For discussion on
23 March 2026

Legislative Council Panel on
Administration of Justice and Legal Services

Implementation of the Law Reform Commission of Hong Kong Report on Hearsay in Criminal Proceedings – Evidence (Amendment) Bill 2026

INTRODUCTION

This paper seeks to brief Members on the re-introduction of the proposed Evidence (Amendment) Bill 2026 (the "2026 Bill") to implement the recommendations of the Report on Hearsay in Criminal Proceedings ("the Report") published by the Law Reform Commission of Hong Kong ("the LRC") in November 2009. This paper outlines the outcome of the recent consultation exercise on the 2026 Bill conducted from 11 December 2025 to 12 January 2026 and the proposed way forward.

BACKGROUND

2. The common law rule against hearsay renders hearsay evidence generally inadmissible in criminal proceedings unless that evidence falls within one of the common law or statutory exceptions to the rule ("the hearsay rule"). The rule seeks to ensure that the witness's credibility and accuracy can be tested in cross-examination. Despite this rationale, the hearsay rule has been the subject of widespread criticism over the years from academics, practitioners and the bench.

3. One of the main criticisms against the hearsay rule is that the rule is strict and inflexible, and excludes hearsay evidence even if it is cogent and reliable. The inadmissibility of hearsay evidence that is otherwise cogent and relevant to the determination of the guilt or innocence of an accused sometimes results in the exclusion of evidence which by standards of ordinary life would be regarded as accurate and reliable. This can result in absurdity and also in injustice.

4. The complexity of the rule and the lack of clarity of its exceptions have also been criticised. In the light of these criticisms, proposals for reform have been put forward in many common law jurisdictions where the subject has been studied for the purpose of reform. In line with such international development, the LRC has proposed reform to the hearsay rule as detailed in the Report.

5. The Government previously introduced the Evidence (Amendment) Bill 2018 (the "2018 Bill") to implement the LRC's recommendations. A Bills Committee was formed to scrutinise the 2018 Bill, but it lapsed at the end of the term of office of the sixth-term Legislative Council on 30 October 2021 due to insufficient time to complete the relevant legislative processes.

6. Subsequent to the lapse of the 2018 Bill, the Department of Justice ("DoJ") conducted a comprehensive review, taking into account the LRC's recommendations, comments received during the last consultation exercise conducted in 2017, the deliberations of the Bills Committee on Evidence (Amendment) Bill 2018, as well as the latest legal and policy developments. The foregoing efforts have led to the current proposed 2026 Bill.

CONSULTATION EXERCISE

7. On 11 December 2025, we issued a consultation paper at **Annex I**[1] ("the Consultation Paper") with a consultation draft of the 2026 Bill[2] ("the Consultation Bill") attached (see Annex C of the Consultation Paper). The Consultation Bill seeks to implement the recommendations of the LRC (with appropriate modifications). Following the recommendations of the LRC, the Consultation Bill does not seek to abolish the common law exclusionary rule against hearsay evidence, but to provide for a comprehensible and principled approach to the admissibility of hearsay evidence by way of specifying when such evidence would be admissible.

8. Apart from the existing statutory exceptions, the common law exceptions preserved by the Consultation Bill, an agreement by the relevant parties to the admission of hearsay evidence, and cases where such admission

[1] As the consultation exercise was conducted on the basis of a draft circulated in English, only the English version of the paper is available.

[2] The draft 2026 Bill at Annex C to Annex I is the consultation draft published in the consultation, and is subject to further revision. The draft is therefore for reference only.

is unopposed, the court has a discretionary power to admit hearsay evidence if the conditions of (a) necessity and (b) threshold reliability are satisfied. In addition, the probative value of the hearsay evidence must always be greater than any prejudicial effect it may have on any party to the proceedings before it can be admitted. As introduced by the Consultation Bill, in order to provide a comprehensive safeguard with a wider and proportionate range of remedies, subsequent to the admission of the contested hearsay evidence, the court may exercise its powers to exclude the said hearsay evidence when it is satisfied that it is in the interests of justice to do so, and may order a further trial or direct the acquittal of the accused.

9. On the procedural framework, the Consultation Bill establishes a detailed notice regime and grants the court powers to vary procedural requirements and allow withdrawal of notices in prescribed situations in order to promote justice and flexibility.

10. The Consultation Bill does not apply to proceedings of a case concerning national security (within the meaning of section 3(2) of the Safeguarding National Security Ordinance) ("NS Proceedings"). Accordingly, NS Proceedings will remain subject to the existing hearsay rule and all its exceptions at common law.

11. During the consultation exercise, we specifically sought the views from various stakeholders including the Judiciary, legal professional bodies, relevant government bureaux and departments, law schools and other interested parties as set out at **Annex II**. We received 15 submissions. Respondents in general supported the proposals. Having carefully considered all the comments and suggestions received, we set out in the table at **Annex III**[3] a summary of those comments and suggestions of the Respondents and our responses.

SUMMARY OF LEGISLATIVE PROPOSALS

12. The 2026 Bill adds a new Part IVA to the Evidence Ordinance (Cap. 8) to implement the new statutory scheme on admission of hearsay evidence in specified proceedings.

[3] Annex III covers our response to all submissions received up to the cut-off date of two weeks before this panel meeting.

Interpretation and scope (ss. 55C–55F)

13. The 2026 Bill contains the interpretation provisions and provides for scope for the new hearsay regime. It defines key terms, including "statement" (any representation of fact or opinion however made, including a written or non-written communication, or a non-verbal communication in form of conduct, that is intended to be an assertion of any matter communicated) and "hearsay" (a statement adduced or to be adduced as evidence in any proceedings is hearsay if (a) it was made otherwise than by a person while giving oral evidence in the proceedings, and (b) it is adduced or to be adduced to prove the truth of its content).

14. The regime applies to evidence adduced or to be adduced in criminal proceedings (other than proceedings in respect of sentencing), or surrender proceedings, to which the strict rules of evidence apply; and to specified evidence adduced or to be adduced in sentencing proceedings used to prove aggravating factors ("Applicable Proceedings"). The 2026 Bill explicitly excludes its application to NS Proceedings, reflecting the constitutional imperative to safeguard national security and mitigate risks from manipulated or disinformation-based evidence.

Ways of admitting hearsay evidence and procedural framework (ss. 55G–55O)

15. In Applicable Proceedings, hearsay evidence is admissible if it is admissible under Division 2, 3 or 5 of the new Part IVA, a preserved common law rule, or any other enactment.

16. Under Division 2, 3 or 5 of the new Part IVA, hearsay evidence is admissible through three statutory gateways: (1) by **agreement** of the parties; (2) on an **unopposed** hearsay evidence notice; or (3) with the court's permission following an **opposed** hearsay evidence notice.

17. The 2026 Bill outlines a detailed notice procedure requiring written notices within stipulated timeframes (e.g., 28 days for a hearsay notice, 14 days for an opposition notice). To allow greater flexibility and improve procedural efficiency, the court is granted discretionary powers to vary these procedural requirements (e.g., to extend time limit for giving a notice, to allow the giving

of an oral notice) and to permit the withdrawal of notices, provided that no substantial prejudice arises, the compliance with the statutory requirement is not reasonably practicable in the circumstances, or it is in the interests of justice to do so. This framework balances procedural certainty with judicial discretion to manage cases efficiently.

Court's permission for admissibility of hearsay evidence (ss. 55P–55R)

18. Where the admission of hearsay evidence is opposed, the court may grant permission for the admission only if it is satisfied of the following five conditions:

(i) the declarant is sufficiently identified;

(ii) oral evidence given by the declarant in the proceedings would be admissible as evidence of the fact that the hearsay evidence is intended to prove;

(iii) a condition of necessity is fulfilled (e.g., the declarant is dead, unfit to be a witness, outside Hong Kong with attendance not reasonably practicable, cannot be found, or refuses to testify on self-incrimination grounds);

(iv) the condition of threshold reliability is met (i.e. the circumstances provide a reasonable assurance of reliability, with assessment based on the nature and content of the statement, the circumstances in which the statement was made, any circumstances that relate to the truthfulness of the declarant and the accuracy of the observation of the declarant, and any supporting admissible evidence); and

(v) the probative value of the hearsay evidence is greater than any prejudicial effect it may have on any party to the proceedings.

19. As regards the burden of proving the condition of necessity, the prosecution bears a stricter standard of proving beyond reasonable doubt, while the accused needs to prove on the balance of probabilities.

Subsequent exclusion of hearsay evidence (s. 55S)

20. There is a refined approach to replace the mandatory "unsafe to convict" acquittal power under the 2018 Bill with a more flexible mechanism. The provision allows a party to apply for the exclusion of hearsay evidence, which has been admitted with the court's permission, if it is in the interests of justice to do so. The court has to take into account all and only the six prescribed factors, including the prejudice that may be caused to the accused by the admission of the hearsay evidence (including any prejudice that may be caused by the lack of cross-examination of the declarant concerned), and any material change in circumstances (e.g., subsequent discovery of deception leading to admission of the hearsay evidence, or the declarant concerned becoming available).

21. Under the proposed statutory scheme, if the evidence is to be excluded, the court has a wide range of options: it can direct the jury to attach no weight to the hearsay evidence, order a further trial, or—if there is no case, or no longer a case, against the accused after the exclusion of the hearsay evidence adduced by the prosecution—direct an acquittal. This approach respects the fundamental separation of roles between the judge and jury, and provides a more tailored safeguard which is a proportionate and sufficient backstop for Hong Kong's specific high-threshold model.

Common Law Rules and Other Provisions (ss. 55T–55X, Schedule 2)

22. The 2026 Bill preserves specified common law exceptions to the hearsay rule listed in Schedule 2 (e.g., confessions, statements in furtherance of joint enterprise or conspiracy, public information, res gestae, etc.), while abrogating the rule against implied assertions. Additional provisions allow for the admission of evidence to prove a declarant's credibility, set rules for the admissibility of previous consistent statements by witnesses, and stipulate that multiple hearsay is admissible only if each level of hearsay satisfies the admissibility criteria under the scheme. These measures ensure that the new statutory scheme integrates seamlessly with existing legal principles where appropriate.

Human Rights Implications

23. The 2026 Bill is designed to be compatible with the right to a fair trial under Article 87 of the Basic Law and Articles 10 and 11 of the Hong Kong Bill of Rights. Crucially, the 2026 Bill upholds the principle of equality of arms by subjecting both the prosecution and the defence to the same rules regarding the admission of hearsay evidence. Furthermore, the scheme incorporates multiple safeguards—condition of necessity, condition of threshold reliability, probative value assessment, and the mechanism of subsequent exclusion of hearsay evidence—to guard against the risk of unsafe convictions and miscarriages of justice.

WAY FORWARD

24. Subject to Members' views, the Government plans to introduce the 2026 Bill into the Legislative Council in the second quarter of 2026.

Department of Justice
March 2026

#634249 v5B

Consultation Paper on Evidence (Amendment) Bill 2026

INTRODUCTION

The Department of Justice ("DoJ") would like to invite comments on the proposed **Evidence (Amendment) Bill 2026** ("the proposed Bill") which seeks to implement the recommendations of the Law Reform Commission of Hong Kong ("LRC") in the report of "Hearsay in Criminal Proceedings" ("Report") and makes related legislative amendments.

2. The common law rule against hearsay renders hearsay evidence generally inadmissible in criminal proceedings unless that evidence falls within one of the common law or statutory exceptions to the rule (the "hearsay rule"). The rule seeks to ensure that the witness's credibility and accuracy can be tested in cross-examination. Despite this rationale, the rule has been the subject of widespread criticism over the years from academics, practitioners and the bench.

BACKGROUND

3. In May 2001, the then Chief Justice and the then Secretary for Justice directed the LRC:

> "*To review the law in Hong Kong governing hearsay evidence in criminal proceedings, and to consider and make such recommendations for reforms as may be necessary.*"

4. A sub-committee ("LRC sub-committee") was appointed to study the subject. In November 2005, the LRC published the consultation paper on "Hearsay in Criminal Proceedings" examining the current law in Hong Kong on hearsay evidence in criminal proceedings and setting out

various proposals for reform of the law ("LRC consultation paper"). The LRC consultation paper was circulated to interested parties for comments. In November 2009, the LRC published the Report recommending that the reform should be achieved by a detailed legislative scheme.

5. The Report acknowledges that a clear case for reform of the hearsay rule has been made out. It points out that any reform must incorporate effective safeguards, as unrestricted relaxation of the hearsay rule may run counter to the interests of the accused persons, the community and justice as a whole. It is the Report's conclusion that while irrelevant and unreliable hearsay evidence should be excluded, relevant and reliable hearsay evidence should be admissible. The proposed reform aims at providing a comprehensible and principled approach to admissibility, with the goal of admission of relevant and reliable evidence where need exists for such evidence.

6. Although views varied as to the extent and degree of reform required, the majority of those who had responded to the LRC consultation paper agreed that there was a need for reform of the hearsay rule in criminal proceedings in Hong Kong. Accordingly, the Report recommends that the existing law of hearsay in criminal proceedings be reformed comprehensively and coherently according to a principled, logical and consistent system of rules and principles.

7. A summary of the detailed recommendations of the LRC is set out at **Annex A** ("Recommendations"). In particular, Recommendation 10 proposes a Core Scheme, as set out at **Annex B**, that envisages the admission of hearsay in only one of four ways: an existing statutory exception (proposal 4); a preserved common law exception (proposal 5); consent of the parties concerned (proposal 6); or the general discretionary power to admit hearsay (proposal 7).

8. On 4 July 2018, the Evidence (Amendment) Bill 2018 ("2018 Bill") was introduced to the Legislative Council, and a Bills Committee was formed to scrutinize it. As there was insufficient time to complete the relevant

legislative processes, the 2018 Bill lapsed at the end of the term of office of the sixth-term Legislative Council on 30 October 2021.

OBJECTIVES AND GUIDING PRINCIPLES

9. Subsequent to the lapse of the 2018 Bill, DoJ conducted a comprehensive review of the 2018 Bill. This review was informed by a wide range of considerations, including the views and recommendations of the LRC, the comments received during the last consultation exercise conducted in 2017, the deliberations of the Bills Committee on Evidence (Amendment) Bill 2018, as well as latest legal and policy developments.

10. In preparing the proposed Bill, DoJ is guided by the following cardinal principles:

- **Upholding the Right to a Fair Trial**: The statutory scheme of admitting hearsay evidence must safeguard all the parties' right to a fair hearing under Article 87 of the Basic Law, Articles 10 and 11 of the Hong Kong Bill of Rights ("HKBOR").

- **Safeguarding the Public Interest in the Administration of Justice**: The statutory scheme should recognize the important public interest in a criminal justice system that reliably convicts the guilty and acquits the innocent. In this regard, it is important to ensure that relevant and reliable evidence is not unduly excluded from the court's consideration.

- **Promoting Judicial Efficiency**: The statutory scheme should be designed to promote judicial efficiency and the timely resolution of proceedings by minimizing unnecessary delays, reducing costs, and limiting protracted procedural disputes.

11. DoJ now wishes to seek the views of the Judiciary, legal professional bodies, relevant government bureaux and departments, law

schools and other interested parties on the proposed Bill.

OVERVIEW OF THE PROPOSED BILL

12. A working draft of the proposed Bill is attached at **Annex C** which may be subject to further revisions or refinements in the light of the comments to be received.

13. Compared to the 2018 Bill, the proposed Bill introduces several new features. The key additions include:

- **Section 55N**: an enhanced, centralized power for the court to vary requirements of notices (paragraphs 33-35)
- **Section 55O**: a new power to withdraw notices (paragraphs 36-37)
- **Section 55S**: a new power to subsequently exclude hearsay evidence, order further trial and acquit the accused (paragraphs 44-57)

14. The main provisions of the proposed Bill are outlined below with reference to the Recommendations. The proposed Bill adds a new Part IVA to the Evidence Ordinance (Cap 8).

Interpretation and scope – sections 55C to 55F

15. Section 55C is the interpretation provision of the proposed Bill. For instance, the term "statement" is defined to mean any representation of fact or opinion however made, including a written or non-written communication, or a non-verbal communication in the form of conduct, that is intended to be an assertion of any matter communicated. A video-recorded interview of a complainant would therefore be a statement that may be admitted under the new Part IVA. (See Recommendation 12)

16. Section 55D provides for the meaning of "hearsay". A statement adduced or to be adduced as evidence in any proceedings is hearsay if (a) it was made otherwise than by a person while giving oral evidence in the proceedings, and (b) it is adduced or to be adduced to prove the truth of its content.

17. Section 55E(1) provides for the scope of application. The newly added Part IVA applies to (a) evidence adduced or to be adduced in criminal proceedings (other than proceedings in respect of sentencing), or surrender proceedings[1], in relation to which the strict rules of evidence apply, and (2) specified evidence adduced or to be adduced in criminal proceedings in respect of sentencing.

18. Section 55E(2)(b) provides that the proposed Bill will not apply to proceedings of a case concerning national security (within the meaning of section 3(2) of the Safeguarding National Security Ordinance (6 of 2024)) ("NS proceedings"). Accordingly, NS proceedings will remain subject to the existing hearsay rule and all its exceptions at common law.

19. Under the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region ("NSL"), the Hong Kong Special Administrative Region ("HKSAR") bears a constitutional duty to safeguard national security and must perform this duty effectively. This includes implementing both the NSL and the relevant local laws to prevent, suppress, and punish acts endangering national security in a timely and effective manner. Procedural reforms must not inadvertently compromise the HKSAR's ability to discharge this overriding constitutional obligation.

20. NS proceedings are vulnerable to disinformation campaigns and the manipulation of evidentiary sources. It is not reasonably practicable for the HKSAR to establish unerring protection or mechanisms to eliminate the

---

[1] The term "surrender proceedings" is defined under section 55C to mean (a) proceedings for committal under section 10 of the Fugitive Offenders Ordinance (Cap. 503); or (b) an appeal under section 11 of that Ordinance. At para. 10.104 of the Report, the LRC sub-committee opined that the proposed reforms should apply to surrender proceedings as they are substantially aligned with defended committal proceedings.

risk of manufactured hearsay, particularly statements purporting to originate from sources outside the HKSAR. The proposed amendments, if applied to NS proceedings, may open the door for the introduction of unverified, malicious, or sensitive information into the public record, even if such material or information is eventually ruled inadmissible or given no weight. The mere introduction of such material or information in NS proceedings poses irreparable risks of undermining national security through the dissemination of disinformation.

21. Section 55E(3) makes it clear that specified evidence in sentencing proceedings is evidence that—

(a) is adduced or to be adduced by the prosecution to prove an aggravating factor; and

(b) is not information furnished under section 27 of the Organized and Serious Crimes Ordinance (Cap. 455), or under an order of the court[2]. (See Recommendations 15 – 16 and 42)

22. Section 55F provides for adaptation of terms in surrender proceedings. In applying a provision of the new Part IVA to evidence adduced or to be adduced in surrender proceedings that relate to a request for the surrender of a person ("subject person") to a place outside Hong Kong ("requesting place")—

(a) a reference in the provision to the prosecutor or prosecution is the requesting place;

(b) a reference in the provision to the accused is the subject person; and

(c) a reference in the provision to a party to the proceedings is to be construed accordingly. (See Recommendation 17)

---

[2] They seek to address the concerns (a) that requiring the prosecution to prove an aggravating factor in accordance with the proposed reform may unduly prolong sentencing proceedings and make such proceedings more complicated; and (b) that the proposed reform may affect statistical data furnished pursuant to section 27 of the Organized and Serious Crimes Ordinance (Cap 455). (See paras. 9.15-9.18 of the Report.)

Ways of admitting hearsay evidence – sections 55G to 55K

23. We have streamlined the operation of the procedural framework with a view to improving the proposed Bill's practical application and clarity.

24. Section 55G sets out the only circumstances under which hearsay evidence is admissible in proceedings, i.e. under—

(a) Division 2, 3 or 5 of the new Part IVA; (See Recommendation 10)

(b) a common law rule preserved by section 55T; (See Recommendations 18 and 19); or

(c) any other enactment. (See Recommendation 20)

25. Section 55H provides that any power of the court to exclude evidence on grounds other than that it is hearsay is not affected.

26. Thereafter, sections 55I, 55J and 55K provide for three distinct and clearly signposted gateways for the admission of hearsay evidence.

27. Firstly, section 55I provides that hearsay evidence is admissible by **agreement** of the relevant parties. (See Recommendation 21) The mechanism in section 55I is comparable to that of section 65C of the Criminal Procedure Ordinance (Cap. 221). While section 65C(3) provides that an admission under that section shall be treated as an admission for the purpose of any subsequent criminal proceedings relating to the same matter (including any appeal or retrial), section 55I(6) of the proposed Bill expressly provides that the agreement does not bind the parties in a retrial or further trial[3]. DoJ considers that to bind parties in a retrial or further trial to an agreement made

[3] As a matter of terminology, a "retrial" in its strictest sense is consequent upon a conviction, an order that the Court of Appeal may grant on an appeal against conviction being allowed (section 83E(1), Criminal Procedure Ordinance, Cap 221). On the other hand, the term "further trial" refers to the subsequent trial on the same indictment following the discharge of a jury that may occur at many different stages of the trial. See the discussion about the differences between the two terms at paras. 52-56 in *HKSAR v Chen Keen* [2021] HKCFI 3567.

in the original trial to admit the hearsay evidence may in some cases put the parties in a difficult and awkward position, where for instance, there has been a change of the defence case or change of counsel or that new evidence has since surfaced in the interim.

28. Secondly, section 55J provides that hearsay evidence is admissible on an **unopposed** hearsay evidence notice. This section deals exclusively with the situation where a hearsay evidence notice is given and no party opposes the admission of the hearsay evidence. (See Recommendation 29)

29. Thirdly, section 55K provides for the admissibility of hearsay evidence upon an **opposed** hearsay evidence notice. Where a hearsay evidence notice is given and is opposed by an opposition notice, admission of the hearsay evidence is contingent upon obtaining the court's permission under section 55P(1). (See Recommendation 22)

Requirements for hearsay evidence notice and opposition notice – sections 55L and 55M

30. The default position for giving notices under the proposed Bill is that they should be given in writing, on time and with the required contents. Any deviation from the default position requires judicial permission. The formal requirements for giving a hearsay evidence notice and opposition notice are set out in sections 55L and 55M.

31. Section 55L requires that a hearsay evidence notice must be given in writing to each other party to the proceedings and the court, and be given within 28 days after the day on which the date for the hearing in which the hearsay evidence is intended to be adduced is fixed. Further, it specifies the required contents of the hearsay evidence notice, such as the name of the declarant (if known), the content of the statement or a description of the hearsay evidence, the grounds for supporting the admission of the hearsay evidence and the facts in support of those grounds.

32. Section 55M requires that the opposition notice must be given in writing to each other party to the proceedings and the court, and be given within 14 days after the day on which the hearsay evidence notice is given. Further, it stipulates that the opposition notice must state why the court should not grant permission under section 55P(1) for the hearsay evidence to be admitted, which facts stated in the hearsay evidence notice are being disputed, and any other objection to the admission of the hearsay evidence.

Court's power to vary requirements – section 55N

33. The proposed Bill provides the court with greater procedural flexibility by granting the court enhanced powers to regulate procedural matters in a manner tailored to the unique circumstances of each individual case.

34. Therefore, under the proposed Bill, all the court's discretionary powers concerning procedural irregularities are now consolidated in section 55N. This section provides a single, coherent set of criteria to govern the exercise of the court's discretion when varying a requirement regarding notices under sections 55L and 55M. The application of these criteria ensures that the court's discretion is exercised fairly, safeguarding the right of all parties to a fair hearing.

35. Section 55N(1)-(2) confers the powers on the court to vary a requirement regarding a hearsay evidence notice or an opposition notice, such as shortening or extending a time limit for giving a notice, and allowing a notice to be given orally. Section 55N(3) provides that the court may exercise such power to vary a requirement on its own motion or on the application of a party to the proceedings. Section 55N(4)-(5) provides that where an application to the court to extend a time limit for giving a notice is made after the expiry of the time limit, the application must be accompanied by the notice to be given, and state the reason why the application is not made before the expiry of the time limit. Section 55N(6) provides that the court may vary a requirement if it is satisfied that—

(a) having regard to the nature and content of the hearsay evidence, no party to the proceedings is substantially prejudiced by the variation of the requirement;

(b) complying with the requirement is not reasonably practicable in the circumstances; or

(c) it is in the interests of justice to do so.

Withdrawal of notices – section 55O

36. To improve procedural efficiency, a new provision is added to allow the court to permit the withdrawal of a hearsay evidence notice or an opposition notice. This power provides valuable flexibility to cater for the need to re-evaluate the necessity of admitting or opposing to hearsay evidence closer to trial in the light of the development of the case. The express power of withdrawal provides a mechanism for parties to change their position before the court rules on the admissibility issue (in the case of an opposed hearsay evidence notice) or before the hearsay evidence is adduced in the proceedings (in the case of an unopposed hearsay evidence notice), thus saving judicial time and resources.

37. Section 55O provides that a party to proceedings may, with the permission of the court, withdraw a hearsay evidence notice or an opposition notice. However, a party to proceedings may not withdraw such a notice after the hearsay evidence to which the notice relates is adduced in the proceedings, or the court grants permission under section 55P(1) for the admission of the hearsay evidence in the proceedings, whichever is the earlier.

Court's permission for admission of hearsay evidence – section 55P

38. Where the admission of hearsay evidence is opposed, the party seeking to admit the hearsay evidence should apply for the court's permission to admit it under section 55P(1). Section 55P(2) provides that the court may grant the permission for the admission of hearsay evidence if the court is

satisfied that—

(a) the declarant is sufficiently identified; (See Recommendation 23)

(b) oral evidence given by the declarant in the proceedings would be admissible as evidence of the fact that the hearsay evidence is intended to prove; (See Recommendation 24)

(c) the condition of necessity is fulfilled; (See Recommendation 25)

(d) the condition of threshold reliability is fulfilled; (See Recommendations 26 and 27) and

(e) the probative value of the hearsay evidence is greater than any prejudicial effect it may have on any party to the proceedings. (See Recommendation 28)

Necessity and threshold reliability conditions – sections 55Q and 55R

39. Sections 55Q and 55R set out the conditions of necessity and threshold reliability, which are essentially the same as that of the 2018 Bill and the LRC's recommendations.

40. For the purposes of section 55P(2)(c), section 55Q(1) provides that the condition of necessity is fulfilled in respect of any hearsay evidence only if—

(a) the declarant is dead;

(b) the declarant is unfit to be a witness, either in person or in another competent manner, in the proceedings because of the declarant's age or physical or mental condition;

(c) the declarant is outside Hong Kong, and neither of the following is reasonably practicable—

(i) securing the declarant's attendance at the proceedings; and

(ii) making the declarant available for examination and cross-examination in another competent manner in the proceedings;

(d) the declarant cannot be found although all reasonable steps have been taken to find the declarant; or

(e) if the party applying for permission is the accused [4] —the declarant refuses to give oral evidence in connection with the statement in the proceedings in circumstances where the declarant would be entitled to refuse on the ground of self-incrimination. (See Recommendation 25)

41. Section 55Q(3) further provides that the standard of proof required to prove that the condition of necessity is fulfilled is beyond reasonable doubt if the applicant is the prosecution, and on the balance of probabilities if the applicant is the accused. (See Recommendation 30)

42. For the purposes of section 55P(2)(d), section 55R(1) provides that the condition of threshold reliability is fulfilled in respect of the admission of hearsay evidence in any proceedings if the circumstances relating to the hearsay evidence provide a reasonable assurance that it is reliable. (See Recommendation 26)

43. In deciding whether the circumstances relating to the hearsay evidence provide a reasonable assurance that it is reliable, section 55R(2) provides that the court may have regard only to—

(a) the nature and content of the statement to be adduced as the hearsay evidence;

---

[4] This was proposed in the Notice of Committee Stage Amendments issued on 19 June 2020 under Rule 57(2) of the Rules of Procedure, allowing only the accused, but not the prosecution, to rely on the declarant's refusal to give evidence on the ground of self-incrimination in proving the condition of necessity.

(b) the circumstances in which the statement was made;

(c) any circumstances that relate to the truthfulness of the declarant;

(d) any circumstances that relate to the accuracy of the observation of the declarant; and

(e) whether the statement is supported by other admissible evidence. (See Recommendations 9D and 27)

Subsequent exclusion of hearsay evidence – section 55S

44. Section 55Q of the 2018 Bill sought to implement Recommendations 9C and 32 of the Report. The LRC sub-committee proposed a mandatory power for the judge to direct an acquittal if the judge considers a conviction based on the hearsay evidence would be "unsafe". This was rooted in the essential aim of protecting an accused against miscarriage of justice and unsafe convictions, a principle which DoJ fully endorses.

45. Upon further review and consideration of the intricate interplay between Recommendations 9C and 32, and other fundamental principles of our criminal justice system, we have concluded that a more refined and flexible approach is warranted. The present proposal in section 55S therefore departs from Recommendations 9C and 32, not in its ultimate goal, but in how that goal is to be achieved. This proposed approach aims to create a more balanced framework that respects the distinct roles of the judge and jury, provides gradual and proportionate remedies, and aligns with the specific design of our proposed statutory scheme.

The refined approach under section 55S

46. After the court grants permission to admit a piece of hearsay evidence, there may be possibilities that it is subsequently found to be in the interests of justice to exclude the same for the purpose of the trial. As such, this section allows the parties to the trial to apply to the court for the exclusion of hearsay evidence, which has been admitted with the court's permission

under section 55P(1). The test for granting the subsequent application for exclusion is whether the court is satisfied that it is in the interests of justice to do so.

47. When considering whether it is in the interests of justice to grant the application for exclusion, the court has to take into account all and only the following six factors set out in section 55S(6)—

(a) the nature of the proceedings, including whether it is a trial by jury or not;

(b) the nature of the statement adduced as the hearsay evidence;

(c) the probative value of the hearsay evidence;

(d) the importance of the hearsay evidence to the case of or against the accused;

(e) taking into account the totality of other evidence (if any), the prejudice that may be caused to the accused by the admission of the hearsay evidence (including any prejudice that may be caused by the lack of cross-examination of the declarant concerned); and

(f) whether there is any material change in circumstances of a nature that, if the changed circumstances had existed or been known at the time when the permission was granted, would likely have resulted in the court finding that—

(i) the condition of necessity was not fulfilled in respect of the admission of the hearsay evidence in the proceedings under section 55Q; or

(ii) the condition of threshold reliability was not fulfilled in respect of the admission of the hearsay evidence in the proceedings under section 55R.

48. Section 55S(6) is enhanced by the inclusion of a new factor to address situations where the circumstances have materially changed since the hearsay evidence has been admitted. This new factor would operate in two principal scenarios—

(a) Where the initial admission of hearsay evidence was procured through deception or concealment that was unknown to the court and the opposing party at the time of the ruling under section 55P(1). If this is later uncovered, section 55S can be triggered to exclude the admitted hearsay evidence.

(b) Where unforeseen supervening events, which were not in existence or reasonably foreseeable when the court's permission was granted, render the hearsay evidence unnecessary or unreliable. Examples include the unexpected recovery of a previously unfit declarant, the return of a witness who could not be located previously, or new technological analysis discrediting the reliability of the hearsay evidence.

49. The drafting of this new factor is deliberately constructed upon two foundational legal concepts to ensure its proper application—

(a) First, the change in circumstances must be "material". This qualifier serves as a crucial threshold to prevent applications based on trivial or inconsequential developments. The applicant bears the burden of demonstrating that the new circumstance is sufficiently significant that it would reasonably have altered the court's initial assessment of the hearsay evidence's necessity or reliability.

(b) Second, the material change must be of such a nature that it would likely have resulted in the court being not satisfied that the conditions of necessity and threshold reliability have been met. In essence, the change must be so fundamental that the hearsay evidence may no longer be said to have fulfilled the two statutory

conditions on necessity and threshold reliability.

50. Upon finding that it is in the interests of justice to exclude the hearsay evidence after having regard to all and only the six factors under section 55S(6), the court will have to consider whether it is appropriate to continue with the trial. In trials sitting with a jury, the court needs to consider whether the trial should continue, and whether the giving of a direction that no weight is to be attached to the hearsay evidence for the purpose of the trial is able to cure the possible prejudicial effect that may have already caused to the jury. If the court considers that the giving of a judicial direction cannot cure the possible prejudicial effect on the jury caused by the excluded hearsay evidence, it should discharge the jury and order a further trial.

51. If the excluded hearsay evidence is adduced by the prosecution and excluded at the close of the prosecution case or after the prosecution case, the court would have to consider whether there is any or still a case against the accused for the offence after the exclusion. If the court, having considered the totality of the remaining evidence (after excluding the relevant prosecution hearsay evidence) adduced by the prosecution, finds that there is no case or no longer a case against the accused for the offence[5], the court should direct the acquittal of the accused.

Rationale for the refined approach

52. DoJ remains steadfast in its commitment to the principles underlying Recommendations 9C and 32, namely, ensuring that the reform of hearsay law contains sufficient safeguards to prevent miscarriage of justice and unsafe conviction. The evolution of the proposed section 55S from the original "unsafe to convict" model is based on several key considerations.

53. Firstly, the proposed section 55S would **provide a wider and more proportionate range of remedies**. The LRC sub-committee proposed a single, mandatory remedy: acquittal. This "all-or-nothing" approach, while

[5] Under section 55S(5), Division 3 of Part IV of the Criminal Procedure Ordinance (Cap. 221) applies to a ruling of no longer having a case to answer as if it were a specified ruling within the meaning of that Division.

capable of providing important safeguards to the accused, can be inflexible. There may be circumstances where, even after a piece of admitted hearsay evidence is subsequently found to be problematic, the remaining prosecution case still shows a reasonable prospect of conviction and it is in the interests of justice for the trial to proceed. In such a scenario, a compulsory acquittal may not be able to serve the wider interests of justice, including those of victims and the community. The proposed section 55S would equip the court with a wider and more proportionate range of options to tailor its response to the specific circumstances of the case, ensuring a just outcome for all parties.

54. Secondly, the proposed section 55S would **uphold the fundamental separation of roles between the judge and jury**, a cornerstone of our criminal justice system. The "unsafe to convict" model, as proposed by the LRC sub-committee and found in section 125 of the United Kingdom ("UK")'s Criminal Justice Act 2003 ("CJA 2003"), requires a trial judge to assess the quality and reliability of the hearsay evidence to determine if a potential conviction may be "unsafe". As our courts have repeatedly affirmed[6], the assessment of the quality and reliability of evidence, and thereby the determination of its weight, fall exclusively within the province of the jury as the arbiter of fact. Asking a judge to apply pre-emptively an "unsafe" test risks usurpation of the jury's role and function. In trials sitting with a jury, the judge's role is to determine questions of law, not questions of fact. Therefore, the judge is not in the best position to speculate on what a jury might conclude from the hearsay evidence, nor assess whether a potential conviction based on the admitted hearsay evidence would be unsafe or otherwise unsatisfactory.

55. The proposed section 55S realigns the judge's power with this fundamental principle. The judge first decides whether to exclude the hearsay evidence in the "interests of justice", and if so, then applies the well-established *Galbraith* test for a no-case-to-answer submission to the remaining prosecution evidence. Where the judge comes to the conclusion that the prosecution evidence, taken at its highest, is such that the jury properly

---

[6] For example, please refer to the Court of Appeal's judgment in *Re Secretary for Justice's Reference (Nos 1-3/2021)* [2022] 5 HKLRD 886, at paras. 39 – 45.

directed could not properly convict upon it, the judge should stop the case and direct the jury to acquit the accused. However, where the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness's reliability, or other matters which are generally speaking within the province of the jury and, where on one possible view of the facts, there is evidence upon which a jury could properly come to the conclusion that the accused is guilty, then the judge should allow the matter to be tried by the jury[7]. This ensures the judge's role remains supervisory, while the jury remains the ultimate arbiter of fact.

56. Thirdly, **the sufficiency and nature of any safeguard must be assessed in the specific context of our proposed statutory scheme's stringent admissibility rules**.

57. The UK's "unsafe to convict" provision at section 125 of the CJA 2003 was designed as a safety net because the English courts have a very broad residual discretion to admit hearsay evidence if it is "in the interests of justice" to do so, even without fulfilling any necessity condition or reliability threshold[8]. The LRC sub-committee rejected this English model, as its categories of automatic admissibility provide insufficient assurances of reliability and the terms of the residual discretion to admit hearsay evidence are too open-ended and vague[9]. In contrast, our proposed statutory scheme requires the prosecution to prove the necessity condition beyond reasonable doubt and to show that the circumstances relating to the hearsay evidence provide a reasonable assurance that it is reliable. The twin conditions of necessity and threshold reliability act as a robust filter at the point of admission, screening out unnecessary or unreliable hearsay evidence from the outset. Because our threshold for admission is much higher and more demanding than that in the UK, the need for a similar "back door" safety net is correspondingly diminished. Indeed, the UK's "unsafe to convict" provision goes beyond the safeguards found in New Zealand's Evidence Act 2006, the very model on which the LRC sub-committee's recommendations

---

[7] *R v Galbraith* [1981] 1 WLR 1039, at 127. Also see the discussion of the Court of Appeal on the *Galbraith* test in *Re Secretary for Justice's Reference (Nos 1-3/2021)* [2022] 5 HKLRD 886, at para. 60.

[8] Section 114(1)(d) of CJA 2003

[9] Recommendation 7

were based[10]. Therefore, the safeguards in the present proposed section 55S are already a proportionate and sufficient backstop for Hong Kong's specific high-threshold model.

Common law rules – sections 55T and 55U

58. Section 55T(1) provides that the common law rules set out in Schedule 2 are preserved. Reading section 55T(1) in light of section 55G, common law exceptions not preserved in the Division will cease to apply to the applicable proceedings[11] after the passing of the proposed Bill. (See Recommendation 19)

59. Section 55U abrogates the common law rule that excludes implied assertions as hearsay[12]. In other words, statements containing implied assertions are no longer to be excluded on the ground that they are hearsay. (See Recommendation 13)

Admissibility of certain hearsay evidence – sections 55V and 55W

60. Division 5 contains two provisions that provide for admissibility of certain hearsay evidence. Section 55V provides that if hearsay evidence is admitted under Division 2 or 3, or under a preserved common law rule, certain evidence is admissible for proving the credibility of the declarant of the hearsay evidence. (See Recommendation 31)[13]

---

[10] Para. 9.71 of the Report and Recommendation 9A

[11] Section 55E provides for the scope of application of the proposed Bill.

[12] In the House of Lords case of *R v Kearley* [1992] 2 AC 228, a majority of the Law Lords confirmed that implied assertions came within the definition of hearsay. The concept of implied assertions is discussed at paras. 3.8-3.13 and 4.12-4.15 of the Report.

[13] When a witness testifies in the usual way, the witness can be cross-examined, and the cross-examiner may ask questions designed to test the witness's credibility. When an absent witness's statement is admitted as hearsay this cannot usually be done. From the point of view of the side against which such evidence is admitted this inability can be a serious disadvantage. So in the hope of making up for this when hearsay evidence is admitted under Division 2 or 3, or under a preserved common law exception, the scope of Recommendation 31 is expanded to give the opposing side the possibility of adducing evidence about matters affecting credibility which the absent witness could have been asked about in cross-examination if he had testified in court.

61. Section 55W(1) provides for certain circumstances under which a previous statement made by a witness is admissible for proving the truth of its content. (See Recommendation 39)

62. Section 55W(2) and (3) presumptively removes the physical record of a statement which has been admitted previously from the jury when they retire to consider their verdict unless all parties to the proceedings agree that it should accompany the jury or the judge considers it appropriate. (See Recommendation 40)

Multiple hearsay – section 55X

63. Section 55X of Division 6 provides that multiple hearsay is admissible only if each level of hearsay is admissible under the new Part IVA. (See Recommendation 14)

Preserved common law exceptions – Schedule 2

64. Schedule 2 sets out the common law rules relating to exceptions to the rule against hearsay which are preserved in accordance with section 55T(1). These preserved rules relate to the admissibility of—

(a) admissions, confessions, and statements against self-interest or mixed statements made by an accused;

(b) statements made in furtherance of a joint or common enterprise or conspiracy;

(c) expert opinion evidence;

(d) public information;

(e) reputation as to character;

(f) reputation or family tradition;

(g) res gestae; and

(h) admissions by agents.

COMPATIBILITY WITH FAIR HEARING PRINCIPLES

65. The proposed Bill is carefully structured to operate within the established principles of a fair hearing, including the right to examine witnesses under Article 11(2)(e) of the HKBOR[14].

66. The right to a fair hearing, including the right to examine witnesses, is not absolute. This right may be subject to reasonable restrictions justifiable by the proportionality test. Crucially, the notion of a fair trial is not exclusively focused on the accused. It reflects a balance of interests, including those of victims and the society in the effective administration of justice[15]. The LRC sub-committee rightly observed that the focus should be on whether the law provides sufficient safeguards against unsafe convictions in the vast majority of cases, rather than aspiring to an impossible standard of a "perfect trial"[16]. Fairness must be viewed in the round, and as the LRC sub-committee also agreed, the admission of hearsay evidence is not *per se* a violation of the right to a fair trial[17].

67. The proposed Bill contains detailed provisions on the conditions of necessity and threshold reliability. Furthermore, under section 55S, it empowers the court to exclude hearsay evidence, order a further trial or acquit the accused in specified circumstances. The proposed Bill ensures equality of arms between the defence and the prosecution regarding the admission of hearsay evidence. In fact, it places an even more onerous burden on the prosecution, which must prove the condition of necessity beyond reasonable doubt. Ultimately, the protection of an accused's right to a fair trial depends

---

[14] Article 11(2)(e) of the HKBOR provides for the right to examine, or have examined, the witnesses against an accused and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.

[15] Para 11.15 of the Report

[16] Para 11.29 of the Report

[17] Para 11.27 of the Report

not only on the law in isolation, but also on how safeguards are being applied to the particular facts of the case to ensure that the trial is fair in the round. In the circumstances, we consider the proposed Bill to be compatible with the right to fair hearing as guaranteed under the HKBOR.

CONSULTATION

68. Before taking the matter forward, DoJ would like to seek the views of the Judiciary, legal professional bodies, relevant government bureaux and departments, law schools and other interested parties on the proposed Bill outlined above.

69. Please address your views or comments on the proposed Bill to the following on or before 12 January 2026—

Policy Affairs Unit 2
Constitutional and Policy Affairs Division
Department of Justice
5/F, East Wing, Justice Place
18 Lower Albert Road
Central, Hong Kong SAR
(Subject: Evidence (Amendment) Bill Consultation)
Fax : 3918 4799
Email : criminalhearsay@doj.gov.hk

70. DoJ may, as appropriate, reproduce, quote, summarise or publish the written comments received, in whole or in part, in any form, without seeking permission of the contributing parties.

71. Names of the contributing parties and their affiliations may be referred to in other documents that DoJ may publish and disseminate by different means after the consultation. If any contributing parties do not wish their names and/or affiliations to be disclosed, please expressly state so when making your written submissions. Any personal data provided will only be used by DoJ and/or other government departments/agencies for purposes

which are directly related to the consultation.

Constitutional and Policy Affairs Division
Department of Justice
11 December 2025

#610008 v5B

Annex A

Summary of Recommendations of the LRC

The LRC made the following recommendations:

1. The existing law of hearsay in Hong Kong criminal proceedings be reformed comprehensively and coherently according to a principled, logical and consistent system of rules and principles. (Recommendation 1)

2. Any reform of the existing law of hearsay in Hong Kong criminal proceedings must have built-in safeguards that protect the rights of defendants and ensure the integrity of the trial process. (Recommendation 2)

3. The polar extreme options of no change or free admissibility, or options just short of these extreme positions, be rejected. (Recommendation 3)

4. The "best available evidence option" be rejected, for it is impractical for the parties to comply with, difficult for the court to enforce without becoming inquisitorial, contains insufficient safeguards, and may contribute to inefficient use of court time. (Recommendation 4)

5. Any reforms of the law of hearsay in criminal proceedings should apply in the same manner to both the prosecution and defence, although allowances for differences in the standard of proof are justifiable. (Recommendation 5)

6. The South African model, which admits hearsay on an entirely discretionary basis "in the interests of justice", be rejected because of concerns with the open-endedness of the discretion. (Recommendation 6)

7. The English model be rejected for two main reasons: its categories of automatic admissibility provide insufficient assurances of reliability and the terms of the residual discretion to admit hearsay are too open-ended and vague. (Recommendation 7)

8. The United States model be rejected because full codification of the existing exceptions cannot cater for all justifiable situations. (Recommendation 8)

9. A modified version of the New Zealand Law Commission model be adopted as the proposed model of reform. The LRC accordingly recommended that, save for those statutory provisions and common law rules respectively mentioned in proposals 4 and 5 of the Core Scheme, the admission of hearsay evidence should be based on a single statutory discretionary power to admit hearsay evidence if it is both necessary and reliable. (Recommendation 9A)

10. Only those common law exceptions provided in proposal 5 of the Core Scheme be preserved. (Recommendation 9B)

11. In cases where prosecution hearsay evidence has been admitted, the judge should have the power to direct a verdict of acquittal where upon an overview of the prosecution evidence once adduced, it would be unsafe to convict the accused. (Recommendation 9C)

12. The New Zealand Law Commission model proposes that the judge, in assessing the reliability criterion, only considers "circumstances relating to the statement". The LRC recommended that the ambit of listed factors to be considered under this criterion be widened to include the presence of supporting evidence. (Recommendation 9D)

Proposed model for reform: the Core Scheme

13. The Core Scheme envisages admitting hearsay in only one of four ways: an existing statutory exception (proposal 4); a preserved common law exception (proposal 5); consent of the parties (proposal 6); or the general discretionary power to admit hearsay (proposal 7). The LRC recommended that the Core Scheme, as set out in the Report, be adopted as a whole as the main vehicle for reforming the law of hearsay in Hong Kong criminal proceedings. (Recommendation 10)

14. The definition of hearsay in the Core Scheme should not include prior statements made by a witness who is available to testify in the trial proceedings. (Recommendation 11)

15. The definition of hearsay should include written and non-written, and verbal and non-verbal, communication. (Recommendation 12)

16. The common law rule that excludes implied assertions as hearsay be abrogated. (Recommendation 13)

17. Multiple hearsay be admissible under the Core Scheme only if each level of hearsay itself satisfies the Scheme's tests for admissibility. (Recommendation 14)

18. The Core Scheme applies only to those criminal proceedings that currently apply the common law hearsay rule. (Recommendation 15)

19. The Core Scheme should apply in sentencing proceedings only when the prosecution is relying on hearsay evidence to prove an aggravating factor. (Recommendation 16)

20. The Core Scheme should apply to extradition[1] proceedings. (Recommendation 17)

21. The codification of the exclusionary rule should be the starting point in the Core Scheme. (Recommendation 18)

22. The abrogation of all common law rules governing the admission of "hearsay evidence" in "criminal proceedings", as those are defined in the Core Scheme, with the exception of the rules governing the admissibility of admissions, confessions and statements against interest made by an accused, acts and declarations in furtherance of a joint or common enterprise or

[1] It is noted that while the Report referred to the extradition proceedings, it is more appropriate to use the surrender proceedings in the context of the HKSAR.

conspiracy, expert opinion evidence, evidence in bail proceedings, evidence in sentencing proceedings (except when the prosecution relies on hearsay evidence to prove an aggravating factor), public information, reputation as to character, reputation or family history, *res gestae*, and admissions by agents. (Recommendation 19)

23. With the exception of section 79 of the Evidence Ordinance (Cap 8), which should be repealed, the retention of all existing statutory provisions that enable the admission of hearsay evidence. (Recommendation 20)

24. The admission of hearsay evidence if the party or parties in relation to whom the evidence is to be adduced consent to the admission. (Recommendation 21)

25. At the heart of the Core Scheme is the discretionary power of the court to admit hearsay evidence if five preconditions are met: the declarant has been adequately identified; oral testimony of the evidence would have been admissible; the necessity and threshold reliability criteria have been satisfied; and the probative value of the evidence exceeds its prejudicial effect. The LRC recommended that this discretionary power to admit be the main vehicle by which to admit hearsay evidence in criminal proceedings. (Recommendation 22)

26. The declarant be identified to the court's satisfaction before the discretionary power to admit can be exercised. (Recommendation 23)

27. Hearsay evidence should be otherwise admissible before it can be admitted under the discretionary power. (Recommendation 24)

28. The necessity condition should only be satisfied where the declarant is genuinely unable to provide testimony of the hearsay evidence and not merely unwilling to do so. In particular, the necessity condition will only be satisfied if the declarant:

(a) is dead;

(b) is physically or mentally unfit to be a witness;

(c) is outside Hong Kong and it is not reasonably practicable to secure his attendance;

(d) cannot be found after all reasonable steps have been taken to find him; or

(e) refuses to give evidence on the ground of self-incrimination. (Recommendation 25)

29. The threshold reliability condition should only be satisfied where the circumstances provide a reasonable assurance that the statement is reliable. (Recommendation 26)

30. In assessing the threshold reliability condition, the court must have regard to the nature and contents of the statement, the circumstances in which the statement was made, the truthfulness of the declarant, the accuracy of the observations of the declarant and the presence of supporting evidence. (Recommendation 27)

31. The probative value of the hearsay evidence must always be greater than any prejudicial effect it may have on any party before it can be admitted under the discretionary power. (Recommendation 28)

32. Rules of court be made to require the party applying to admit hearsay evidence under the discretionary power to give timely and sufficient notice to all other parties to the proceedings. (Recommendation 29)

33. The party applying to admit hearsay evidence under the discretionary power has the burden of proving the condition of necessity to the required standard of proof, which will be beyond reasonable doubt if the party applying is the prosecution, and on a balance of probabilities if the party applying is the defence. (Recommendation 30)

34. Where hearsay evidence is admitted under the discretionary power, evidence relevant to the declarant's credibility (including other inconsistent statements), which would have been admissible had the declarant testified as a witness, be admitted. (Recommendation 31)

35. The addition of a new power requiring the trial judge, at the conclusion of the prosecution's case or any time thereafter, to direct a verdict of acquittal of an accused against whom hearsay evidence has been admitted under the discretionary power where the judge considers that, taking account of the factors listed at proposal 15(b) of the Core Scheme, and notwithstanding the fact that there is a prima facie case against the accused, it would be unsafe to convict the accused. The factors listed at proposal 15(b) to which the judge must have regard in deciding whether to exercise this power are the nature of the proceedings, the nature of the hearsay evidence, the probative value of the hearsay evidence, the importance of such evidence to the case against the accused, and any prejudice to an accused resulting from the admission of that hearsay evidence. (Recommendation 32)

Special topics

36. The exception in respect of bankers' records be retained but that its implementation should form part of the general exception in regard to the production of records as appears in Recommendations 34, 35 and 36 below. (Recommendation 33)

37. The exceptions in respect of business records and computer records be retained with the primary aim being simplification of the production of all records, with existing legislation relating to non-computerised records being replaced by a single section that applies to all documents irrespective of their varying nature. (Recommendation 34)

38. Insofar as computerised records are concerned:

(1) separate regimes should apply to data stored or generated in the course of business and that stored or generated for non-business

purposes; and

(2) specific consideration should be given to, inter alia, the implications arising from the storage of data outside of Hong Kong (and its retrieval) and the integrity of such data. (Recommendation 35)

39. Records complying with the proposed legislation will be automatically admissible subject to a discretion vested in the court to direct that a document not be admissible if the court is satisfied that the statement's reliability is doubtful. (Recommendation 36)

40. Further study of the topic of documentary and digital evidence as a whole, both as to the requirements for admissibility and the formalities or procedures for adducing such evidence in the trial process. (Recommendation 37)

41. The existing law that makes prior inconsistent statements of witnesses inadmissible for the truth of their content will not be changed. However, this should be reconsidered if and when there is an established general practice by law enforcement agencies of recording witness statements by reliable audio-visual means. (Recommendation 38)

42. In relation to prior consistent statements:

(1) where prior consistent statements are presently admitted under existing common law exceptions (eg prior identification, recent complaint, rebutting recent fabrication), they should also be admitted for their substantive truth; (Recommendation 39A)

(2) prior statements used by witnesses to refresh their memory should not be admitted for their substantive truth; (Recommendation 39B)

(3) the prior identification exception should be extended (in addition to persons) to objects and places generally; (Recommendation 39C) and

(4) the question of whether the recent complaint exception should be extended to all victim offences and to complaints made as soon as could reasonably be expected after the alleged conduct should be further studied together with the question of abolishing the recent complaint exception and replacing it with a narrower one that admits complaint evidence only for the purpose of narrative, in the sense of describing how the charge came to be laid. (Recommendation 39D)

43. Inclusion of an express provision that makes the physical record of an admitted prior statement presumptively removed from the jury's possession in their deliberations, unless the judge finds that the jury would be substantially assisted by receiving and reviewing the physical record. (Recommendation 40)

44. No specific regime be introduced for appeals against decisions on the admissibility of hearsay evidence. (Recommendation 41)

45. The new legislation should specifically address the issue of the admissibility of hearsay in sentencing in conformity with the general recommendations in the Report for safeguarded change to the existing law. (Recommendation 42A)

46. The new legislation should also specifically state that in all courts, in the sentencing phase, any disputed issue of fact or matter of aggravation must be proved by the prosecution beyond reasonable doubt. (Recommendation 42B)

Annex B

The Core Scheme

1. Hearsay means a statement that:

(a) was made by a person (the declarant) other than a witness;

(b) is offered in evidence at the proceedings to prove the truth of its content; and

(c) is a written, non-written or oral communication which was intended to be an assertion of the matter communicated.

2. Hearsay evidence may not be admitted in criminal proceedings except under the terms of these proposals.

3. Unless otherwise stipulated, all previous common law rules relating to the admission of hearsay evidence (including the rule excluding statements containing implied assertions) are abolished.

4. Nothing contained in these proposals shall affect the continued operation of existing statutory provisions that render hearsay evidence admissible.

5. The common law rules that relate to admissibility of the following evidence are not affected by these proposals:

(a) admissions, confessions, and statements against interest made by an accused;

(b) acts and declarations made during the course and in furtherance of a joint or common enterprise or conspiracy;

(c) expert opinion evidence;

(d) evidence admissible upon application for bail;

(e) evidence admissible in sentencing proceedings, except when the prosecution is relying on hearsay evidence to prove an aggravating factor;

(f) public information;

(g) reputation as to character;

(h) reputation or family tradition;

(i) *res gestae*; and

(j) admissions by agents.

6. (a) Hearsay evidence shall be admitted where each party in relation to whom the evidence is to be adduced agrees to its admission for the purposes of those proceedings.

(b) An agreement under this proposal may with the leave of the court be withdrawn in the proceedings for the purposes of which it is made.

7. Hearsay evidence not admitted under proposals 4, 5 or 6 is admissible only where:

(a) the declarant is identified to the court's satisfaction;

(b) oral evidence given in the proceedings by the declarant would be admissible of that matter;

(c) the conditions of

(i) necessity and

(ii) threshold reliability

stipulated in proposals 8 to 12 below are satisfied; and

(d) the court is satisfied that the probative value of the evidence is

greater than any prejudicial effect it may have on any party to the proceedings.

8. The condition of necessity will be satisfied only:

(a) where the declarant is dead;

(b) where the declarant is unfit to be a witness, either in person or in any other competent manner, at the proceedings because of his age or physical or mental condition;

(c) where the declarant is outside Hong Kong and it is not reasonably practicable to secure his attendance, or to make him available for examination and cross-examination in any other competent manner;

(d) where the declarant cannot be found and it is shown that all reasonable steps have been taken to find him; or

(e) where the declarant refuses to give evidence in circumstances where the declarant would be entitled to refuse to testify on the ground of self-incrimination.

9. The condition of necessity will not be satisfied where the circumstances said to satisfy the condition have been brought about by the act or neglect of the party offering the statement, or someone acting on that party's behalf.

10. The burden of proving the condition of necessity is on the party applying to admit the hearsay evidence. In the case of the prosecution, the standard of proof is beyond reasonable doubt, and in the case of the defence, the standard is on the balance of probabilities.

11. The condition of threshold reliability will be satisfied where the circumstances provide a reasonable assurance that the statement is reliable.

12. In determining whether the threshold reliability condition has been fulfilled, the court shall have regard to all circumstances relevant to the statement's apparent reliability, including:

(a) the nature and contents of the statement;

(b) the circumstances in which the statement was made;

(c) any circumstances that relate to the truthfulness of the declarant;

(d) any circumstances that relate to the accuracy of the observation of the declarant; and

(e) whether the statement is supported by other admissible evidence.

13. Rules of court are to be made that a party give notice of his intention to adduce hearsay evidence under proposal 7; that evidence is to be treated as admissible if notice has been properly served, and no counter notice has been served; that the failure to give notice means that the evidence will not be admitted save with the court's leave; that where leave is given, the tribunal of fact may draw inferences, if appropriate, from the failure to give notice; and that the failure to give notice may attract costs.

14. Where in any proceedings hearsay evidence is admitted by virtue of these proposals:

(a) any evidence which, if the declarant had given evidence in connection with the subject matter of the statement, 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 the declarant had made a statement inconsistent with the admitted statement shall be admissible for the purpose of showing that the declarant has contradicted himself.

15. (a) At the conclusion of the case for the prosecution, or at any time thereafter, in any proceedings in which hearsay evidence is admitted under proposal 7 of the Core Scheme, the court shall direct the acquittal of an accused against whom such evidence has been admitted under the terms of these proposals where the judge considers that, taking account of the factors listed at proposal 15(b), and notwithstanding the fact that there is a prima facie case against the accused, it would be unsafe to convict the accused.

(b) In reaching its decision under this proposal, the court shall have regard to:

(i) the nature of the proceedings;

(ii) the nature of the hearsay evidence;

(iii) the probative value of the hearsay evidence;

(iv) the importance of such evidence to the case against the accused; and

(v) any prejudice to an accused which may eventuate consequent upon the admission of such evidence.

Annex C

This draft is for consultation and is subject to change.

Evidence (Amendment) Bill 2026

Contents

Clause Page

Part 1

Preliminary

1. Short title and commencement 1

2. Enactments amended 1

Part 2

Amendments to Evidence Ordinance (Cap. 8)

3. Section 25 amended (Government Chemist's certificates) 2

4. Section 26 amended (certificates as to photographic process) 2

5. Part IVA added 2

Part IVA

Hearsay Evidence in Criminal Proceedings and Surrender Proceedings

Division 1—Preliminary

55C. Interpretation 3

55D. Meaning of *hearsay* 3

55E. Application 4

55F. References to prosecution or accused etc. in this Part 5

Clause Page

55G. When is hearsay evidence admissible 6

55H. Court's power to exclude evidence not affected 6

Division 2—Admission of Hearsay Evidence by Agreement of Parties

55I. Hearsay evidence admissible by agreement 6

Division 3—Admission of Hearsay Evidence on Unopposed Hearsay Evidence Notice or with Court's Permission

55J. Hearsay evidence admissible on unopposed hearsay evidence notice 8

55K. Hearsay evidence admissible with court's permission 9

55L. Requirements for hearsay evidence notice 9

55M. Requirements for opposition notice 10

55N. Court's power to vary requirement of sections 55L and 55M 11

55O. Withdrawal of notices 12

55P. Court's permission for admission of hearsay evidence 13

55Q. Condition of necessity 14

55R. Condition of threshold reliability 16

55S. Subsequent exclusion of hearsay evidence admitted with court's permission 16

Clause Page

Division 4—Common Law Rules relating to Hearsay Evidence

55T. Certain common law rules relating to exceptions to rule against hearsay preserved 19

55U. Implied assertion 19

Division 5—Admissibility of Certain Hearsay Evidence and Related Evidence

55V. Evidence for proving credibility 19

55W. Previous statements of witnesses 20

Division 6—Supplementary Provision

55X. Multiple hearsay 21

6. Section 79 repealed (admissibility of certain medical notes and reports) 21

7. Schedule renumbered 21

8. Schedule 2 added 21

Schedule 2 Common Law Rules relating to Exceptions to Rule against Hearsay Preserved 21

Part 3

Amendment to Air Pollution Control (Dust and Grit Emission) Regulations (Cap. 311 sub. leg. B)

9. Regulation 9 amended (size analysis and viscosity determination of sample) 26

A BILL

To

Amend the Evidence Ordinance to provide for the admissibility of hearsay evidence in criminal proceedings and surrender proceedings; and to provide for related matters.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

(1) This Ordinance may be cited as the Evidence (Amendment) Ordinance 2026.

(2) This Ordinance comes into operation on a day to be appointed by the Secretary for Justice by notice published in the Gazette.

2. Enactments amended

The enactments specified in Parts 2 and 3 are amended as set out in those Parts.

Part 2

Amendments to Evidence Ordinance (Cap. 8)

3. Section 25 amended (Government Chemist's certificates)

Section 25(1)—

Repeal

"the Schedule"

Substitute

"Schedule 1".

4. Section 26 amended (certificates as to photographic process)

Section 26(1)—

Repeal

"the Schedule"

Substitute

"Schedule 1".

5. Part IVA added

After Part IV—

Add

"Part IVA

Hearsay Evidence in Criminal Proceedings and Surrender Proceedings

Division 1—Preliminary

55C. Interpretation

In this Part—

declarant ( ), in relation to a statement adduced or to be adduced as hearsay evidence in any proceedings, means the person who made the statement;

hearsay ( )—see section 55D;

oral evidence ( ) includes evidence which, by reason of any disability, disorder or other impairment, a person called as a witness gives in writing, by signs or by way of any device;

statement ( ) means a representation of fact or opinion however made, including a written or non-written communication, or a non-verbal communication in the form of conduct, that is intended to be an assertion of any matter communicated;

surrender proceedings ( ) means—

(a) proceedings for committal under section 10 of the Fugitive Offenders Ordinance (Cap. 503); or

(b) an appeal under section 11 of that Ordinance.

55D. Meaning of *hearsay*

For the purposes of this Part—

(a) a statement adduced or to be adduced as evidence in any proceedings is hearsay if—

(i) it was made otherwise than by a person while giving oral evidence in the proceedings; and

(ii) it is adduced or to be adduced to prove the truth of its content;

(b) a reference to hearsay includes hearsay of whatever degree; and

(c) a reference to hearsay evidence is to be construed accordingly.

55E. Application

(1) This Part applies to—

(a) evidence adduced or to be adduced in criminal proceedings (other than proceedings in respect of sentencing), or surrender proceedings, in relation to which the strict rules of evidence apply; and

(b) specified evidence adduced or to be adduced in criminal proceedings in respect of sentencing.

(2) Despite subsection (1), this Part does not apply to evidence adduced or to be adduced in—

(a) proceedings commenced before the commencement date of this Part; or

(b) proceedings that relate to a case concerning national security (within the meaning of section 3(2) of the Safeguarding National Security Ordinance (6 of 2024)).

(3) For the purposes of subsection (1)(b), specified evidence is evidence that—

(a) is adduced or to be adduced by the prosecution to prove an aggravating factor; and

(b) is not information furnished under section 27 of the Organized and Serious Crimes Ordinance (Cap. 455), or under an order of the court.

(4) For the purposes of subsection (2)(a), proceedings are regarded as having been commenced—

(a) for criminal proceedings for an offence in respect of which a complaint is made or an information is laid—at the time when the complaint is made or the information is laid;

(b) for criminal proceedings for an offence in respect of which an indictment is preferred under section 24A(1)(b) of the Criminal Procedure Ordinance (Cap. 221)—at the time when the indictment is so preferred;

(c) for criminal proceedings in respect of sentencing—at the time when the criminal proceedings of which the sentencing proceedings form part are commenced; or

(d) for surrender proceedings that relate to a request for the surrender of a person to a place outside Hong Kong—at the time when a warrant for the arrest of the person is issued by a magistrate under section 7 of the Fugitive Offenders Ordinance (Cap. 503).

55F. References to prosecution or accused etc. in this Part

In applying a provision of this Part to evidence adduced or to be adduced in surrender proceedings that relate to a request for the surrender of a person (***subject person***) to a place outside Hong Kong (***requesting place***)—

(a) a reference in the provision to the prosecutor or prosecution is the requesting place;

(b) a reference in the provision to an accused is the subject person; and

(c) a reference in the provision to a party to the proceedings is to be construed accordingly.

55G. When is hearsay evidence admissible

Hearsay evidence is admissible in proceedings only if it is admissible under—

(a) Division 2, 3 or 5;

(b) a common law rule preserved by section 55T; or

(c) any other enactment.

55H. Court's power to exclude evidence not affected

This Part does not affect any power of the court to exclude evidence on grounds other than that it is hearsay.

Division 2—Admission of Hearsay Evidence by Agreement of Parties

55I. Hearsay evidence admissible by agreement

(1) Hearsay evidence is admissible in proceedings if the prosecutor and the accused for or against whom the hearsay evidence is to be adduced—

(a) make an oral agreement before the court for the admission of the hearsay evidence in the proceedings; or

(b) jointly produce to the court a written agreement made (whether before or during the proceedings) by both of them stating their agreement for the

admission of the hearsay evidence in the proceedings.

(2) An accused may make an oral agreement or written agreement for the purposes of subsection (1)—

(a) in person; or

(b) by the accused's counsel or solicitor on behalf of the accused.

(3) A written agreement made by the prosecutor and an accused for the purposes of subsection (1)(b) must purport to be signed by the prosecutor and by—

(a) if the agreement is made by the accused in person—

(i) where the accused is an individual—the accused; or

(ii) where the accused is a body corporate—a director, manager, company secretary or other similar officer of the body corporate; or

(b) if the agreement is made by the accused's counsel or solicitor on behalf of the accused—the counsel or solicitor.

(4) Hearsay evidence admissible in any proceedings under subsection (1) because of an oral agreement or written agreement made by an accused may be adduced in the proceedings only—

(a) by the prosecutor or the accused; and

(b) for or against the accused.

(5) An oral agreement or written agreement mentioned in subsection (1) made for the purpose of any proceedings relating to a matter—

(a) is to be taken as an agreement for the purpose of any subsequent proceedings relating to the matter; and

(b) may, with the permission of the court, be withdrawn for the purpose of—

(i) the proceedings for which it was made or produced; or

(ii) any subsequent proceedings relating to the matter.

(6) For the purposes of subsection (5), a reference to subsequent proceedings relating to a matter—

(a) includes an appeal in respect of the matter; but

(b) does not include a retrial or further trial of the matter.

Division 3—Admission of Hearsay Evidence on Unopposed Hearsay Evidence Notice or with Court's Permission

55J. Hearsay evidence admissible on unopposed hearsay evidence notice

(1) Hearsay evidence is admissible in proceedings if—

(a) a party to the proceedings who intends to adduce the hearsay evidence in the proceedings gives a hearsay evidence notice meeting the requirements specified in section 55L(1) in accordance with the requirements specified in section 55L(2); and

(b) no opposition notice meeting the requirements specified in section 55M(1) is given by any party to the proceedings in respect of the hearsay evidence notice in accordance with the requirements specified in section 55M(2).

(2) For the purposes of subsection (1), a reference to the requirements specified in section 55L(1) or (2) or 55M(1)

or (2) includes those requirements as varied under section 55N.

55K. Hearsay evidence admissible with court's permission

(1) Hearsay evidence is admissible in proceedings if—

(a) a party to the proceedings who intends to adduce the hearsay evidence in the proceedings gives a hearsay evidence notice meeting the requirements specified in section 55L(1) in accordance with the requirements specified in section 55L(2);

(b) after being given the hearsay evidence notice, a party to the proceedings gives in respect of the notice an opposition notice meeting the requirements specified in section 55M(1) in accordance with the requirements specified in section 55M(2) to oppose the admission of the hearsay evidence in the proceedings; and

(c) the court grants permission under section 55P(1) for the admission of the hearsay evidence in the proceedings.

(2) For the purposes of subsection (1), a reference to the requirements specified in section 55L(1) or (2) or 55M(1) or (2) includes those requirements as varied under section 55N.

55L. Requirements for hearsay evidence notice

(1) For the purposes of sections 55J(1)(a) and 55K(1)(a), a hearsay evidence notice to be given by a party to any proceedings who intends to adduce any hearsay evidence in the proceedings—

(a) must be in writing;

(b) must state, if known, the name of the declarant of the statement to be adduced as the hearsay evidence;

(c) if—

(i) the hearsay evidence is in the form of an oral statement—must state the content of the statement;

(ii) the hearsay evidence is in the form of a written statement—must be accompanied by a copy of the document in which the statement is contained; or

(iii) the hearsay evidence is not in the form of an oral statement or written statement—must contain a description of the hearsay evidence; and

(d) must state—

(i) the grounds for supporting the admission of the hearsay evidence in the proceedings; and

(ii) the facts in support of those grounds.

(2) For the purposes of sections 55J(1)(a) and 55K(1)(a), a hearsay evidence notice must be given to—

(a) each other party to the proceedings; and

(b) the court,

within 28 days after the day on which the date for the hearing in which the hearsay evidence is intended to be adduced is fixed.

55M. Requirements for opposition notice

(1) For the purposes of section 55K(1)(b), an opposition notice to be given by a party to any proceedings who has

been given a hearsay evidence notice in respect of any hearsay evidence—

(a) must be in writing;

(b) must state why, if an application for the court's permission were made under section 55P(1), the court should not grant permission for the hearsay evidence to be admitted;

(c) must state which facts, if any, stated in the hearsay evidence notice under section 55L(1)(d)(ii) are disputed by the party; and

(d) must state any other objection to the admission of the hearsay evidence.

(2) For the purposes of section 55K(1)(b), an opposition notice must be given to—

(a) each other party to the proceedings; and

(b) the court,

within 14 days after the day on which the hearsay evidence notice is given.

55N. Court's power to vary requirement of sections 55L and 55M

(1) The court may vary a requirement specified in section 55L(1) or (2) or 55M(1) or (2) regarding a hearsay evidence notice or opposition notice to be given in respect of any hearsay evidence intended to be adduced in any proceedings.

(2) Without limiting subsection (1), the court—

(a) may shorten or extend a time limit for giving a hearsay evidence notice or opposition notice; and

(b) may allow a hearsay evidence notice or opposition notice to be given orally.

(3) The court may exercise the power under subsection (1) on its own motion or on the application of a party to the proceedings.

(4) An application for extending a time limit for giving a notice mentioned in subsection (1) may be made before or after the expiry of the time limit.

(5) An application for extending a time limit for giving a notice mentioned in subsection (1) made after the expiry of the time limit—

(a) must be accompanied by the notice to be given; and

(b) must state the reason why the application is not made before the expiry of the time limit.

(6) The court may exercise the power under subsection (1) if the court is satisfied that—

(a) having regard to the nature and content of the hearsay evidence to which the notice relates, none of the parties to the proceedings is substantially prejudiced by the variation of the requirement;

(b) complying with the requirement is not reasonably practicable in the circumstances; or

(c) it is in the interests of justice to do so.

55O. Withdrawal of notices

(1) A party to proceedings may, with the permission of the court—

(a) withdraw a hearsay evidence notice meeting the requirements specified in section 55L(1) given by the party in accordance with the requirements specified in section 55L(2); or

(b) withdraw an opposition notice meeting the requirements specified in section 55M(1) given by the party in accordance with the requirements specified in section 55M(2).

(2) Despite subsection (1), a notice may not be withdrawn under that subsection after whichever is the earlier of the following—

(a) the hearsay evidence to which the notice relates is adduced in the proceedings;

(b) the court grants permission under section 55P(1) for the admission of the hearsay evidence in the proceedings.

(3) A party who withdraws a notice under subsection (1) is to be regarded as not having given the notice for the purposes of section 55J or 55K.

(4) For the purposes of subsection (1), a reference to the requirements specified in section 55L(1) or (2) or 55M(1) or (2) includes those requirements as varied under section 55N.

55P. Court's permission for admission of hearsay evidence

(1) The court may, for the purposes of section 55K(1)(c), grant permission for the admission of any hearsay evidence in any proceedings on the application of a party to the proceedings.

(2) The court may grant permission under subsection (1) if the court is satisfied that—

(a) the declarant of the statement to be adduced as the hearsay evidence is sufficiently identified;

(b) oral evidence given by the declarant in the proceedings would be admissible as evidence of the fact that the hearsay evidence is intended to prove;

(c) the condition of necessity is fulfilled in respect of the admission of the hearsay evidence in the proceedings;

(d) the condition of threshold reliability is fulfilled in respect of the admission of the hearsay evidence in the proceedings; and

(e) the probative value of the hearsay evidence is greater than any prejudicial effect it may have on any party to the proceedings.

55Q. Condition of necessity

(1) For the purposes of section 55P(2)(c), the condition of necessity is fulfilled in respect of the admission of any hearsay evidence in any proceedings if—

(a) the declarant of the statement to be adduced as the hearsay evidence is dead;

(b) the declarant is unfit to be a witness, either in person or in another competent manner, in the proceedings because of the declarant's age or physical or mental condition;

(c) the declarant is outside Hong Kong and neither of the following is reasonably practicable—

(i) securing the declarant's attendance at the proceedings;

(ii) making the declarant available for examination and cross-examination in another competent manner in the proceedings;

(d) the declarant cannot be found although all reasonable steps have been taken to find the declarant; or

(e) if the party applying for a permission for the purposes of section 55P(1) is the accused—the declarant refuses to give oral evidence in connection with the statement in the proceedings in circumstances where the declarant would be entitled to refuse on the ground of self-incrimination.

(2) Despite subsection (1), a party applying for a permission under section 55P(1) (***applicant***) may not rely on paragraph (a), (b), (c), (d) or (e) of subsection (1) to prove that the condition of necessity is fulfilled if—

(a) the circumstances mentioned in the paragraph relied on were brought about by the act or neglect of—

(i) the applicant; or

(ii) a person acting on behalf of the applicant; and

(b) the purpose of bringing about the circumstances was to prevent the declarant from giving oral evidence in the proceedings (whether at all or in connection with the statement).

(3) For the purposes of section 55P(2)(c)—

(a) the burden of proving that the condition of necessity is fulfilled is on the applicant; and

(b) the standard of proof required to prove that the condition of necessity is fulfilled is—

(i) if the applicant is the prosecution—beyond reasonable doubt; or

(ii) if the applicant is the accused—on the balance of probabilities.

55R. Condition of threshold reliability

(1) For the purposes of section 55P(2)(d), the condition of threshold reliability is fulfilled in respect of the admission of any hearsay evidence in any proceedings if the circumstances relating to the hearsay evidence provide a reasonable assurance that the hearsay evidence is reliable.

(2) In deciding whether the circumstances relating to the hearsay evidence provide a reasonable assurance that the hearsay evidence is reliable, the court may have regard only to—

(a) the nature and content of the statement to be adduced as the hearsay evidence;

(b) the circumstances in which the statement was made;

(c) any circumstances that relate to the truthfulness of the declarant of the statement;

(d) any circumstances that relate to the accuracy of the observation of the declarant; and

(e) whether the statement is supported by other admissible evidence in the proceedings.

55S. Subsequent exclusion of hearsay evidence admitted with court's permission

(1) This section applies to a trial of an offence in which any hearsay evidence has been admitted with the court's permission granted under section 55P(1).

(2) The court may, on an application of a party to the trial, exclude the hearsay evidence if the court is satisfied that it is in the interests of justice to do so.

(3) If the court excludes the hearsay evidence under subsection (2)—

(a) where the court considers it appropriate to continue with the trial after the exclusion—the court may direct that no weight is to be attached to the hearsay evidence for the purpose of the trial; or

(b) where the court considers it not appropriate to continue with the trial after the exclusion—the court may order a further trial.

(4) Further, if the hearsay evidence excluded under subsection (2) was adduced by the prosecution—

(a) where the hearsay evidence is excluded at the conclusion of the case for the prosecution for the offence and, after the exclusion, the court rules that the accused has no case to answer in relation to the offence—the court may direct the acquittal of the accused for the offence; or

(b) where the hearsay evidence is excluded after the conclusion of the case for the prosecution for the offence and the court considers that, had the hearsay evidence been excluded at the conclusion of the case for the prosecution for the offence, the court would have ruled that the accused had no case to answer in relation to the offence, the court may—

(i) rule that the accused no longer has a case to answer in relation to the offence; and

(ii) direct the acquittal of the accused for the offence.

(5) Division 3 of Part IV of the Criminal Procedure Ordinance (Cap. 221) applies to a ruling of no longer having a case to answer mentioned in subsection (4)(b)(i) as if it were a specified ruling within the meaning of that Division.

(6) In deciding whether it is in the interests of justice to exclude the hearsay evidence under subsection (2), the court may have regard only to—

(a) the nature of the proceedings, including whether it is a trial by jury or not;

(b) the nature of the statement adduced as the hearsay evidence;

(c) the probative value of the hearsay evidence;

(d) the importance of the hearsay evidence to the case of or against the accused;

(e) taking into account the totality of other evidence (if any), the prejudice that may be caused to the accused by the admission of the hearsay evidence (including any prejudice that may be caused by the lack of cross-examination of the declarant concerned); and

(f) whether there is any material change in circumstances of a nature that, if the changed circumstances had existed or been known at the time when the permission was granted, would likely have resulted in the court finding that—

(i) the condition of necessity was not fulfilled in respect of the admission of the hearsay evidence in the proceedings under section 55Q; or

(ii) the condition of threshold reliability was not fulfilled in respect of the admission of the hearsay evidence in the proceedings under section 55R.

Division 4—Common Law Rules relating to Hearsay Evidence

55T. Certain common law rules relating to exceptions to rule against hearsay preserved

(1) The common law rules set out in Schedule 2 are preserved.

(2) The words describing a common law rule mentioned in Schedule 2 are intended only to identify the rule and are not to be construed as altering the rule in any way.

55U. Implied assertion

Any evidence containing an implied assertion that, if this section had not been enacted, would have been excluded under any common law rule on the ground that it is hearsay, is not to be excluded on that ground.

Division 5—Admissibility of Certain Hearsay Evidence and Related Evidence

55V. Evidence for proving credibility

(1) This section applies if any hearsay evidence is admitted in any proceedings under Division 2 or 3, or under a common law rule preserved by section 55T.

(2) Any evidence that, if the declarant of the statement adduced as the hearsay evidence had given oral evidence in the proceedings in connection with the statement, would have been admissible in the proceedings as relevant to the declarant's credibility as a witness, is admissible in the proceedings.

(3) Also, any evidence tending to prove that the declarant made a statement that is inconsistent with the hearsay

evidence is admissible in the proceedings for showing that the declarant contradicted himself or herself.

55W. Previous statements of witnesses

(1) A previous statement made by a person giving oral evidence in any proceedings is admissible in evidence in the proceedings for proving the truth of its content if—

(a) any of the following conditions is fulfilled—

(i) the purpose of adducing the statement is to rebut a suggestion that the person's evidence has been recently fabricated;

(ii) the purpose of adducing the statement is to prove the person's prior identification of a person, object or place;

(iii) the statement is admissible in evidence in the proceedings under any common law rule relating to evidence of recent complaint; and

(b) while giving oral evidence, the person indicates that, to the best of the person's belief—

(i) the statement was made by the person; and

(ii) the content of the statement is true.

(2) Subsection (3) applies if, on a trial before a judge and jury—

(a) a previous statement made by a person giving oral evidence is admitted in evidence under this section; and

(b) the statement or a copy of the statement is produced as an exhibit.

(3) The exhibit must not accompany the jury when they retire to consider the verdict unless—

(a) all parties to the trial agree that it should accompany the jury; or

(b) the court considers it appropriate.

Division 6—Supplementary Provision

55X. Multiple hearsay

A statement that is hearsay is not admissible in evidence in proceedings to prove that an earlier statement that is hearsay was made unless both statements are admissible in evidence in the proceedings under this Part.".

6. Section 79 repealed (admissibility of certain medical notes and reports)

Section 79—

Repeal the section.

7. Schedule renumbered

The Schedule—

Renumber the Schedule as Schedule 1.

8. Schedule 2 added

After Schedule 1—

Add

"Schedule 2

[s. 55T]

Common Law Rules relating to Exceptions to Rule against Hearsay Preserved

Rule 1

Confessions etc.

Any rule of law under which in criminal proceedings an admission, a confession, a statement against self-interest or a mixed statement made by an accused is admissible in evidence.

Rule 2

Joint Enterprise or Conspiracy

Any rule of law under which in criminal proceedings a statement made by a party in furtherance of a joint enterprise or conspiracy is admissible in evidence against another party to the enterprise or conspiracy for proving the truth of its content.

Rule 3

Expert Opinion

Any rule of law under which in criminal proceedings the opinion of a person called as a witness on an issue in the proceedings on which the person is qualified to give expert evidence is admissible in evidence.

Rule 4

Public Information

Any rule of law under which in criminal proceedings—

(a) a published work dealing with a matter of a public nature (for example, history, a scientific work, a dictionary or a map) is admissible as evidence of facts of a public nature stated in the work;

(b) a public document (for example, a public register and a return made under public authority with respect to a matter of public interest) is admissible as evidence of facts stated in the document;

(c) a record (for example, the record of a court, treaty, Government grant, pardon or commission) is admissible as evidence of facts stated in the record; or

(d) evidence relating to a person's age or date or place of birth may be given by a person without personal knowledge of the matter.

Rule 5

Reputation as to Character

Any rule of law under which in criminal proceedings evidence of a person's reputation is admissible in evidence for proving the person's good or bad character.

Rule 6

Reputation or Family Tradition

Any rule of law under which in criminal proceedings evidence of reputation or family tradition is admissible in evidence for proving or disproving—

(a) pedigree or the existence of a marriage;

(b) the existence of any public or general right; or

(c) the identity of any person or thing.

Rule 7

Res Gestae

Any rule of law under which in criminal proceedings a statement is admissible in evidence for proving the truth of its content if—

(a) the statement was made by a person so emotionally overpowered by an event that the possibility of concoction or distortion can be disregarded;

(b) the statement accompanied an act that can be properly evaluated as evidence only if considered in conjunction with the statement; or

(c) the statement relates to a physical sensation or a mental state (for example, intention or emotion).

Rule 8

Admissions by Agents etc.

Any rule of law under which in criminal proceedings—

(a) an admission made by an agent of an accused is admissible against the accused in evidence for proving the truth of its content; or

(b) a statement made by a person to whom an accused refers another person for information is admissible against the accused in evidence for proving the truth of its content.".

Part 3

Amendment to Air Pollution Control (Dust and Grit Emission) Regulations (Cap. 311 sub. leg. B)

9. Regulation 9 amended (size analysis and viscosity determination of sample)

Regulation 9(a)(ii) and (b)(ii)—

Repeal

"the Schedule"

Substitute

"Schedule 1".

Annex II

Evidence (Amendment) Bill 2026
List of Consultees

Legal Professional Bodies

1. Hong Kong Bar Association*
2. The Law Society of Hong Kong#

Government

3. Judiciary*
4. Security Bureau*
5. Labour and Welfare Bureau*
6. Labour Department*
7. Legal Aid Department*
8. Hong Kong Police Force*
9. Independent Commission Against Corruption*
10. Customs and Excise Department
11. Immigration Department
12. Fire Services Department*

Law Schools

13. Faculty of Law, The University of Hong Kong*
14. Faculty of Law, The Chinese University of Hong Kong

15. School of Law, The City University of Hong Kong*

Other Organisations

16. Duty Lawyer Service*

17. Securities and Futures Commission*

18. Office of the Privacy Commissioner for Personal Data*

*: The consultees who replied to the Consultation Paper before the cut-off date (two weeks before the Panel meeting). The DoJ's responses to these submissions are set out Annex III.

#: The consultee who replied to the Consultation Paper after the cut-off date. The submission is currently under review and is therefore not reflected in Annex III.

Annex III

Summary of Comments and Suggestions on the proposed Evidence (Amendment) Bill 2026[1] and Department of Justice (DoJ)'s Responses

Issues	Respondents' Comments/Suggestions	DoJ's Responses
General		
1 Enhancing access to justice	(1) In general, the respondents expressed support for the proposed Bill, and appreciated that it: a. addresses the widespread concerns over the years about hearsay evidence; b. changes the highly restrictive hearsay evidence rule; c. provides a comprehensible and principled approach to the admissibility of hearsay evidence in criminal proceedings; d. incorporates sufficient and effective safeguards after relaxing the hearsay rule, while rendering relevant and reliable hearsay evidence admissible; e. introduces new gateways for adducing hearsay evidence in situations where it is currently inadmissible, for example, where the witness is outside Hong Kong or cannot otherwise be located or contacted. These specific gateways are valuable in enabling the effective prosecution of	We are grateful for the broad support expressed for the proposed Bill and for the constructive feedback received during the consultation process. The responses generally affirm the direction of the proposed legislative amendments, recognizing the value of the proposed reforms in enhancing access to justice and ensuring fairness of criminal proceedings.

[1] References to the "proposed Evidence (Amendment) Bill 2026" and the "proposed Bill" in this Summary refer to the working draft of the proposed Evidence (Amendment) Bill 2026 at Annex C to the Consultation Paper issued by DoJ in December 2025 for the purpose of consultation.

	cases; f. aligns with the general trend across the common law world to move from admissibility as the key issue in evaluating evidence to that of weight; g. puts Hong Kong on a par with other jurisdictions on hearsay evidence; h. makes a significant step forward in strengthening the enforcement framework against crimes; i. places the prosecution and the defence on an equal playing field in the admission of hearsay evidence j. inaugurates a much-needed discretionary power in the law of criminal hearsay, for which there is a dire need for modernization	
Section 55E – Application		
2 Exclusion of NS proceedings	(1) It is unclear why the proposed Bill's hearsay provisions should not apply to national security ("NS") cases. The justifications regarding disinformation risk could apply to any international case. The general principles of a fair trial, the public interest, and efficiency should apply equally to NS cases as they do to non-NS cases.	The HKSAR has an overriding constitutional duty under the National Security Law ("NSL") to safeguard national security effectively. Procedural reforms must not compromise this obligation. The distinct nature of NS threats necessitates a tailored evidential approach. There is no issue of disparate treatment. The principle of equality before the law requires that similar treatment be accorded to comparable situations. In this context, the appropriate comparator is not between a party in a NS case and a party in a general criminal case. Rather, it is between the

		prosecution and the defence within the same NS proceeding. This principle was affirmed in *HKSAR v Chow Hang Tung*[2], where the court dismissed a challenge regarding the prohibition of overseas live television links in NS cases. The court held that the principle of "equality of arms" requires that the accused's right to call witnesses be subject to the same conditions as those of the prosecution. Since the proposed exclusion in the proposed Bill applies equally to both the prosecution and the defence in NS cases, subjecting both sides to identical restrictions regarding the admission of hearsay, there is no unfairness to either party. Also, the general position remains that witnesses should give direct evidence in court. The admission of hearsay is not permitted as of right.
	(2) NS cases are not convincingly more vulnerable to fabricated evidence than other cases of organized crimes (e.g., triads, cross-border groups), as forensic processes can expose less than credible evidence, and overseas evidence would still need to meet the necessity and threshold reliability conditions.	NS proceedings are uniquely vulnerable to disinformation and evidence manipulation by hostile actors, especially from foreign sources. The risk scale and NS implications are not commensurate with ordinary criminal cases. This threat is distinct from organized crime, involving strategic disinformation campaigns by hostile actors aimed at undermining NS itself. The primary concern is the irreparable risk posed by the mere introduction of such material or information into the public domain, even if later ruled unreliable or inadmissible.
	(3) Concerns about dissemination of sensitive information could be addressed by the existing provision in section 123 of the	Regarding section 123 of Cap. 221, it is not a complete or proportionate solution to the specific risk posed by individual pieces of hearsay evidence. Section 123 of Cap. 221 concerns

[2] [2025] 5 HKLRD 270

	Criminal Procedure Ordinance (Cap. 221), which allows proceedings to be held in closed court to safeguard NS, rather than by excluding the new hearsay provisions entirely.	whether the whole proceedings should take place in a closed court if it appears to the court that it is necessary to do so for the purpose for safeguarding national security (see s.123(1) and (1AA)). It is also noted that the closed court arrangement is specifically governed by Article 41 of the NSL[3] which provides that such arrangement is allowed when state secrets or public order is involved in the proceedings such that it is not appropriate to take place in open court. Both legal requirements impose a high threshold to justify holding a closed court. This is an exceptional measure not suited for routinely managing the risk presented by a single piece of potentially sensitive hearsay evidence. Rather, the exclusionary approach under the proposed Bill is a more targeted and proportionate safeguard that prevents the specific risk at the point of admission, without necessitating the drastic step of closing the entire proceedings.
	(4) Sedition cases under the repealed provisions in the Crimes Ordinance (Cap. 200) have long been tried under the same evidence rules as other criminal offences. Article 41 of the NSL[4] applies HKSAR procedural laws, indicating intent to "domesticate" NS crimes into existing criminal law framework, rather than creating a wholly separate procedural category, except for specific NSL-stipulated exceptions (e.g., jury trial, bail	While Article 41 of the NSL provides for applying HKSAR procedural laws, it inherently allows for necessary adaptations to meet specific NS safeguarding requirements. This exclusion is one such justified and specific adaptation, consistent with the NSL's overarching purpose. For example, section 5 of the Courts (Remote Hearing) Ordinance (Cap. 654) prohibits NS proceedings from being conducted by way of remote hearings.

[3] Article 41 (para. 4) of the NSL: "審判應當公開進行。因為涉及國家秘密、公共秩序等情形不宜公開審理的，禁止新聞界和公眾旁聽全部或者一部分審理程序，但判決結果應當一律公開宣佈。"

[4] Article 41 (para. 1) of the NSL: "香港特別行政區管轄危害國家安全犯罪案件的立案偵查、檢控、審判和刑罰的執行等訴訟程序事宜，適用本法和香港特別行政區本地法律。"

	presumption).	
	(5) Excluding NS cases will mean the prosecution is deprived of more liberal rules to admit hearsay evidence to prove its case. The cost-benefit balance would lean more in favour of having hearsay evidence to strengthen prosecution cases than the risk of the defence fabricating evidence. Barristers and solicitors have professional duties not to adduce evidence which they know or suspect is false.	The "cost-benefit" analysis in the NS context differs fundamentally from that in general crime. The primary objective in NS cases is the prevention, suppression, and punishment of acts endangering NS. Bearing in mind the unique risks associated with NS, the paramount objective is to eliminate such risks including the risk of opening the door to untested, potentially fabricated accounts or disinformation from hostile actors being placed on the court record. Therefore, maintaining the well-tested evidentiary rules under the common law for NS cases would better protect the integrity of NS proceedings and NS over the evidentiary convenience of either party. Moreover, experience in previous NS proceedings best illustrated that the successful prosecution lies in meticulous preparation and reliance on reliable and cogent evidence. While the professional duties of legal practitioners are recognized and respected, they are not and should not be burdened as a complete safeguard against sophisticated, state-level, or highly organized disinformation campaigns often associated with NS threats. The exclusion will completely foreclose the risk of such material entering the proceedings while ensuring strict equality of arms and the right to a fair trial.

	(6) If the exclusion of NS cases is to be maintained, the language of section 55E(2)(b) should be refined to make it only apply to "proceedings <u>of</u> a case concerning security". The existing proposed language of "proceedings <u>that relate to</u> a case concerning…" is somewhat vague and could capture proceedings only tangentially related to a NS case.	We agree that clarity is paramount. The policy intent is to ensure that the exclusion covers all proceedings concerning national security and offences endangering national security. We will consider if the drafting language can be improved to clarify the policy intent above.
	(7) To fully align with the intent to exclude NS proceedings from the scope of the proposed Bill, it is proposed that section 55E(2)(b) be amended to explicitly exclude "specified evidence" alongside "evidence", thereby ensuring that the exclusion covers all stages of NS cases, including sentencing.	Our policy intent is to exclude all stages of NS proceedings, including sentencing proceedings, from the scope of the proposed Bill. We thank the respondent for the drafting comment and will aim to ensure that the provision achieves this policy intent.
3 Proof of mitigating factor	(1) The Department is asked to clarify whether Part IVA applies to defence evidence intended to prove a mitigating factor. If yes, this should be spelt out in the definition of "specified evidence". If not, the rationale behind and the mechanism for introducing defence evidence to prove a mitigating factor should be explained.	The proposed Bill is designed to regulate only those specific proceedings identified in section 55E, rather than imposing a blanket restriction on adducing hearsay evidence across all criminal matters. The term "proceedings" in section 55G is not a generic reference; it is intended to be construed against the scope of proceedings defined by section 55E. Consequently, if a proceeding falls outside the scope of section 55E, such as hearsay evidence adduced by an accused in sentencing proceedings to prove a mitigating factor, it would remain unaffected by the new statutory scheme. In such instances, the status quo prevails, and admissibility of hearsay evidence

		would continue to be governed by existing common law principles and practice.[5] We will consider if the drafting language can be improved to clarify the policy intent above.
Section 55G – Admissibility of hearsay evidence in applicable proceedings		
4 Admissibility of implied assertion not included	(1) A respondent raised queries as to whether section 55G should include an express reference to section 55U, which permits implied assertions to be adduced as admissible hearsay.	Section 55U implements Recommendation 13 in the Report on "Hearsay in Criminal Proceedings" ("Report") of the Law Reform Commission ("LRC"), which seeks to abrogate the common law rule that excludes implied assertions as hearsay. With the said common law rule abrogated, implied assertions would no longer be considered as hearsay. Since section 55G relates to the admissibility of hearsay evidence in applicable proceedings (as defined in section 55E), we consider that reference to section 55U is not required.
Section 55I – Hearsay evidence admissible by agreement		
5 Oral agreement to admit hearsay evidence	(1) The inclusion of oral agreement as a valid method for admitting hearsay evidence is questionable. Unlike the proposed section 55I, admissions made under section 65C of the Criminal Procedure Ordinance (Cap. 221) must be put into writing as "Admitted Facts". "Oral agreement" is currently undefined in the Evidence	First of all, the mechanism in section 55I is comparable to that of section 65C of the Criminal Procedure Ordinance (Cap. 221). An unrepresented accused may admit facts which are to be considered as conclusive evidence in a criminal trial under section 65C of Cap. 221[6] and section 65C(2)(b) of Cap. 221 provides that "an admission under this section, **if made otherwise than in court**, shall be made in writing" (emphasis supplied). Hence, section 65C of Cap. 221 also allows the oral

[5] Under existing practice, hearsay evidence may be admissible in sentencing proceedings to prove a mitigation factor if it is credible. See *HKSAR v Ma Suet-chun* [2001] 4 HKC 337 at para. 8, *R v Gardiner* (1982) 68 CCC (2d) 477 at para. 109; *Patrick Smith* (1988) 87 Cr. App. R 393, at 398; Sentencing in Hong Kong, 11th Edition at para. 2-16; Archbold Hong Kong 2026 at para. 11-2A.

[6] *Lam Man-woo v. R* [1974] HKLR 331, at 336

	Ordinance (Cap. 8) or the proposed Bill, and there is no prescribed formality of how such "oral agreement" is to be constituted. Such absence of clear procedure is haphazard, especially for an accused appearing in person. There is concern that unrepresented defendants may agree to admit hearsay evidence without fully understanding the legal consequences or the scope of what they are admitting. Prosecutors have a duty of fairness. They should generally avoid informal oral communications with unrepresented parties and written communication is preferable. Relying on oral confirmation from an unrepresented accused fails to provide necessary procedural safeguards and risks unfairness in the adversarial system. The Department is asked to consider whether sufficient safeguard is afforded to an unrepresented accused.	admission of conclusive facts if such admission is made in court. As such, we consider that it is appropriate to allow hearsay evidence to be admitted by oral agreement if it is made before the court. In normal cases, the issue of admitting hearsay evidence should be resolved at the pre-trial stage and the parties to the proceedings should have ample time to prepare a written agreement on the admission of hearsay evidence. However, it is always possible that there may be issues arising during the trial and it may be impracticable for the parties to prepare a written agreement, e.g. an unrepresented accused may inadvertently attempt to adduce a piece of relevant but uncontroversial hearsay evidence during trial. The proposed section 55I(1)(a) would provide the necessary flexibility to deal with such situations promptly. This flexibility is particularly important in mid-trial circumstances where time is of the essence, especially in jury trials. Where parties already agree to admit hearsay evidence, it would be unnecessarily rigid to require a written agreement in all cases. Further, similar to section 65C of Cap. 221, the proposed section 55I(1)(a) stipulates that oral agreement for the admission of the hearsay evidence has to be made **before the court**. As such, the parties to the proceedings have to identify and inform the court of the piece of hearsay evidence that they agreed to admit under section 55I(1)(a) in clear terms. With judicial oversight on the matter, we are confident that the risk of prejudice to the unrepresented accused would be minimal.

		As rightly pointed out, prosecutors have a duty of fairness and they are to abide by the Prosecution Code. Moreover, the court has an overriding duty to ensure that the proceedings are conducted in a fair manner and hence, we are confident that the court would ensure that the unrepresented accused understands the implications of agreeing to admit hearsay evidence fully. As such, the unrepresented accused's right to fair trial would not be compromised and the risk of prejudice or abuse against an unrepresented accused would be minimal.
	(2) While section 55L requires a formal hearsay evidence notice with specific requirements, no such notice is required to be given for any agreement under section 55I. The Department should clarify if a formal notice under section 55J should be required to accurately document these agreements to ensure a clear record of exactly what evidence is being admitted.	In normal cases, the issue of admitting hearsay evidence should be resolved at the pre-trial stage and the parties to the proceedings should have ample time to issue a formal hearsay evidence notice or to prepare a written agreement on the admission of hearsay evidence. Given that oral agreements are intended to address exceptional circumstances arising during the trial, requiring prior written notice would be impractical and would defeat the purpose of the provision. Furthermore, this approach is consistent with the wider framework, as the proposed Bill also permits hearsay evidence notices and opposition notices to be given orally with the court's permission under the proposed section 55N. On the other hand, an oral agreement for the admission of the hearsay evidence has to be made **before the court** and in order for such piece of hearsay evidence to be admitted, the parties to the proceedings have to identify and inform the court such piece of hearsay evidence that they agreed to admit under section 55I(1)(a) in clear terms. As such, there is a clear court

		record of the exact piece of evidence being admitted.
	(3) Without specification of how such "oral agreement" pursuant to section 55I(1) is to be accurately recorded and documented, parties would need to request for court transcript to ascertain what exactly was agreed, which could prolong the proceedings unnecessarily where disputes arise.	Unlike section 65C of the Criminal Procedure Ordinance (Cap. 221), which deals with the admission of facts, the proposed section 55I concerns the admission of hearsay evidence, which is a statement defined under the proposed sections 55C and 55D. As such, parties to the proceedings are not agreeing to some abstract concept or set of facts, but rather to a specific piece of evidence that should already exist in a readily accessible form, e.g. a witness statement, a document, a sound recording, or a video file. In practice, it is expected that the medium containing the hearsay statement should be documented as an exhibit. In such a case, the risk of a party not knowing what they are agreeing to is indeed low, as is the need for a court transcript.
6 Withdrawal of agreement	(1) What the test or factors should the court apply or have regard to in deciding whether to permit withdrawal of an agreement? Should the test be set out to be "in the interests of justice"? Should the relevant factors be set out in section 55I(5)(b) and should they be similar to some of those in section 55S(6)?	We envisage that there might be cases where agreement for the admission of hearsay evidence may be made but parties subsequently would like to withdraw the agreement e.g. an accused changes his/her legal representation and the new counsel forms a different view on the hearsay evidence. Unlike sections 55N, 55P, 55R and 55S, agreement for the admission of hearsay evidence is made on a voluntary basis. Further, the grounds for withdrawal are also fact-sensitive. Hence, we consider that it is not appropriate to lay down the test and the factors that the court should apply or have regard to when considering the application for withdrawal as it might introduce a rigidity that could undermine flexibility and judicial discretion.

7 Subsequent proceedings	(1) Would a magistracy review under section 104 of the Magistrates Ordinance (Cap. 227) or a review of sentence under section 81A of the Criminal Procedure Ordinance (Cap. 221) be regarded as "subsequent proceedings relating to a matter"? Should the wording of section 55I(6)(a) be amended to expressly include "a review"?	We agree that a magistracy review under section 104 of the Magistrates Ordinance (Cap. 227) and a review of sentence under section 81A of the Criminal Procedure Ordinance (Cap. 221) are to be regarded as "subsequent proceedings relating to a matter". We will examine whether the drafting language can be refined.
Division 3 – Admission of Hearsay Evidence on Unopposed Hearsay Evidence Notice or with Court's Permission		
8 Right to cross-examination and risks to fair trial	(1) Division 3, by permitting the admission of hearsay evidence to prove the truth of its content, forsakes parties of the right to cross-examination, which is the very essence of the common law criminal trial and the "greatest legal engine ever invented for the discovery of truth". The right to cross-examine is constitutionally protected under Article 87 of the Basic Law and Article 11 of the Bill of Rights. Denying a defendant this fundamental right not only denies him of a fair trial, but may also result in actual wrongful conviction because the "truth quality" of the adduced hearsay evidence against the accused cannot be tested. These risks are not alleviated by giving the defendant a similar right to adduce hearsay evidence,	The Department acknowledges the importance of the right to cross-examination in criminal proceedings. However, we respectfully disagree that Division 3 forsakes parties of the right to cross-examination. The right to a fair trial under Article 87 of the Basic Law and Article 11(1) of the Hong Kong Bill of Rights does not guarantee an absolute right to cross-examine every witness in all circumstances. It is a right to obtain the attendance and examination of witnesses under the same conditions as witnesses against the accused, which is a procedural right. The unavailability of a witness does not of itself constitute a breach of the right to call witnesses. The fact that a witness is beyond reach does not establish a breach, provided the witness has not been put beyond reach by the actions of the prosecution or the Government.[7]

[7] *HKSAR v Hon Ming Kong* [2014] 2 HKLRD 710, at paras 469-470, affirmed in *HKSAR v Chow Hang Tung* [2025] 5 HKLRD 270 at paras 24-26.

	or by the formal and procedural safeguards set out in the rest of Division 3, such as the conditions of necessity and threshold reliability. The Department is urged to review how other jurisdictions considered by the Law Reform Commission have overcome similar constitutional hurdles regarding hearsay and to evaluate the impact of those reforms for further insights in steering the proposed Bill ahead.	Division 3 provides a carefully circumscribed scheme for admitting hearsay evidence as an exception to the hearsay rule at common law, applicable only where certain strict conditions are met. It contains multiple safeguards, including the condition of necessity, condition of threshold reliability, and judicial discretion to exclude hearsay evidence and order a further trial. Furthermore, even where hearsay evidence is admitted against the accused, the court must carefully assess the weight to be given to such evidence and must not accept its contents as true without proper evaluation. These safeguards work cumulatively to ensure that hearsay evidence is admitted only where necessary and reliable, and that the accused's right to a fair trial is protected. The LRC undertook a comprehensive comparative study of the hearsay evidence regimes in England and Wales, New Zealand, Australia, Canada, Scotland, and South Africa in formulating its recommendations. An entire chapter of the Report (Chapter 11) was devoted to discussing human rights implications, and the LRC gave due regard to human rights concerns in formulating its recommendations. The proposed Bill is based on the LRC's recommendations, which have already drawn upon the experience from these jurisdictions. The Department considers that the proposed Bill enhances the truth-finding function of criminal trials by allowing relevant and reliable evidence to be considered. In practice, insisting on direct testimony may in some situations frustrate the interests of justice, for example, where a witness has died, is unfit to testify, or cannot be located despite reasonable efforts. In such

		cases, excluding hearsay evidence may actually impede the discovery of truth and the proper administration of justice.
9 Implications for conduct of trial	(1) Division 3 may likely divert the resources of both sides towards searching for past hearsay materials – and for evidence for countering the reliability of the hearsay materials adduced by the opposite side. This may likely lengthen criminal trials, and increase their costs.	Division 3 enhances access to justice by enabling parties to adduce relevant and reliable hearsay evidence that would otherwise be excluded. Parties retain full discretion over the conduct of their cases, including decisions on what evidence to adduce and whether to challenge the reliability of hearsay evidence adduced by the opposing side. The concern about diversion of resources presupposes that parties will engage in extensive searches for hearsay materials and challenges to such evidence. However, this concern overlooks two important considerations. First, hearsay evidence will only be admitted where the conditions of necessity and threshold reliability are both satisfied. The necessity requirement ensures that hearsay evidence is not admitted where direct oral evidence is reasonably available. This inherently limits the scope for parties to engage in wide-ranging searches for hearsay materials. Second, section 55L(2) requires a hearsay evidence notice to be given within 28 days after the fixing of the trial date and section 55M(2) requires the opposition notice to be given within 14 days thereafter. Any application to vary the time requirement will only be approved by the court under section 55N if one of the conditions under section 55N(6) is met. The court retains robust case management powers to ensure the efficient conduct

		of proceedings and is empowered to reject unmeritorious applications to adduce hearsay evidence out of time or unreasonable requests for adjournments to oppose such evidence. In any event, the Department considers that any increase in time or resources required to assess the admissibility of hearsay evidence will be outweighed by the benefits of allowing relevant and reliable evidence to be considered.
Section 55J – Hearsay evidence admissible on unopposed hearsay notice		
10 Unopposed admission	(1) The proposed Bill clarifies the court's broad power to extend time for opposing admission of hearsay evidence (section 55N), addressing previous concerns over admission based solely on lack of opposition. This advances the broader admission of hearsay evidence while promoting practitioner diligence in filing appropriate notices in a timely manner, and aligns with the LRC's recommendation in the Report for admission of hearsay evidence by consent[8].	We welcome the respondent's endorsement of the proposed mechanism for admitting hearsay evidence on unopposed hearsay notice.
Sections 55L and 55M – Requirements for hearsay evidence notice and opposition notice		
11 Formats of	(1) In order to allow some degree of uniformity in the formats of the hearsay	We agree that adopting standard forms is beneficial to the court and all parties to the proceedings. Since the issuance of hearsay

[8] See paragraphs 9.40-41 of the Report.

hearsay notices and opposition notices	evidence notice and opposition notice, can standard formats of such notices be set out in a Schedule to the Evidence Ordinance? Prescribed forms can promote judicial efficiency and timely resolution of the proceedings.	evidence notice and opposition notice relates to the conduct of court proceedings, we will explore the feasibility of setting out the standard formats of notices.
12 Identification of the statement or assertion of truth sought to be proved under section 55L(1)(c)(iii)	(1) According to section 55L(1)(c)(iii), the hearsay evidence notice must contain "a description of the hearsay evidence" where the hearsay evidence is not in the form of an oral statement or a written statement. In other words, the hearsay evidence should be in the form of conduct. However, in some instances, it may be unclear as to what the statement or assertion sought to be proved by the conduct in question. It is thus suggested that section 55L(1)(c)(iii) should be amended so as to make clear that a description or identification of the statement or assertion the truth of which is sought to be proved by the conduct is required.	We agree that, in the context of section 55L(1)(c)(iii), requiring the applicant to state a description or identification of the statement or assertion the truth of which is sought to be proved by the conduct in the hearsay evidence notice would enable the court and other parties to the proceedings to better understand the substance of the application. We will examine whether the drafting language can be refined.
Section 55Q – Condition of necessity		
13 Burden of proof	(1) If the prosecution is the applicant seeking to admit the hearsay evidence, it will have to satisfy the condition of necessity beyond reasonable doubt. This may lead	The "beyond reasonable doubt" standard is the standard of proof that the prosecution has all along been required to discharge when proving the elements of a criminal offence, often involving complex factual matrix and subjective mental

	to practical issues which require further clarification. For example, questions may be raised about what kind of evidence the prosecution must present to prove the condition of unfitness beyond reasonable doubt.	states. Applying the same standard to proving the condition of necessity does not create a novel or insurmountable challenge. It is a standard that the courts and the prosecution are familiar with. Besides, the adoption of the "beyond reasonable doubt" standard in proving the admissibility of a piece of evidence is not new as well. For example, a party to the trial may adduce documentary records in a criminal proceeding as prima facie evidence of any fact stated therein under section 22 of the Evidence Ordinance (Cap. 8) if certain conditions have been satisfied. To prove that those conditions are satisfied, the standard of proof that the prosecution has to discharge is one of "beyond reasonable doubt"[9]. In the context of proving that the declarant falls under subsection (1)(b) of section 55Q, admissible evidence has to be adduced and the existing rules of evidence apply. This may involve calling the medical practitioner who concluded that the declarant is unfit to testify before the court, or admitting a witness statement made by such medical practitioner pursuant to section 65B of the Criminal Procedure Ordinance (Cap. 221).
	(2) Given that the defendant has no chance to cross-examine the declarant, and that a defendant bears no burden to prove innocence, the standard for proving the condition of necessity by the defendant	The Department does not agree that the standard of proof for the defence to prove necessity should be evidential. The proposed standard, beyond reasonable doubt for the prosecution and balance of probabilities for the defence, implements the LRC's Recommendation 30. Notably, this

[9] See *R v. Mattey & Queeley* [1995] Crim LR 308 and Archbold Hong Kong 2026, paragraph 9-71

	should be evidential, rather than on balance of probabilities.	recommendation was formulated in direct response to concerns raised by the Bar Association during consultation. The LRC initially proposed that both prosecution and defence should prove necessity on the balance of probabilities. The Bar Association took issue with this initial proposal and pointed out that standards of proof in criminal proceedings are fundamentally asymmetrical as between defence and prosecution. The LRC Sub-Committee carefully considered the Bar's submissions and revised its position accordingly, recommending that the prosecution should prove necessity beyond reasonable doubt, while the defence should prove it on the balance of probabilities.[10] We consider that the balance of probabilities standard for the defence is appropriate for the following reasons. First, the condition of necessity relates to the availability of a witness to testify in court, not to the defendant's guilt or innocence. Requiring the defence to establish necessity on the balance of probabilities merely requires showing that direct oral evidence is more likely than not unavailable. The defendant bears no burden to prove innocence. Second, an evidential standard for adducing defence hearsay evidence would set the bar far too low. The evidential burden is not a "burden of proof" in the strict sense, as there is no requirement to "prove" that fact or issue; the obligation is to

[10] Paras. 9.83-9.85 of the LRC Report.

		adduce sufficient evidence for it properly to be considered an issue in the case.[11] Such a low standard would be insufficient to ensure that hearsay evidence is admitted only where there is a reasonable factual foundation demonstrating genuine necessity. Third, our concern for a low standard is compounded by the nature of the facts relevant to proving necessity. Matters such as whether a witness is deceased, seriously ill, or cannot be located are typically within the peculiar knowledge of the party seeking to adduce the hearsay evidence. Where the defence seeks to adduce hearsay evidence under a mere evidential burden, it need only adduce some evidence, however minimal, capable of supporting the existence of necessity. Once this low threshold is met, the prosecution would face considerable practical difficulty in challenging or disproving the defence's assertions about witness unavailability, particularly where those assertions rest on facts peculiarly within the defence's knowledge and beyond the prosecution's practical means of investigation. While the prosecution must scrutinize the necessity of defence hearsay evidence regardless of the applicable standard, the nature of that task differs fundamentally depending on the burden of proof required of the defence. Under the balance of probabilities standard, the defence must affirmatively satisfy the court that necessity more likely than not exists. The court weighs the evidence from both sides, the defence's case for necessity and the prosecution's challenge to that assertion. This appropriately places the onus

[11] See Phipson on Evidence 21st Ed at §6-02.

		on the party with access to the relevant information and is consistent with section 55Q(3)(a), which expressly states that the burden of proving that the condition of necessity is fulfilled is on the applicant. This approach also aligns with the position at common law, where a party seeking to adduce hearsay evidence under a common law exception must carry the burden of establishing that the exception applies.[12]
14 Proving not reasonably practicable to secure witness attendance	(1) For section 55Q(1)(c), the term "not reasonably practicable" would be subject to interpretation. To ensure certainty and clarity, it is suggested to codify the criteria as to what constitutes "not reasonably practicable to secure the declarant's physical attendance".	Section 55Q(1)(c) is drafted with reference to section 116(2)(c) of the United Kingdom Criminal Justice Act 2003 which states that "the person is outside the United Kingdom and it is not reasonably practicable to secure his attendance". Also, a similar necessity condition in section 16(2)(b) of New Zealand's Evidence Act 2006 states that "the person is outside New Zealand and it is not reasonably practicable for him or her to be a witness". In comparison, section 55Q(1)(c) is already a more detailed provision, as it expressly stipulates that neither (i) securing the declarant's attendance nor (ii) making the declarant available for examination and cross-examination in another competent manner is reasonably practicable. In practice, this means that the party relying on this condition will need to exercise reasonable diligence in either arranging the declarant's return to Hong Kong or arranging for the giving of his testimony by other means (such as by video link or in a remote hearing). To prescribe further specific criteria in subsection (c) might introduce a rigidity that could undermine flexibility and judicial

[12] Para. 9.83 of the LRC Report

		discretion, which is essential to the interests of justice. The court is best positioned to evaluate the unique facts of each application and determine whether the evidence adduced, be it medical reports, immigration records, or oral testimony from medical professionals or investigating officers, satisfies this condition. In interpreting and applying the test of "reasonably practicable", the court may also draw upon relevant jurisprudence from the United Kingdom and New Zealand.
	(2) Presumably, "not reasonably practicable" would cover situations where the overseas declarant is deceased or unfit. In this regard, questions will arise as to whether a death certificate issued by a foreign authority or a medical certificate issued by an overseas medical practitioner would be acceptable as proof that it is not reasonably practicable for the declarant to attend the proceedings, or make himself available for examination and cross-examination by other means.	The proposed Bill provides for distinct necessity conditions in admitting hearsay evidence. Where the primary reason for the declarant's absence is death or unfitness, the application should principally be made under the specific subsections dealing with those conditions (i.e. subsections (1)(a) for death or (1)(b) for unfitness), regardless of whether the declarant is located inside or outside Hong Kong. That said, the necessity conditions are not mutually exclusive. If, for instance, the party adducing the evidence cannot strictly prove a specific condition (e.g. where death is suspected but no body is found, or a medical diagnosis is contested), they are not precluded from relying on the other broader limbs. The court would look at the totality of the circumstances to decide if attendance is practicable or if all reasonable steps have been taken to find the declarant, even if the specific fact of death or unfitness is not established to the requisite standard.

	(3) Further, to the extent that the documentary proof required to prove a necessity condition, such as a death certificate or medical certificate, is adduced without the person issuing it being called to give evidence, it appears that the prosecution will have to apply for it to be admitted as hearsay evidence pursuant to the amended provisions, by proving that it is not reasonably practicable for the person to do so.	Documentary evidence, depending on its nature, may be adduced to prove the truth of its content pursuant to the exceptions under the common law rule or as provided in our statute. If the document is of a public nature, it would likely be regarded as an existing common law exception to the rule of hearsay[13], which is preserved under section 55T. Apart from the common law exception, a public document may also be adduced pursuant to section 18 of the Evidence Ordinance (Cap. 8). If such public document is a foreign document, it may be adduced pursuant to section 19A of the Evidence Ordinance (Cap. 8), provided that the conditions therein are satisfied. Whereas if the document concerned is a private document, there are also provisions in the Evidence Ordinance (Cap. 8) to facilitate the production of the same in trials e.g. sections 20, 22 and 22A. If, for instance, the person confirming the death or medical condition of the declarant e.g. the person issuing the death or medical certificate of the declarant (the "Issuer") is unable to testify in court, the statement of the Issuer can be admissible to prove the declarant's death or medical condition provided that all the requirements under section 55P(2) are satisfied. Hence, if the court is satisfied that the statements of both the declarant and the Issuer have met all the requirements under section 55P(2), they are then both admissible in evidence (see the proposed section 55X).
15 Drafting of	(1) The current drafting of section 55Q(1)(c)	When drafting the relevant section, we have also considered the

[13] *Sturla v. Freccia* (1880) 5 App Cas 623

	section 55Q(1)(c)	is not clear enough for the readers by using "neither of the following".	drafting of the Chinese version of the same section. After taking such into account and since the use of the words "neither of the following is reasonably practicable" accurately conveys the condition that: it is not reasonably practicable to both secure the declarant's attendance at the proceedings and make the declarant available for examination and cross-examination in another competent manner in the proceedings, the current drafting is preferred.
16	Proving all reasonable steps have been taken to find the declarant	(1) Section 55Q(1)(d) requires that all reasonable steps have been taken to find the declarant. This leads to the question as to what constitutes reasonable steps. This issue would likely be hotly contested in an application for admission of hearsay evidence.	The question of whether a party "has taken all reasonable steps" is not new to the courts. For example, if one party intends to adduce some documentary records as evidence, such party may rely on section 22 of the Evidence Ordinance (Cap. 8) to adduce the same. Before one may rely on such section, such party has to prove that the conditions as laid down under section 22(1)(a), (b) and (c) of the Evidence Ordinance (Cap. 8) are satisfied. Amongst the conditions, there are the conditions of "*cannot be identified and* ***all reasonable steps*** *have been taken to identify him*" (section 22(1)(c)(iii)) and "*his identity being known, cannot be found and* ***all reasonable steps*** *have been taken to find him*" (section 22(1)(c)(iv)). Hence, when considering whether to admit a document pursuant to section 22 of the Evidence Ordinance (Cap. 8), the court would have to determine, *inter alia*, whether the applicant had taken all reasonable steps to identify or locate the witness. Further, in the context of considering whether a stay of proceedings is to be granted on the reason that a witness has gone missing, one of the considerations that the court would have to consider is whether all reasonable steps had been taken to secure the attendance of the missing witnesses. As such, the courts

		would have the expertise to determine such matter. In any case, the steps which an applicant is expected to take to find the declarant must be reasonable having regard to all relevant circumstances and must be considered on a case-by-case basis. In interpreting and applying the test of "all reasonable steps", the court may also draw upon relevant jurisprudence from the United Kingdom and New Zealand.[14]
17 Ground of self-incrimination not open to potential prosecution witnesses	(1) Under section 55Q(1)(e), there is no good policy reason to deny the prosecution the opportunity to apply to admit the declarant's hearsay statement on the ground of "declarant refusing to testify for fear of self-incrimination".	In the Evidence (Amendment) Bill 2018, section 55Q(1)(e) was initially not restricted to declarants for the accused only. However, Hon Cheung Yu-yan expressed concerns on the said proposed subsection. After deliberation, the Government proposed to modify section 55Q(1)(e), so that this subsection is now only open to the accused. We acknowledge that a declarant, who is a potential prosecution witness, may fear his/her testimony would expose him/her to proceedings for an offence. Nevertheless, if a declarant's evidence is considered of sufficient assistance to the prosecution but is self-incriminating, consideration may be given to granting the witness immunity from prosecution so as to enable the declarant to testify in court without incriminating oneself. As such, there is no need for the prosecution to rely on such ground to adduce a declarant's statement as hearsay evidence.

[14] Section 116(2)(d) of the Criminal Justice Act 2003 of UK provides that one of the conditions for admitting hearsay evidence is that "the relevant person cannot be found although such steps as it is reasonably practicable to take to find him have been taken". Section 16(2)(d) of the Evidence Act 2006 of New Zealand provides that a person is unavailable as a witness if the person "cannot with reasonable diligence be identified or found".

Section 55R – Condition of threshold reliability		
18 Standard of proof	(1) The condition of threshold reliability under section 55R requires that the circumstances provide "a reasonable assurance that the hearsay evidence is reliable." However, any criminal trials, and convictions, should not rest on evidence the reliability of which is only "reasonably assured."	The threshold reliability condition in the proposed Bill implements the LRC's Recommendations 26 and 27. The LRC Sub-Committee examined various formulations from other jurisdictions and ultimately adopted the approach from New Zealand's Evidence Act 2006. Under section 18(1)(a) of New Zealand's Evidence Act, hearsay evidence may be admitted if "the circumstances relating to the statement provide reasonable assurance that the statement is reliable". The Sub-Committee found this formulation most attractive for its simplicity and because "the word 'assurance' implied a reasonably high threshold which was appropriate for such a criterion".[15] It is important to understand the nature and function of the threshold reliability test. According to New Zealand jurisprudence, the reference to "reasonable assurance of reliability" means that the evidence is reliable enough for the fact-finder to consider it and draw conclusions as to its weight.[16] As the New Zealand Court of Appeal stated in *Adams v R*[17], "A judge must determine, as a matter of law, whether the threshold is met. This gate-keeping role is quite different from the jury's role in assessing the credibility of witnesses and the reliability of evidence given at trial. The distinct constitutional functions of judge and jury must not be conflated". Also, in *TK v R*[18], the New Zealand Court of Appeal stated that "A court…does not have to assess the reliability of the hearsay

[15] Para. 9.56 of the LRC Report.
[16] *R v Burr* [2015] NZHC 1623 at [12]
[17] [2012] NZCA 386 at [26]
[18] [2012] NZCA 185, at [23]

		statement against the criminal standard of proof. What is instead required is a scrutiny of the circumstances surrounding the statement and an assessment, in that context, that there is a 'reasonable assurance' the statement is reliable. If admitted, the function of weighing up the surrounding circumstances of the hearsay evidence and assessing its overall reliability passes to the jury." Thus, once hearsay evidence is admitted, its ultimate reliability becomes a matter for the jury (or the court in non-jury trials) to assess as the arbiter of fact under the criminal standard of proof when determining guilt or innocence. The jury may accept or reject the admitted hearsay evidence, and may attach whatever weight to it as they consider appropriate. Furthermore, section 55V provides an important safeguard. It allows the admission of evidence that would have been relevant to the declarant's credibility if the declarant had given oral evidence, and permits evidence of prior inconsistent statements by the declarant. This ensures that the reliability of hearsay evidence can be properly tested and challenged.
	(2) Differential standards of proof should also apply: that the prosecution must prove the condition of reliability beyond a reasonable doubt, and the defendant need only do so on an evidential standard.	The necessity and threshold reliability conditions are qualitatively different. Necessity involves questions of fact requiring appropriate standards of proof. Threshold reliability involves a question of law requiring an evaluative judgment. The concept of differential standards of proof does not apply to threshold reliability because it is not a factual determination but a legal assessment of whether circumstances provide reasonable assurance of reliability.

		This distinction was recognized by the LRC Sub-Committee in its careful consideration of the standards of proof issue. The Sub-Committee concluded that while the necessity test "related to facts which required an appropriate standard of proof to be established," the threshold reliability test "required the judge to satisfy himself that the circumstances provided a 'reasonable assurance' that the statement was reliable." This reflects the fundamental difference in nature between the two conditions. Accordingly, while the LRC proposed differential standards of proof for necessity (beyond reasonable doubt for prosecution, and balance of probabilities for defence), no such differential standards were proposed for threshold reliability.[19]
Section 55S – Subsequent exclusion of hearsay evidence admitted with court's permission		
19 General	(1) The new section 55S is supported, as it was always unclear how a power to direct an acquittal[20] on grounds broader than the "no case to answer" test would apply in practice. (2) What is proposed is not at all novel or perhaps necessary as a court would probably have an inherent jurisdiction to revisit its admissibility decisions and then deal with the consequences should it change its decision before the conclusion	We note and thank the respondent's support for section 55S and the observation that statutory clarity is beneficial, even if the court already possesses inherent jurisdiction. However, we consider this provision to be necessary. Section 55S explicitly sets out the mechanism for parties to apply for the exclusion of previously admitted hearsay evidence and, crucially, defines the specific parameters for judicial discretion. By mandating that the court must take into account the six factors listed in section 55S(6) when determining where the interests of justice lie, the provision ensures a level of certainty and consistency that inherent jurisdiction alone may not provide. By having section 55S, we aim to ensure that the court would have a clear

[19] Para. 9.85 of the LRC Report
[20] Section 55Q of the Evidence (Amendment) Bill 2018

	of the trial. (3) In principle, section 55S is not necessary, but having it does no harm and may help to clarify the relevant procedures to be followed.	statutory basis to intervene in the interests of justice, thereby avoiding potential disputes over the scope of inherent jurisdiction.
20 Risk of exploitation	(1) Since there are no express restrictions on when the application can be made and since the first four factors listed in subsection (6) appear to be essentially the same factors already considered when the hearsay evidence is initially admitted, there are concerns that the exclusion mechanism provided under section 55S may be exploited by parties to the proceedings as it would give a second chance for them to oppose the admission of hearsay evidence. (2) It was suggested to set out restrictions on when and in what circumstances the exclusion mechanism would apply.	Section 55S serves as an important safeguard to prevent miscarriages of justice and unsafe convictions. While the initial grant of permission under section 55P requires the court to balance probative value against prejudicial effect, such admissibility rulings are typically made at the pre-trial stage without the benefit of the full evidentiary picture. Section 55S addresses this by empowering the court to subsequently review the hearsay evidence in the context of the full trial. Thus, if the prosecution hearsay evidence is subsequently found to be unfairly prejudicial when viewed against the totality of the evidence, the court may exclude it to ensure a fair trial for the accused. The court retains ample powers to maintain proper management of the proceedings and will not allow applications that are frivolous, vexatious, or devoid of merit. As such, we are confident that section 55S would not be exploited as a tactical device to disrupt or delay proceedings.
21 Direction/order to be made after exclusion of	(1) A respondent sought clarifications on whether, upon excluding hearsay evidence under section 55S, the court's considerations and consequential orders	Section 55S applies to both trials sitting with and without a jury and the court's considerations and consequential orders to be made are the same. In other words, there is no difference in the operation of section 55S for trials sitting with or without a

previously admitted hearsay evidence	would vary: a. depending on whether the trial sits with or without a jury, when deciding whether to continue with the trial; and b. depending on whether the excluded evidence was adduced by prosecution or defence, when assessing whether there is any or still a case against the accused	jury. If the excluded evidence was adduced by prosecution, such exclusion may weaken the prosecution's case to the extent that no prima facie case remains against the accused. Since the determination of whether there is a case to answer relies solely on the sufficiency of the prosecution's evidence, excluding defence hearsay evidence, which is by its nature exculpatory, would not diminish the case already presented by the prosecution against the accused. Nonetheless, if a piece of defence hearsay evidence is excluded under section 55S(2), the court still has to consider whether it is appropriate to continue with the trial after such exclusion and make the appropriate direction or order under section 55S(3) accordingly.
	(2) In section 55S(3)(a), instead of using the word "may", the word "shall" should be used as no consideration or weight should be given to a piece of excluded evidence.	We agree that once a piece of hearsay is excluded, no weight should be given to it. We will examine whether the drafting language can be refined.
	(3) Under section 55S(3)(b), further trial should only be ordered if it is in the interest of justice to do so. It is better to state this criterion.	We envisage that there might be cases where a further trial will not be just and appropriate having regard to all the circumstances. Hence, the word "may" is used in the subsection so as to provide the court with the relevant discretion.
	(4) It is not entirely clear why the power to order a further trial under section 55S(3)(b) is necessary if the trial has been conducted by a professional judge without	The LRC recommended that the same set of rules should be applied to both jury and non-jury trials as it would avoid unnecessary complexity and any perception that the protection offered to an accused might depend on the prosecutor's choice

	a jury.	of trial venue[21]. As such, the drafting of the proposed section 55S does not distinguish trials sitting with or without a jury.
	(5) Section 55S(4)(a) should be deleted in its entirety as the court will direct an acquittal of the accused for the offence if it rules that the accused has no case to answer in relation to such offence as a matter of law and procedure.	The court, as a matter of law and procedure, will direct an acquittal of the accused for the offence after ruling that the accused has no case to answer in relation to that offence. With a view to providing a complete picture on the procedure to be followed after the exclusion of previously admitted hearsay evidence, we consider that retaining the said subsection is appropriate.
	(6) It is not entirely clear why, under section 55S(4)(a), where the court rules no case to answer, the court may still not direct the acquittal of the accused.	We agree that the court should direct acquittal of the accused for the offence if the court rules that there is no case to answer in respect of such offence. We will examine whether the drafting language can be refined.
	(7) Section 55S(6)(e) appears to imply that a defendant could be convicted on prosecution evidence which is entirely hearsay in nature. If so, that would change completely the character of common law criminal trials and is wholly unacceptable.	Section 55S provides a general judicial discretion to exclude hearsay evidence where it would not be in the interests of justice to admit it. If the defence considers that hearsay evidence should be excluded, for example, where the prosecution seeks to rely solely on hearsay evidence, it remains open to the defence to apply for exclusion under section 55S on the ground that admission would not be in the interests of justice. When deciding whether it is in the interest of justice to exclude the said piece of hearsay evidence, the court has to take into account all and only the six factors as provided under the proposed section 55S(6). Amongst these factors, there are factors including the importance of the hearsay evidence to the

[21] Para. 9.102 of the LRC Report

		case against the accused (section 55S(6)(d)) and the prejudice that may be caused to the accused by the admission of the hearsay evidence (including any prejudice that may be caused by the lack of cross-examination of the declarant concerned) (section 55S(6)(e)). Where the prosecution case rests entirely or substantially on hearsay evidence, the importance of that evidence to the case against the accused would be particularly significant, and the prejudice from lack of cross-examination may be more acute. The court, acting as a gatekeeper, would weigh these factors in determining whether admission would be in the interests of justice. Depending on the particular circumstances, this balancing exercise may lead to exclusion of the hearsay evidence. The provision thus safeguards against unfairness or unacceptable prejudice to the accused while maintaining the necessary flexibility for the court to assess each case on its particular circumstances.
Section 55T – Certain common law rules relating to exceptions to rule against hearsay preserved		
22 Preservation of common law rules	(1) A respondent agreed with the objective of preserving the generally recognized exceptions to the hearsay rule at common law (which are not yet covered by the proposed Bill itself). The wording in section 55T is clear and accurately reflects the legislative intent. The wording in Schedule 2, which sets out the preserved common law rules, is also agreeable.	We thank the respondent's support for the preservation of common law exceptions to the hearsay rule.

23 Drafting of the heading	(1) A respondent suggested that the heading of section 55T may be amended by adding the word "the" after the words "relating to exception to" for the sake of clarity.	We will examine whether the drafting language can be refined.
Section 55U – Implied assertion		
24 Drafting of section 55U	(1) A respondent agreed with the objective of abolishing the hearsay "implied assertion" rule originating from *Kearley* which had been heavily criticized. The only comment is that the section could be simplified as follows: "The common law rule excluding implied assertions on the ground of hearsay is hereby abolished."	We note the comment and will consider if the drafting language can be improved.
Section 55V – Evidence for proving credibility		
25 Purpose of evidence proving credibility	(1) On section 55V(2), a respondent agreed with the objective as stated in Recommendation 31 and footnote 13 of the Consultation Paper that a party should be able to adduce evidence affecting the absent hearsay declarant's credibility as if he were cross-examined had he given oral evidence. It is assumed this wording would allow for a wide range of evidence including general evidence of bad character of the absent declarant.	Where a piece of hearsay evidence is admitted under the proposed Part IVA, evidence which is relevant to the declarant's credibility could be admitted as long as the same would have been admissible had the declarant testified as a witness.
	(2) The wording of section 55V(2) seems to	The proposed section 55V (2) makes clear that rather than

	also allow for the party seeking to adduce the hearsay evidence of the absent witness to be able to adduce evidence in support of his credibility. At present the wording of this subsection appears to allow for both evidence in support of or attacking the absent witness' credibility to be adduced, which would go beyond the objective as stated in Recommendation 31 and footnote 13 of the Consultation Paper.	allowing all kinds of evidence relevant to the declarant's credibility to be admitted, it only allows the admission of evidence that would have been admissible had the declarant of the statement given oral evidence in the proceedings. This means the same rules and restrictions that apply to credibility evidence for testifying witnesses also apply to credibility evidence concerning declarants of hearsay statements. As such, we consider that the current drafting of the proposed section 55V(2) has not gone beyond the objective as stated in Recommendation 31 and footnote 13 of the Consultation Paper.
	(3) The phrase "if the declarant... had given oral evidence in the proceedings *in connection with the statement*" is viewed as otiose and a source of potential confusion. If the legislative intent is that where hearsay evidence is admitted under the proposed Bill, evidence that relates to that hearsay declarant's "credibility" is admissible. Then such evidence should simply be admissible. The emphasized words serve no purpose and should be deleted.	The phrase "in connection with the statement" in the proposed section 55V(2) is intended to make clear that the declarant is supposedly testifying in court regarding the matters stated in the statement, which should relate to the issue of the case. We will consider if the drafting language can be further improved.
	(4) A respondent agreed with this provision and its purpose of providing the tribunal with evidence of previous inconsistent statement of the hearsay declarant.	The Department welcomes the respondent's support for this provision.

26 Drafting of section 55V(3)	(1) A respondent suggested that the first word ("Also") in section 55V(3) may be amended to "Further" for the sake of consistency.	We will examine whether the drafting language can be refined.
Section 55W – Previous statements of witnesses		
27 Previous consistent statements for refreshing memory and as subject of cross-examination	(1) While the provision generally aligns with the statutory developments of other common law jurisdictions such as the United Kingdom ("UK"), it does not include a specific category found in section 120 of the UK Criminal Justice Act 2003: "previous consistent statements" that are used both as memory-refreshing tools and as the subject of cross-examination. If the legislative intent is to comprehensively cover all common law exceptions regarding previous consistent statements, it is recommended to include the relevant wording from the UK legislation to include these specific circumstances.	Section 55W implements LRC's Recommendation 39. As stated in paragraph 10.82 of the Report, the LRC Sub-Committee originally proposed that prior statements used by witnesses to refresh their memory should be admitted for their substantive truth, as should prior statements of a witness who genuinely cannot recall the events recorded in the statements. However, having considered the concerns expressed by some of the consultees, namely, prior consistent statements might be given undue weight, their production might become a matter of routine thereby reducing the importance of the witness's spoken evidence in court, and that there was a risk that a witness might fabricate his original statement and subsequently claim no recollection of the events, the LRC recommended that prior statements used by witnesses to refresh their memory should not be admitted for their substantive truth.
28 Requirement of "to the best of the person's belief"	(1) A respondent suggested that section 55W(1)(b) may be amended to simply require that "while giving oral evidence, the person confirms that (i) the statement was made by the person; and (ii) the content of the statement is true."	We will examine whether the drafting language can be refined.

Section 55X – Multiple hearsay		
29 Multiple hearsay	(1) A respondent agreed with this provision and its purpose of clarifying the conditions of admitting multiple hearsay.	The Department welcomes the respondent's support for this provision.
30 Drafting of section 55X	(1) The wording of section 55X seems difficult to understand and the provision does not seem to reflect that evidence of multiple hearsay is not simply to prove that an earlier statement was made but that it was also true.	The words "statement" and "hearsay" have been defined in sections 55C and 55D respectively. As such, reading the words in context, we consider that the element of "truth" has already been incorporated. We will examine whether the drafting language can be refined.

Department of Justice
March 2026

#633758 v5D