitration or reference, whether under an enactment or not.

(3) For the avoidance of doubt it is declared that in this Part, and in any amendment made by the Evidence (Amendment) Ordinance 1969 (25 of 1969) to any other enactment,

references to a person's husband or wife do not include references to a person who is no longer married to that person.

- (4) Nothing in this Part shall prejudice the operation of any enactment which provides (in whatever words) that any answer or evidence given by a person in specified circumstances shall not be admissible in evidence against him or some other person in any proceedings or class of proceedings (however described).

In this subsection the reference to giving evidence is a reference to giving evidence in any manner, whether by furnishing information, making discovery, producing documents or otherwise.

- (5) Nothing in this Part shall prejudice—
- (a) any power of a court, in any legal proceedings, to exclude evidence (whether by preventing questions from being put or otherwise) at its discretion; or
  - (b) the operation of any agreement (whenever made) between the parties to any legal proceedings as to the evidence which is to be admissible (whether generally or for any particular purpose) in those proceedings.
- (6) Where, by reason of any defect of speech or hearing from which he is suffering, a person called as a witness in any legal proceedings gives his evidence in writing or by signs, that evidence is to be treated for the purposes of this Part as being given orally.

*(Added 25 of 1969 s. 7. Amended 2 of 1999 s. 5)*

*[cf. 1968 c. 64 s. 18 U.K.]*

## **69. Rules**

The Chief Justice shall or may make rules with regard to any

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matter in respect of which rules shall or may be made under this Part.

*(Added 25 of 1969 s. 7. Amended 65 of 1980 s. 9)*

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## Part VII

### Depositions

*(Format changes—E.R. 4 of 2018)*

**70. Admissibility in evidence in criminal proceedings of deposition of person dead, etc.**

Whenever it is proved by the oath of any credible witness, or in any other manner whatsoever it appears, to the satisfaction of the Court of First Instance, that the Secretary for Justice, or other person conducting a prosecution on behalf of the Crown, is unable to produce at the trial any person as a witness, in consequence of the death of such person, or of his absence from Hong Kong, or of the impracticability of serving process on him, or of his being so ill as not to be able to travel, or of his being insane, or of his being kept out of the way by means of the procurement of the person accused, or of his being resident in a country the laws of which prohibit his absenting himself therefrom, or which he refuses to quit after application made to him in that behalf or because he cannot be found at his last-known place of residence in Hong Kong; and if it also appears from the certificate of the magistrate or other officer hereinafter mentioned that such person was examined before a magistrate, or other officer to whom the cognizance of the offence appertained, and that the usual oath was administered to him prior to his examination, and that the examination was taken in the presence of the person accused, and that he, or his counsel or solicitor, had a full opportunity of cross-examining such person, and that the evidence so taken was reduced into writing and read over to and signed by him and also by the magistrate or other officer as aforesaid, so much of the evidence as would have been admissible, if the said person had been produced and examined



before the said court in the ordinary manner, shall be read and received in evidence.

*(Amended 50 of 1911; 51 of 1911; 62 of 1911 Schedule; 63 of 1911 Schedule; 20 of 1922 s. 2; 37 of 1984 s. 11; L.N. 362 of 1997; 25 of 1998 s. 2)*

*[cf. 1848 c. 42 s. 17 U.K.]*

**71. Prima facie proof of examination having been duly taken**

The production from the custody of the proper officer of the certificate referred to in section 70 shall be sufficient proof of the signature of such magistrate or other officer aforesaid, unless it is proved that such examination was not taken in manner aforesaid or was not in fact signed by the person examined or by the magistrate or officer aforesaid purporting to sign the same.

*(Amended 51 of 1911; 63 of 1911 Schedule)*

**72. Objection that deposition tendered was not signed by magistrate**

No objection to the reception in evidence of the examination of any person shall be permitted to prevail on the ground that the particular examination of such person was not signed by the magistrate or other officer as aforesaid, if it appears, in manner aforesaid, that the depositions wherein such examination was included were so signed.

*(Amended 50 of 1911; 62 of 1911 Schedule)*

**73. Power to take deposition of person dangerously ill, etc., and admissibility thereof**

- (1) Whereas it may happen that a person, who is dangerously ill, and unable to travel, may be able to give material and important information relating to an indictable offence or to a person accused thereof, and it is desirable, in the interest of truth and justice, that means should be provided for perpetuating such testimony and for rendering the same available in cases of necessity— (*Amended 8 of 1912 s. 34; 5 of 1924 Schedule*)

Whenever it is made to appear, to the satisfaction of any magistrate, that any person who is dangerously ill and unable to travel, is able and willing to give material information relating to an indictable offence or to a person accused thereof, it shall be lawful for the said magistrate to take in writing his statement upon oath, and such magistrate shall thereupon subscribe the same, and shall add thereto by way of caption a statement of his reason for taking the same, and of the day and place when and where the same was taken, and of the names of the persons, if any, assisting at the taking thereof, and, if the same relates to any offence for which any accused person is already committed or bailed to appear for trial, shall transmit the same with the said addition to the Registrar of the High Court, and in all other cases to the magistrates' clerk, who are respectively required to preserve the same and file it for record; and if afterwards, on the trial of any offender or offence to which the same may relate, the person who made the said statement is proved to be dead, or if it proved that there is no reasonable probability that such person will be able to attend and give evidence at the trial, it shall be lawful to read such statement in evidence, either for or against the person accused, without further proof

thereof, if the same purports to be signed by the magistrate by or before whom it purports to be taken, and provided it is proved, to the satisfaction of the court, that reasonable notice of the intention to take such statement has been given to the person (whether prosecutor, or person accused) against whom it is proposed to be read in evidence, and that such person, or his counsel or solicitor, had or might have had, if he had chosen to be present, full opportunity of cross-examining the person who made the same. (*Amended 51 of 1911; 63 of 1911 Schedule; 8 of 1912 s. 34; 23 of 1915 s. 4; 20 of 1922 s. 3; 27 of 1937 Schedule; 47 of 1997 s.10; 25 of 1998 s. 2*)

- (2) No such statement shall be rejected on the ground of any failure to comply with any of the provisions of subsection (1) with regard to the notice or the caption unless the court is of opinion that the person accused was substantially prejudiced by such failure. (*Added 20 of 1922 s. 3*)

[*cf. 1867 c. 35 s. 6 U.K.*]

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## Part VIII

### Evidence for Proceedings in Other Jurisdictions

*(Part VIII replaced 2 of 1977 s. 3)*

*(Format changes—E.R. 4 of 2018)*

#### 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;

***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; *(Added 23 of 2003 s. 12)*

***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.]*

#### Evidence for civil proceedings

#### 75. Application to the Court of First Instance for assistance in obtaining evidence for civil proceedings in another court

Where an application is made to the Court of First Instance for an order for evidence to be obtained in Hong Kong and the court is satisfied—

- (a) that the application is made in pursuance of a request issued by or on behalf of a court or tribunal (***the***

*requesting court*) exercising jurisdiction in a country or territory outside Hong Kong; and

- (b) that the evidence to which the application relates is to be obtained for the purposes of civil proceedings which either have been instituted before the requesting court or whose institution before that court is contemplated,

the Court of First Instance shall have the powers conferred on it by this Part.

*(Amended 25 of 1998 s. 2)*

*[cf. 1975 c. 34 s. 1 U.K.]*

**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 by any means, including by way of a live television link; *(Amended 23 of 2003 s. 13)*
  - (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 evidence otherwise than on oath where this is asked for by the requesting court. (*Amended 23 of 2003 s. 13*)
- (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.]*

## **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 subsections (2) and (2A), in civil proceedings in the country or territory in which the requesting court exercises jurisdiction. (*Amended 23 of 2003 s. 14*)
- (2) Where a person is giving evidence by any means other than by way of a live television link, subsection (1)(b) shall not apply unless the claim of the person in question to be exempt from giving the evidence is either— (*Amended 23 of 2003 s. 14*)
  - (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.
- (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. (*Added 23 of 2003 s. 14*)
- (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 national security or the security of the HKSAR; 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; 6 of 2024 s. 124*)

- (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.]*

#### **77A. Effect of subpoena**

For the purposes of this Part, a reference in a subpoena to attendance at a trial shall be construed as if it included a reference to attendance before an examiner or commissioner appointed by the court or a judge thereof in any cause or matter in that court.

*[cf. 1975 c. 34 s. 4 U.K.]*

### **Evidence for criminal proceedings**

#### **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) 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). (*Replaced 23 of 2003 s. 15*)
- (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.*]

### Supplementary

#### 77C. Rules of court

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— (*Amended 25 of 1998 s. 2*)

- (a) as to the manner in which any such application as is mentioned in section 75 is to be made;
- (b) subject to this Part, as to the circumstances in which an order can be made under section 76; and
- (c) as to the manner in which any such reference as is mentioned in section 77(2) is to be made;

and any such rules may include such incidental, supplementary and consequential provision as the authority making the rules may consider necessary or expedient.

[*cf. 1975 c. 34 s. 7 U.K.*]

#### 77D. Saving

Nothing in this Part shall be construed as enabling any court to make an order that is binding on the Crown or on any person in his

capacity as an officer or servant of the Crown.

*[cf. 1975 c. 34 s. 9(4) U.K.]*

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## Part VIIIA

### Obtaining of Evidence in Other Jurisdictions for Use in Criminal Proceedings in Hong Kong

*(Part VIIIA added 37 of 1984 s. 10)*

*(Format changes—E.R. 1 of 2015)*

#### **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 by any means (including by way of a live television link), 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 *(Amended 23 of 2003 s. 16)*

- (b) by the production of any document or thing, the nature of such document or thing or a description thereof.
- (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*)

(6A) In subsection (2), **live television link** (電視直播聯繫) has the same meaning as in Part VIII. (*Added 23 of 2003 s. 16*)

(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*)

(*Format changes—E.R. 1 of 2016*)

## **77F. Admissibility in criminal proceedings of evidence obtained pursuant to letter of request**

- (1) Subject to this section and section 77G, any deposition, together with any document or thing exhibited or annexed thereto, which is received by the Registrar pursuant to a letter

of request issued by him under section 77E in respect of any criminal proceedings, shall on its production without further proof be admitted in those criminal proceedings as prima facie evidence of any fact stated in the deposition and in the document (if any) exhibited or annexed thereto if—

- (a) it is agreed by or on behalf of the prosecution and every person charged with an offence to which that fact relates that such deposition together with any such document or thing exhibited or annexed thereto may be tendered in evidence; or
- (b) in the case of a deposition having exhibited or annexed thereto any document of a kind referred to in subsection (2) but no other document, the conditions mentioned in that subsection in relation to a document of that kind are satisfied; or
- (c) in the case of a deposition having exhibited or annexed thereto any combination of documents consisting of any document of a kind referred to in subsection (2) and any other document—
  - (i) in respect of such first-mentioned document, the conditions mentioned in that subsection in relation to a document of that kind are satisfied; and
  - (ii) in respect of such other document, the court is satisfied that that document is the original thereof, or a copy thereof made by any photographic process, and that, having regard to the matters referred to in paragraph (d)(i), (ii) and (iii), no unfairness is likely to occur in those criminal proceedings consequent upon the deposition and that document being admitted in evidence under this section; or (*Amended 67 of 1986 s. 5*)

- (d) in the case of any other deposition, the court is satisfied that any document (if any) exhibited or annexed thereto is the original thereof, or a copy thereof made by any photographic process, and that, having regard to the following matters— (*Amended 67 of 1986 s. 5*)
  - (i) whether it is reasonably practicable to secure the attendance of the deponent, taking into account for that purpose his bodily or mental condition or the delay or expense likely to be caused in securing his attendance;
  - (ii) whether the deponent was cross-examined before such court or tribunal; and
  - (iii) any other matter which, in the circumstances, appears to the court to be relevant,no unfairness is likely to occur in those criminal proceedings consequent upon the deposition and any document (if any) exhibited or annexed thereto being admitted in evidence under this section.
- (2) The conditions referred to in subsection (1)(b) and (c)(i) are—
  - (a) in relation to a document (*the foreign document*) which falls within subsection (2)(a) of section 19A, that the deposition having the foreign document exhibited or annexed thereto—
    - (i) shall have been made by a person having custody or control of any record, book or document from which the foreign document is derived;
    - (ii) shall contain an explanation of the nature and contents of the foreign document; and
    - (iii) without prejudice to any other matter contained or referred to therein, shall contain such averments

of fact relating to the foreign document as are sufficient to show whether it falls within subsection (2)(a)(i) or (ii) of that section;

- (b) in relation to a document which is a record, or a copy of any entry or matter recorded in a record, used in the ordinary business of a body formed or established outside Hong Kong and carrying on the business of banking outside Hong Kong, or which (having formerly carried on the business of banking outside Hong Kong) is being or has been wound up or dissolved or has otherwise ceased to carry on such business, that the deposition having that document exhibited or annexed thereto— (*Amended 67 of 1986 s. 5*)
  - (i) shall have been made by an officer of such body or, in the case of any such body which is being or has been wound up or dissolved or has otherwise ceased to carry on such business, by any person who is, or is an officer of, a person responsible for administering its affairs; (*Amended 67 of 1986 s. 5*)
  - (ii) shall contain an explanation of the nature and contents of that document; and
  - (iii) without prejudice to any other matter contained or referred to therein, shall contain such averments of fact relating to that document as would, if the document were a copy of an entry or matter recorded in a banker's record and tendered in evidence under section 20, be sufficient to prove in respect thereof the matters required to be proved under that section in respect of a copy of any such entry or matter;
- (c) in relation to a document which is or forms part of a record falling within subsection (1)(b) of section 22 or is a copy of such a document, that—



- (i) the deposition having that document exhibited or annexed thereto—
  - (A) shall have been made by a person having custody or control of such record; and
  - (B) shall contain an explanation of the nature and contents of that document; and
  - (C) without prejudice to any other matter contained or referred to therein, shall contain or be supported by such evidence, whether by averments of fact contained therein or otherwise, relating to that document as would, if the document were a statement tendered in evidence under that section, be sufficient to prove that nothing in subsection (2) or (3) of that section prevented its being admitted in evidence thereunder; (*Amended 18 of 2014 s. 48*)
- (ii) it is shown (whether by averments of fact contained in the deposition or otherwise) that any of the circumstances referred to in subsection (1)(c) of that section except in sub-paragraph (ii) thereof, affect the person who supplied the information from which such record was compiled; and (*Amended 18 of 2014 s. 48*)
- (iii) (if the deposition is an affidavit, affirmation or declaration relating to a request referred to in section 77G(4A)) the court is satisfied that no unfairness is likely to occur in the criminal proceedings referred to in subsection (1) consequent upon the deposition and that document being admitted in evidence; (*Added 18 of 2014 s. 48*)

- (d) in relation to a document or a copy of a document produced by any device which is a computer within the meaning of section 22A, that the deposition having that document exhibited or annexed thereto—
  - (i) shall have been made by a person who, at any time during the period over which the computer was used to store, process or retrieve information for the purposes of any activities (*the relevant activities*) carried on over that period, occupied a responsible position in relation to the operation of the computer or the management of the relevant activities;
  - (ii) shall contain an explanation of the nature and contents of that document; and
  - (iii) without prejudice to any other matter contained or referred to therein, shall contain such averments of fact as would, if that document were a statement tendered in evidence under that section, be sufficient (in relation to the use of that computer over that period) to satisfy the requirements of subsection (2) of that section.
- (3) A deposition, or any document or thing exhibited or annexed thereto, shall not be admitted in criminal proceedings by virtue of this section as evidence of any fact unless direct oral evidence of that fact would be admissible in those proceedings.
- (4) Where a deposition having exhibited or annexed thereto any document of a kind referred to in subsection (2) contains matter other than averments made in respect of such document pursuant to subsection (1)(b) or (c)(i) or for the purposes of section 77G(4), such matter shall not be admitted in evidence in criminal proceedings by virtue of this section unless the court is satisfied that, having regard to the matters

referred to in subsection (1)(d)(i), (ii) and (iii), no unfairness is likely to occur in those criminal proceedings consequent upon its being so admitted.

- (5) A certificate purporting to be signed by the Registrar and certifying that any deposition to which such certificate is attached, together with any document or thing exhibited or annexed thereto (if any), has been received by him pursuant to a letter of request issued by him under section 77E in respect of any criminal proceedings referred to in the certificate, shall on its production without further proof be admitted in those criminal proceedings as conclusive evidence of the facts contained therein.
- (6) References in this section to a letter of request issued by the Registrar under section 77E in respect of any criminal proceedings include references to a letter of request issued by him in respect of any criminal proceedings (whether instituted or not) at any time after 1 January 1984 and before the commencement<sup>#</sup> of the Evidence (Amendment) Ordinance 1984 (37 of 1984) to a court or tribunal exercising jurisdiction outside Hong Kong requesting such court or tribunal to assist in obtaining evidence for the purposes of those criminal proceedings.

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Editorial Note:

<sup>#</sup> Commencement date: 15 June 1984

### **77G. Provisions supplementary to sections 77E and 77F**

- (1) Where under this Part it is relevant for the purposes of any criminal proceedings to prove any particular or matter in respect of a deponent or a deposition, or any document or thing exhibited or annexed to a deposition, such matter or particular may be proved by an averment contained in the deposition stating that particular or matter.

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- (2) Where any deposition having exhibited or annexed thereto a document of a kind referred to in section 77F(2)(c) is admitted in evidence by virtue of section 77F, section 22(3) and (4) shall apply in relation to any statement contained in that document as they apply in relation to a statement given in evidence by virtue of section 22.
- (3) Section 22A(4) and (9) shall apply for the purposes of section 77F(2)(d) as they apply for the purposes of section 22A.
- (4) Section 22B(2) and (3) shall apply in relation to a statement contained in any document exhibited or annexed to any deposition admitted in evidence under this Part as they apply in relation to a statement admitted in evidence by virtue of section 22 or 22A.
- (4A) References in this Part to a deposition, to the extent that it is received by the Secretary for Justice pursuant to a request under section 9(1) of the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525), include references to an affidavit, affirmation or declaration made under an obligation to state the truth according to the law of the place where the affidavit, affirmation or declaration is made; and references to a deponent are to be construed accordingly. (*Added 18 of 2014 s. 49*)
- (5) References in this Part to a document or thing exhibited or annexed to a deposition include references to a document or thing referred to in the deposition as a document or thing exhibited or annexed thereto.
- (6) In this Part **document** (文件), **copy** (副本) and **statement** (陳述) have the same meaning as in Part IV.
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## **Part IX**

### **Miscellaneous**

*(Amended 5 of 1924 s. 21)*

*(Format changes—E.R. 4 of 2018)*

**78. Impounding of forged document or false instrument admitted in evidence**

Whenever any forged document or false instrument has been admitted in evidence by virtue of this Ordinance, the court or the person who has admitted the same, may, at the request of any party against whom the same is so admitted in evidence, direct that the same shall be impounded and be kept in the custody of such officer of the court or other proper person, for such period, and subject to such conditions as to the court or person may seem meet.

*(Amended 11 of 1922 s. 19; 15 of 1924 s. 21; 49 of 1992 s. 5)*

*[cf. 1845 c. 113 s. 4 U.K.; 1851 c. 99 s. 17 U.K.]*

**79. Admissibility of certain medical notes and reports**

In any prosecution for murder or manslaughter any medical notes or report by any Government medical officer which purport to relate to the deceased shall be admissible in evidence upon proof of the handwriting of such Government medical officer, and upon proof of his death or absence from Hong Kong.

*(20 of 1922 s. 9 incorporated by 5 of 1924 s. 21. Amended 37 of 1984 s. 11)*

**80. Observations and evidence of accused person before magistrate to be taken down and to be admissible at trial**

On the hearing of any indictable offence it shall be the duty of the magistrate to take down in the minute of proceedings any material

statement or observation made, and any evidence given, by the accused in the course of the proceedings, and, without prejudice to any other method of proof, any such statement or observation or evidence so taken down shall be admissible in evidence against the accused on his trial upon production of the minute of proceedings.

*(20 of 1922 s. 10 incorporated by 5 of 1924 s. 21)*

**81. Warrant or order to bring up prisoner to give evidence**

- (1) Any judge of the Court of First Instance may, on application or on his own motion, issue a warrant or order for bringing up any person in lawful custody before any court to enable such person to prosecute, pursue, defend or be examined as a witness in, any proceedings, either criminal or civil, before such court. *(Replaced 46 of 1967 s. 3)*
- (2) Any District Judge, magistrate, coroner appointed under the Coroners Ordinance (Cap. 504), adjudicator appointed under the Small Claims Tribunal Ordinance (Cap. 338), presiding officer appointed under the Labour Tribunal Ordinance (Cap. 25), judge of the Court of First Instance who is a member of the Competition Tribunal by the operation of section 135(1) of the Competition Ordinance (Cap. 619) or member of the Lands Tribunal referred to in section 4(1)(a), (b), (c) or (d) of the Lands Tribunal Ordinance (Cap. 17) may, on application or on his own motion, issue a warrant or order for bringing up any person in lawful custody before the District Court, magistrate, coroner, Small Claims Tribunal, Labour Tribunal, Competition Tribunal or Lands Tribunal, as the case may be, to enable such person to prosecute, pursue, defend or be examined as a witness in, any proceedings, either criminal or civil, before such District Court, magistrate, coroner, Small Claims Tribunal, Labour Tribunal, Competition Tribunal or Lands Tribunal. *(Replaced 46 of 1967 s. 3)*

*Amended 79 of 1981 s. 11; 27 of 1997 s. 62; 15 of 2014 s. 13; 18 of 2014 s. 43)*

- (3) Such prisoner or person shall be brought under the same care and custody, and be dealt with in like manner in all respects, as a prisoner required by any writ of habeas corpus awarded by the Court of First Instance to be brought before the said court to be examined as a witness in any cause or matter depending before the said court is by law required to be dealt with. *(Amended 50 of 1911; 51 of 1911; 62 of 1911 Schedule; 63 of 1911 Schedule)*

*(Amended 5 of 1924 s. 21; 25 of 1998 s. 2)*

*[cf. 1853 c. 30 s. 9 U.K.]*

## **82. Saving as to Wills Act 1837**

Nothing in this Ordinance shall be construed to repeal any provisions contained in the Wills Act 1837 (1837 c. 26 U.K.).

*(Amended 50 of 1911; 62 of 1911 Schedule; 5 of 1924 s. 21)*

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## Schedule

*(Format changes—E.R. 4 of 2018)*

Form 1

[section 25(1)]

### EVIDENCE ORDINANCE

(Chapter 8)

#### GOVERNMENT CHEMIST'S CERTIFICATE

I, *(name)* ....., Government Chemist hereby certify that—

- (a) on *(date)* .....  
a sealed packet(s) *(or as the case may be)* .....  
..... marked *(if any special mark)* .....  
..... and containing  
*(description of contents)* ..... was/  
were delivered to the Government Laboratory *(or as the case may be)* .....  
by *(name or description of person)* .....  
.....
- (b) the said sealed packet(s) *(or as the case may be)* .....  
..... was/were  
found to contain/be *(result of examination and/or analysis)* .....  
.....
- (c) on *(date)* ..... after examination  
and/or analysis at the Government Laboratory *(or as the case may be)* .....



Evidence Ordinance

Schedule

S-4

Cap. 8

*may be)* ..... the (item(s) submitted for  
examination and/or analysis) .....  
was/were handed in a sealed packet(s) (or as the case  
*may be)* ..... marked (if any special mark)  
..... to (name or description of  
person) .....

Date .....

*Government Chemist.*

*(Replaced 42 of 1973 s. 3)*

Form 2

[section 26(1)]

EVIDENCE ORDINANCE

(Chapter 8)

CERTIFICATE

I, ..... of ..... ,  
being a public officer appointed in writing by the Commissioner of Police  
under section 26 of the Evidence Ordinance hereby certify that—

(1) on (date) .....  
I received from (name or description of person)  
..... a sealed packet (or as the case  
*may be)* ..... marked (if any special  
*mark)* ..... containing exposed photographic film[s]  
which was/were processed by me and I prepared therefrom (number)

Evidence Ordinance

Schedule

S-6

Cap. 8

..... photographic print[s] and/or (*number*)  
..... enlargement[s];

(2) on (*date*) ..... I handed  
the said (*number*) ..... photographic print[s] and  
/ or (*number*) ..... enlargements, each of which was marked  
..... and signed by me, to (*name or*  
*description of person*) .....

(3) the said (*number*) .....  
photographic print[s] and/or (*number*) ..... enlargements  
is/are as nearly as may be [an] exact reproduction[s] from the exposed  
film[s] received by me as aforesaid and have in no way been retouched,  
altered or otherwise interfered with in the process of preparation thereof.

*Date* .....

(*Signed*) .....

(*Schedule added 31 of 1969 s. 6*)