2026 年 3 月 23 日

討論文件

立法會司法及法律事務委員會

落實香港法律改革委員會
《刑事法律程序中的傳聞證據報告書》——
《2026 年證據(修訂)條例草案》

引言

本文件旨在向委員簡介為落實香港法律改革委員會("法改會")於 2009 年 11 月發表的《刑事法律程序中的傳聞證據報告書》("報告書")中的建議而重新提交擬議的《2026 年證據(修訂)條例草案》("《2026 年條例草案》")一事。本文件概述最近就《2026 年條例草案》進行的諮詢工作(諮詢期為 2025 年 12 月 11 日至 2026 年 1 月 12 日)的結果，及擬議的未來路向。

背景

2. 根據普通法關於豁除傳聞證據的規則，除非傳聞證據屬於普通法或成文法所定規定的例外情況之一，否則在刑事法律程序中一般不得予以接納("傳聞規則")。該項規則旨在確保可以藉著盤問來測試證人的可信性及準確度。儘管有此理據，傳聞規則多年來仍然廣受學者、執業者及法官批評。

3. 傳聞規則所受到的其中一個主要批評，是規則嚴苛和欠缺彈性，而且即使傳聞證據有力和可靠，也在豁除之列。不接納縱然是有力和關乎裁定被告罪成與否的傳聞證據，有時會導致一些按日常

生活標準來說是準確和可靠的證據遭到豁除。此舉可引致荒謬和不公的情況。

4. 此外，傳聞規則也因其複雜性和例外規定不清晰而受到批評。因應這些批評，多個普通法司法管轄區在為實行改革而研究有關議題後，均提出改革建議。法改會已因應上述的國際發展情況提出有關傳聞規則的改革建議，詳情載於報告書。

5. 政府過去曾提交《2018 年證據(修訂)條例草案》(《2018 年條例草案》)，以落實法改會的建議。立法會亦成立了法案委員會審議該條例草案，但該條例草案因未能趕及在第六屆立法會於 2021 年 10 月 30 日任期完結時完成立法程序而告失效。

6. 律政司在《2018 年條例草案》失效後進行全面的檢討，當中考慮到法改會的建議、2017 年進行上一次諮詢工作期間收到的意見、《2018 年證據(修訂)條例草案》法案委員會的商議內容，以及法律及政策方面的最新發展。基於上述檢討工作的結果，我們推出現時擬議的《2026 年條例草案》。

諮詢工作

7. 於 2025 年 12 月 11 日，我們發出**附件 I**[1]載列的諮詢文件("諮詢文件")，當中夾附《2026 年證據(修訂)條例草案》的諮詢擬稿[2] ("諮詢草案")(見諮詢文件附件 C)。諮詢草案旨在落實法改會的建議(經適當修訂)。按照法改會的建議，諮詢草案並非旨在廢除根據普通法豁除傳聞證據的規則，而是藉着指明在什麼情況下可以接納傳聞證據，為接納傳聞證據訂明有條理和合乎原則的做法。

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[1] 鑑於諮詢工作是根據以英文傳閱的擬稿進行，本文件僅提供英文版本。

[2] 附件 I 附件 C 所載的《2026 年條例草案》擬稿旨在作諮詢之用，須再作修訂，因此僅供參考。

8. 除了屬成文法例外規定、諮詢草案所保留的普通法例外規定、有關各方同意接納傳聞證據，或在沒有反對的情況下獲接納的傳聞證據之外，法庭可視乎有關傳聞證據是否符合(a)必要性及(b)可靠性門檻的條件，運用酌情權接納傳聞證據。此外，傳聞證據的證案價值必須大於該證據對法律程序中任何一方可能產生的不利影響，方可獲得接納。正如諮詢草案所闡述，為了提供完善保障，須制訂更廣泛和相稱的補救措施；就此，法庭在接納傳聞證據後如信納豁除該傳聞證據有利於秉行公義，則可以行使權力豁除該傳聞證據，並可命令進行再審，或指示裁定被告無罪。

9. 在程序框架方面，諮詢草案訂立了周詳的通知制度，及賦權法庭可更改程序要求和准許在訂明的情況下撤回通知，以秉行公義和增加彈性。

10. 諮詢草案不適用於涉及國家安全的案件(《維護國家安全條例》第 3(2)條所指者)的法律程序("國安法律程序")，而該等法律程序仍然受現行的傳聞規則及其所有例外情況規限。

11. 在諮詢期間，我們特地向**附件 II** 所載的持份者，包括司法機構、法律專業團體、政府相關決策局和部門、法律學院及其他相關團體徵求意見。我們收到 15 份意見書。回應者大致支持建議。經仔細考慮收到的全部意見和建議後，現把回應者的意見和建議摘要及本司的回應，以表列方式載於**附件 III**[3]。

立法建議摘要

12. 《2026 年條例草案》在《證據條例》(第 8 章)新增第 IVA 部，以實施在指明法律程序中接納傳聞證據的新法定計劃。

[3] 附件 III 載列本司在截稿日期前(即是次委員會會議前兩星期)接獲的所有意見書作出的回應。

釋義及涵蓋範圍(第 55C 至 55F 條)

13. 《2026 年條例草案》載有釋義條文，並訂明接納傳聞證據的新制度的適用範圍。該條例草案界定主要用語，包括"陳述"(不論以何種方式作出的某事實申述或意見申述，包括書面或非書面的傳達，或屬行為形式的非語言或非文字傳達，而該申述旨在表示所傳達的事宜屬真確)及"傳聞"(在(或將在)某法律程序中援引作為證據的某陳述，如符合以下說明，即屬傳聞——(a)該陳述並非由某人在該法律程序中提供口頭證據時作出；及(b)援引該陳述的目的，是為了證明其內容屬實)。

14. 該制度適用於在(或將在)某刑事法律程序(就判刑而進行的法律程序除外)或移交逃犯法律程序中援引的證據，前提是嚴格的證據規則適用於該法律程序；及在(或將在)就判刑而進行的刑事法律程序中援引、以證明某加重刑罰因素的指明證據("適用法律程序")。《2026 年條例草案》明確指出，該制度不適用於國安法律程序，以彰顯維護國家安全和減低因受操控或基於虛假資訊所得證據而造成的風險所屬的憲制責任。

接納傳聞證據的方式及程序框架(第 55G 至 55O 條)

15. 在適用法律程序中，傳聞證據可根據第 2、3 或 5 分部、獲保存的普通法規則，及任何其他成文法則獲接納。

16. 根據新增的第 IVA 部的第 2、3 或 5 分部，傳聞證據可通過以下三種法定途徑獲接納：(1)藉各方**協議**獲接納；(2)因應**未遭反對的**傳聞證據通知而獲接納；或(3)在傳聞證據通知**遭反對**後，在法庭准許下獲准許接納。

17. 《2026 年條例草案》詳述通知程序，當中訂明書面通知須在指定時限內發出(例如發出傳聞證據通知的時限為 28 天，發出反對

通知的時限則為 14 天)。為提高彈性並使通知程序更有效率，法庭獲授酌情權，可以更改這些程序規定(例如延長發出通知的時限、容許以口頭方式發出通知)，也可准許撤回通知，但前提是該等舉措不會造成重大損害，或在有關情況下遵從法定規定並非合理地切實可行，又或該等舉措有利於秉行公義。這個框架在確保程序明確，及賦予法庭司法酌情權以有效率地處理案件之間取得平衡。

法庭准許接納傳聞證據 (第 55P 至 55R 條)

18. 如有一方反對接納傳聞證據，法庭必須信納有關情況符合下列五項條件，才可准許接納傳聞證據：

(i) 已充分識別陳述者的身分；

(ii) 陳述者在法律程序中提供的口頭證據會獲接納為證據，用以證明有關傳聞證據旨在證明的事實；

(iii) 符合必要性條件(例如陳述者經已去世、不適宜擔任證人、不在香港而要該人出席法律程序並非合理地切實可行、無法尋獲，或陳述者以會導致自己入罪為理由而拒絕作供)；

(iv) 符合可靠性門檻條件(即根據陳述的性質及內容、作出該陳述的情況、任何關乎陳述者是否誠實及其觀察是否準確的情況，以及是否有任何可獲接納的證據支持該陳述，評定有關情況為證據的可靠性提供合理保證)；以及

(v) 傳聞證據的證案價值，大於該證據對法律程序的任何一方可能造成的不利影響。

19. 至於證明符合必要性條件的舉證責任，控方須按排除合理疑點這項較嚴格的標準舉證，而被告則須按相對可能性的衡量的標準舉證。

傳聞證據在獲接納後的豁除(第 55S 條)

20. 《2026 年條例草案》優化做法，以更靈活的機制取代《2018 年條例草案》所訂如被告"定罪並不穩妥"便強制須裁定被告無罪的權力。本條文容許法律程序的任何一方申請豁除在法庭准許下獲接納的傳聞證據，惟此舉須有利於秉行公義。法庭須考慮全部且僅限於所訂明的六項因素，包括接納某傳聞證據可能對被告造成的不利影響(包括因不能盤問有關陳述者而可能對該被告造成的任何不利影響)，以及情況是否有任何重大變更(例如後來才發現導致該傳聞證據獲接納的欺騙行為，又或有關陳述者能夠出庭作供)。

21. 在建議的法定計劃下，如法庭決定豁除證據，能選擇行使以下多項權力──指示陪審團視有關傳聞證據為不具有任何分量、命令進行再審，或在豁除由控方援引的傳聞證據後判定被告無須答辯或不再須答辯的情況下，指示裁定被告無罪。這個做法體現法官和陪審團各司其職，並提供了一項更具針對性的保障；就香港特有的高門檻模式而言，這是一道合乎比例且充分的防線。

普通法規則及其他條文(第 55T 至 55X 條、附表 2)

22. 《2026 年條例草案》保留了附表 2 所列普通法中關乎傳聞規則的指明例外情況(例如招認、為促使進行夥同犯罪或串謀而作出的陳述、公共資訊、與案件同步並存的陳述等)，同時廢止針對隱含斷言的規則。新增條文讓用以證明陳述者可信性的證據可獲接納，就證人以往所作的一致陳述的可接納性訂立規則，以及訂明多重傳聞唯一可獲接納的情況是當每一重傳聞均符合計劃所訂的可接納性

準則。這些措施旨在確保新法定計劃在適當情況下與現有法律原則妥為銜接。

人權方面的影響

23. 《2026年條例草案》旨在符合《基本法》第八十七條及《香港人權法案》第十和第十一條所賦予的公正審判的權利。重要的是，《2026年條例草案》恪守權利平等原則，使控辯雙方在接納傳聞證據方面受相同規則所限。此外，計劃下訂有多項保障，包括必要性條件、可靠性門檻條件、證案價值評估，以及在法庭接納某傳聞證據後將該傳聞證據豁除的機制，以防範定罪不穩妥和司法不公的風險。

未來路向

24. 視乎委員的意見，政府計劃於2026年第二季度將《2026年條例草案》提交立法會。

律政司

2026年3月

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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

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[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)

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[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;

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[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

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[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

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[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]

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[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

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[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

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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

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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".

附件 II

《2026 年證據(修訂)條例草案》
接受諮詢者名單

法律專業團體

1. 香港大律師公會*

2. 香港律師會#

政府

3. 司法機構*

4. 保安局*

5. 勞工及福利局*

6. 勞工處*

7. 法律援助署*

8. 香港警務處*

9. 廉政公署*

10. 香港海關

11. 入境事務處

12. 消防處*

法律學院

13. 香港大學法律學院*

14. 香港中文大學法律學院

15. 香港城市大學法律學院*

<u>其他組織</u>

16. 當值律師服務*

17. 證券及期貨事務監察委員會*

18. 個人資料私隱專員公署*

*：在截稿日期(即事務委員會會議舉行前兩星期)前就《諮詢文件》提交意見的諮詢者。律政司對該等意見的回應已載列於附件三。

#：在截稿日期後就《諮詢文件》提交意見的諮詢者。律政司現正審視該等意見，因此附件三並未涵蓋有關內容。

#635587 v1

關於擬議《2026 年證據(修訂)條例草案》[1]的意見和建議摘要及律政司的回應

問題	回應者的意見／建議	律政司的回應
一般問題		
1 利便尋求公義	(1) 一般而言，回應者表示支持擬議《2026 年證據(修訂)條例草案》(《條例草案》)，並理解其旨在： a. 應對多年來傳聞證據引起的廣泛關注； b. 修改極具限制性的傳聞證據規則； c. 為在刑事法律程序中接納傳聞證據訂明有條理和合乎原則的做法； d. 在放寬傳聞規則後訂立充分和有效的保障，同時讓相關和可靠的傳聞證據可獲接納； e. 設立新途徑，以便在現時傳聞證據不獲接納的情況下(例如證人身處香港境外或無法尋獲或聯繫時)，援引傳聞證據。這些特定途徑有助當局有效地進行案件的檢控工作； f. 與國際間評估證據的關鍵由可接納	我們感謝各方在諮詢過程中對擬議《條例草案》表示的廣泛支持，並提出具建設性的意見。所得回應普遍肯定修例建議的方向，認同擬議改革有助利便尋求公義和確保刑事法律程序公正。

[1] 本摘要提述的“擬議《2026 年證據(修訂)條例草案》”及“擬議《條例草案》”，是指律政司於 2025 年 12 月為徵詢意見而發出的諮詢文件中附件 C 所載的擬議《2026 年證據(修訂)條例草案》的工作擬稿。

	性改為證據的分量這項普遍趨勢接軌； g. 使香港在處理傳聞證據上與其他司法管轄區看齊； h. 在加強打擊罪行的執法框架方面邁出重要一步； i. 使控辯雙方在接納傳聞證據方面享有同等地位 j. 在急需現代化的刑事傳聞證據法中，引入甚為必要的酌情決定權	
第 55E 條—適用範圍		
2 豁除涉及國家安全的法律程序	(1) 不清楚為何擬議《條例草案》中關於傳聞證據的條文不應適用於涉及國家安全(“國安”)的案件。有關虛假資訊風險的理據可適用於任何國際案件。關乎公正審判、公眾利益及效率的一般原則應適用於國安案件，一如該等一般原則適用於非國安案件。	根據《中華人民共和國香港特別行政區維護國家安全法》(“《香港國安法》”)，香港特區負有凌駕性憲制責任，須有效維護國家安全。程序改革不得損害這項義務。鑑於國安威脅性質獨特，故有必要採用特定提證方法。 箇中並無差別待遇的問題。基於在法律面前人人平等的原則，要求在相若的情況下應給予相似的待遇。在這情況下，適當的比較對象並非國家安全案件中的一方與一般刑事案件中的一方，而是同一宗國安案件的法律程序中控方與辯方之間的對比。這項原則已在*香港*

		特別行政區 訴 鄒幸彤案[2]確立，案中法庭駁回就國安案件中禁止海外證人藉電視直播聯繫方式作供提出的質疑。法庭裁定根據"權利平等"的原則，被告和控方須在相同條件下享有傳召證人的權利。由於擬議《條例草案》建議的豁除同樣適用於國安案件的控辯雙方，使雙方受有關接納傳聞證據的相同條件規限，故沒有對任何一方造成不公。此外，一般原則仍是證人應該出庭直接作證。傳聞證據的接納並非必然的權利。
	(2) 國安案件較其他有組織罪行案件(例如三合會案件、跨境集團案件)更容易出現捏造證據的說法有欠說服力，因為法證程序能揭露不太可信的證據，而且海外證據仍需要符合必要性條件和可靠性門檻條件。	涉及國家安全的法律程序性質獨特，容易出現敵對勢力(尤其是境外勢力)發布虛假資訊和操控證據的情況。這風險程度和對國家安全的影響不可與一般刑事案件相提並論。這種威脅與有組織罪行不同，涉及敵對勢力策劃發布虛假資訊，意圖危害國家安全。當中最值得關注的是這些材料或資訊一旦發放到公共領域，即使事後被裁定為不可靠或不可獲接納，也會造成無可補救的風險。
	(3) 《刑事訴訟程序條例》(第 221 章)第 123 條這項現有條文准許法律程序在非公開法庭進行，以維護國家	對於這項由個別傳聞證據引起的具體風險，第 221 章第 123 條並非全面或相稱的解決方法。第 221 章第 123 條關乎如法庭認為是為了維護國家安全所需者，則整

[2] [2025] 5 HKLRD 270

	安全。這已可解決發布敏感資料的問題，無須完全把新訂的傳聞證據條文豁除在外。	項法律程序便可在非公開法庭進行(見第 123(1)及(1AA)條)。同樣須留意的是，在非公開法庭進行審訊的安排明確受到《香港國安法》第四十一條[3]規管。該條訂明法律程序如因涉及國家秘密或公共秩序而不宜公開審理，則准予實行這項安排。這兩項法律要求都設定了很高的門檻，以證明非公開法庭的合理性。這是一項特殊措施，不適宜用於恆常管理由單一項可能含有敏感資料的傳聞證據所引起的風險。反之，擬議《條例草案》所訂的豁除傳聞證據做法是一項更具針對性和相稱的保障措施，能夠在決定是否接納證據時防範上述特定風險，而無須使用閉門進行整項法律程序這種極端手段。
	(4) 就《刑事罪行條例》(第 200 章)已廢除條文下的煽動案件而言，長久以來審理該類案件所依據的證據規則與審理其他刑事罪行案件所依據的證據規則相同。《香港國安法》第四十一條[4]採用香港特區的程序法，	雖然《香港國安法》第四十一條訂明香港特區程序法適用，但該條文本質上容許作出所需的適應性修改，以符合維護國家安全的特定要求。這項豁除措施即屬此類合理且特定的適應性修改，符合《香港國安法》的總體目的。例如，《法院(遙距聆訊)條例》(第 654 章)第 5 條禁止國安法律程序以遙距聆訊方式進行。

[3] 《香港國安法》第四十一條第四款："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] 《香港國安法》第四十一條第一款："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。"

	顯示其用意是把國安罪行“本土化”，以將國安罪行納入現有的刑事法律框架內，而非創立另一個完全獨立的程序類別，惟《香港國安法》訂明的特定例外情況(例如有陪審團的審訊、保釋推定)則除外。	
	(5) 豁除國安案件意味控方將不得按放寬的規則接納傳聞證據以證明其案情。若要權衡利弊，接納傳聞證據能加強控方的案情，相比辯方捏造證據的風險，利應大於弊。大律師和事務律師負有專業責任，不能援引他們明知或懷疑是虛假的證據。	在國安案件中權衡的“利弊”與一般罪案截然不同。在國安案件中，主要目標是防範、制止和懲治危害國家安全的行為。鑑於國家安全的相關風險特殊，首要目標是消除該等風險，包括讓未經驗證且可能屬敵對勢力捏造的陳述或虛假資訊記入法庭記錄的風險。 因此，在國安案件中沿用普通法下久經考驗的證據規則，會更有效確保涉及國家安全的法律程序得以持正進行，並更全面保障國家安全，而不是只利便任何一方舉證。再者，從過往涉及國家安全的法律程序所得經驗清楚顯示，成功的檢控取決於一絲不苟的準備工夫和依賴可靠有力的證據。 雖然法律執業者的專業職責備受認可和尊重，但他們既不負責也不應負責全面防範經精心策劃、在國家層面或組織嚴密地散播虛假資訊，且往往與國安威脅有關的活動。豁除國安案件的做法會徹底杜絕該等材料

		進入法律程序的風險，同時確保控辯雙方權利完全平等和享有接受公正審判的權利。
	(6) 若維持豁除國安案件的做法，則第55E(2)(b)條的用語須優化，令其僅適用於"涉及國家安全的案件的法律程序"。目前擬議用語"關乎涉及國家安全的案件的法律程序"有些含糊，可能令只與國家安全案件有些少關係的法律程序也包括在內。	我們同意用語清晰至關重要。該項政策原意是確保豁除國安案件的做法涵蓋所有涉及國家安全和危害國家安全罪行的法律程序。我們會考慮可否改善草擬用語，以釐清上述政策原意。
	(7) 為了完全符合把涉及國家安全的法律程序豁除在《條例草案》擬稿的範圍之外這項原意，建議修訂第55E(2)(b)條，明確豁除"指明證據"及"證據"，從而確保該項豁除涵蓋國安案件的所有階段(包括判刑)。	我們的政策原意是把涉及國家安全的法律程序的所有階段(包括判刑法律程序)豁除在《條例草案》擬稿的範圍之外。我們感謝回應者就擬稿提出的意見，並會致力確保該條文達致這項政策原意。
3 減刑因素的證明	(1) 請律政司釐清第IVA部是否適用於旨在證明某項減刑因素的辯方證據。若然適用，便應在"指明證據"的定義中闡明。若不適用，則應解釋提出辯方證據以證明某項減刑因	擬議《條例草案》只旨在規管第55E條所指的特定法律程序，而非在所有刑事事宜上全盤限制援引傳聞證據。第55G條中"法律程序"一詞並非一般提述，而是要按照第55E條所界定的法律程序範圍來解釋。因此，如某個法律程序不屬第55E條所訂範圍，例如被告在

	素的理據及機制。	判刑法律程序中援引傳聞證據以證明某項減刑因素，則該程序不會受新法定計劃影響。在該等情況下，現行做法維持不變，而傳聞證據的可接納性將繼續受現有普通法原則及慣例規管。[5] 我們會考慮可否改善草擬用語，以釐清上述政策原意。
第 55G 條—傳聞證據在適用的法律程序中的可接納性		
4 不涵蓋隱含斷言的可接納性	(1) 一名回應者質疑第 55G 條應否包括對第 55U 條的明文提述，因為後者准許援引隱含斷言作為可獲接納的傳聞。	第 55U 條旨在落實香港法律改革委員會("法改會")發表的《刑事法律程序中的傳聞證據報告書》("《報告書》")中的建議 13，尋求廢止隱含斷言屬傳聞而遭豁除的普通法規則。該普通法規則予以廢止後，隱含斷言不再被視為傳聞。 由於第 55G 條關乎傳聞證據在適用的法律程序中的可接納性(在第 55E 條已界定)，我們認為無須提述第 55U 條。
第 55I 條—傳聞證據藉協議而可獲接納		
5 以口頭協議接	(1) 就把口頭協議包括為接納傳聞證據	首先，第 55I 條的機制與《刑事訴訟程序條例》

[5] 根據現行做法，傳聞證據如屬可信，可在判刑法律程序中獲接納，以證明某項減刑因素。見*香港特別行政區 訴 馬雪珍* [2001] 4 HKC 337 案第 8 段，*R 訴 Gardiner* (1982) 68 CCC (2d) 477 案第 109 段；*Patrick Smith* (1988) 87 Cr. App. R393 第 398 頁；Sentencing in Hong Kong (第 11 版)第 2-16 段；Archbold Hong Kong 2026 第 11-2A 段。

納傳聞證據	的有效方法，此做法值得商榷。與擬議第 55I 條不同，根據《刑事訴訟程序條例》(第 221 章)第 65C 條作出的承認必須以書面記錄為"獲承認事實"。《證據條例》(第 8 章)或擬議《條例草案》現時均未有界定什麼是"口頭協議"，亦沒有就如何才構成"口頭協議"訂明手續要求。如此欠缺明確程序未免過於草率，尤其是對出庭自辯的被告而言。有意見關注無律師代表的被告可能在未完全理解其承認事項的法律後果或其承認事項的範圍的情況下同意接納傳聞證據。檢控人員有責任秉持公正。一般而言，他們應避免與無律師代表的各方進行非正式口頭通訊，書面通訊則較為合適。援引無律師代表的被告作出的口頭確認無法提供所需的程序保障，並可能使辯論式訴訟制度出現不公。要求律政司考慮是否已向無律師代表的	(第 221 章)第 65C 條的機制相似。根據第 221 章第 65C 條，無律師代表的被告可承認事實，而獲承認的事實會在刑事審訊中視為不可推翻的證據[6]；第 221 章第 65C(2)(b)條則規定，"根據本條作出的承認，<u>**如非在法庭上作出**</u>，須以書面作出"(加入強調)。因此，根據第 221 章第 65C 條，如是在法庭上作出承認，可以口頭承認不可推翻的事實。據此，我們認為，允許藉口頭協議接納傳聞證據，惟有關口頭協議必須於法庭上訂立，這做法恰當。 在正常情況下，接納傳聞證據的問題應在審訊前解決，而有關法律程序的各方應有充足時間擬備接納傳聞證據的書面協議。然而，審訊期間總有可能出現問題，令到各方擬備書面協議一事可能不切實際，例如無律師代表的被告可能在審訊期間無意間試圖援引一項相關但無爭議性的傳聞證據。 擬議第 55I(1)(a)條將提供必要的靈活性，以便迅速處理此類情況。這種靈活性在審訊中途尤其重要，因為時間至關重要，尤以有陪審團的審訊為然。如各方已同意接納傳聞證據，則要求在所有情況下均須有書面協議，這做法實屬不必要地僵化。

[6] *Lam Man-woo 訴 R* [1974] HKLR 331 案，第 336 頁

	被告提供足夠保障。	此外，與第 221 章第 65C 條相似，擬議第 55I(1)(a)條訂明，同意接納傳聞證據的口頭協議須**於法庭上**訂立。因此，有關法律程序的各方須明確地指出並通知法庭各方根據第 55I(1)(a)條同意接納某項傳聞證據。通過對此事的司法監察，我們確信對無律師代表的被告造成不利影響的風險極微。 正如上文指出，檢控人員有責任秉持公正，並須遵守《檢控守則》。此外，法庭有凌駕性責任確保法律程序公平地進行，所以我們深信法庭會確保無律師代表的被告完全理解同意接納傳聞證據有何影響。因此，無律師代表的被告獲得公正審判的權利不會受損，被告受到不利影響或侵害的風險也微乎其微。
	(2) 雖然第 55L 條規定須發出正式的傳聞證據通知，並訂明有關通知須符合的具體規定，但對根據第 55I 條訂立的協議，則無規定須發出此通知。律政司應闡明是否須根據第 55J 條發出正式通知，用以準確記錄該等協議，確保所接納證據的確切內容會有清晰的記錄。	在正常情況下，接納傳聞證據的問題應在審訊前解決，而有關法律程序的各方應有充足時間發出正式的傳聞證據通知或擬備接納傳聞證據的書面協議。由於口頭協議旨在處理審訊期間出現的特殊情況，規定須事先發出書面通知既不切實際又違背該條文的原意。再者，這個做法符合宏觀的法例框架，因為根據擬議第 55N 條，擬議《條例草案》也批准在法庭准許下以口頭方式發出傳聞證據通知及反對通知。 另一方面，同意接納傳聞證據的口頭協議須於法庭上

		訂立，而為接納某項傳聞證據，有關法律程序的各方須明確地指出並通知法庭各方根據第 55I(1)(a)條同意接納某項傳聞證據，因此確切獲接納的證據會有清晰的法庭記錄。
	(3) 由於沒有具體說明如何準確地記錄和以文件記載根據第 55I(1)條所訂立的"口頭協議"，雙方或會需要要求查閱法庭謄本，以確定協議的確切內容，這可能會導致爭議出現，不必要地延長法律程序。	有別於處理事實承認的《刑事訴訟程序條例》(第 221 章)第 65C 條，擬議第 55I 條關乎接納傳聞證據，有關定義載於擬議第 55C 及 55D 條。因此，有關法律程序的各方並非就一些抽象的概念或事實訂立協議，而是針對一項特定的證據，而該證據理應已以易於取覽的形式存在，例如一份證人陳述書、一份文件、一段錄音或一個錄像檔案。實際上，預期載有傳聞陳述的媒介應被記錄為一項證物。在此情況下，某一方不知悉雙方所協議的事項的風險實際上很低，而同樣地，需要查閱法庭謄本的機會亦低。
6 撤回協議	(1) 法庭在決定是否就撤回協議批予准許時，應採用哪些驗證準則或考慮哪些因素？應否訂明有關驗證準則為"有利於秉行公義"？第 55I(5)(b)條應否訂明相關因素，這些因素又應否類似第 55S(6)條所訂的某些因素？	我們預料在某些情況下，各方可能一度為接納傳聞證據訂立協議，但其後有意撤回該協議，例如當被告更換法律代表而新聘大律師對傳聞證據持有不同看法。 有別於第 55N、55P、55R 及 55S 條，接納傳聞證據的協議是自願訂立的。此外，撤回協議的理由也視乎案情而定。因此，我們認為不宜訂立法庭在考慮撤回協議申請時應採用的驗證準則或應考慮的因素，因為此舉未

		免欠缺彈性，削弱靈活性及司法酌情權。
7 後續法律程序	(1) 根據《裁判官條例》(第 227 章)第 104 條進行的裁判官覆核，或根據《刑事訴訟程序條例》(第 221 章)第 81A 條進行的刑罰覆核，會否視作"關乎某事宜的後續法律程序"？應否修訂第 55I(6)(a)條的字眼，以明文包括"覆核"？	我們同意根據《裁判官條例》(第 227 章)第 104 條進行的裁判官覆核，以及根據《刑事訴訟程序條例》(第 221 章)第 81A 條進行的刑罰覆核，將視作"關乎某事宜的後續法律程序"。我們會研究可否改善草擬用語。
第 3 分部—因應未遭反對的傳聞證據通知接納傳聞證據，或在法庭准許下接納傳聞證據		
8 盤問的權利及對公正審判構成的風險	(1) 第 3 分部准許接納傳聞證據以證明其內容屬實，因而使控辯雙方失去盤問的權利；這項權利是普通法下刑事審訊的精髓，也是"為探求真相所創立最偉大的法律機制"。盤問的權利根據《基本法》第八十七條及《香港人權法案》第十一條受憲制保障。剝奪被告的這項基本權利不但令該人無法得到公正審判，實際上也可能因無從驗證針對被告而援引的傳聞證據的"真實程度"而導致	律政司認同在刑事法律程序中，盤問的權利十分重要。然而，我們不同意第 3 分部使控辯雙方失去盤問的權利。 《基本法》第八十七條及《香港人權法案》第十一(一)條所賦予的公正審判權利，並不保證雙方在所有情況下都絕對有權盤問每名證人。這項權利是指被告有權在與控方證人相同的條件下，取得證人出庭及接受盤問，屬於一項程序性權利。證人不能出席審訊本身並不構成違反傳召證人的權利。無法聯繫證人一事並不違反該項權利，前提是該證人並非因控方或政府的行為

	錯誤定罪。這些風險不會因賦予被告類似的援引傳聞證據的權利，或因第 3 分部其餘條文所載的正式及程序上的保障(例如必要性條件及可靠性門檻條件)而有所緩減。現促請律政司檢視法改會所考慮的其他司法管轄區如何克服有關傳聞證據的同類憲制障礙，並評估該等改革措施的影響，以進一步洞悉未來推動擬議《條例草案》的方向。	而無法聯繫。[7] 第三部分所訂的計劃就接納傳聞證據作為普通法下傳聞規則的例外規定訂立嚴格規限，但該計劃只在情況符合若干嚴格條件時方告適用。該計劃包含多項保障，包括必要性規定、可靠性門檻條件，以及有關豁除傳聞證據和命令進行再審的司法酌情權。此外，即使法庭接納針對被告的傳聞證據，也必須仔細評估該證據的分量，亦不得未經適當評估便接納證據內容屬實。這些保障共同確保傳聞證據只在必要和可靠的情況下方獲接納，並保障被告獲得公正審判的權利。 法改會在制定建議時，對英格蘭及威爾斯、新西蘭、澳洲、加拿大、蘇格蘭及南非的傳聞證據制度進行全面的比較研究。《報告書》內一整章(第 11 章)專門探討該制度對人權造成的影響，法改會在制定建議時亦已充分考慮在人權方面的疑慮。擬議《條例草案》以法改會的建議為基礎，而該等建議已借鑑了上述司法管轄區的經驗。 律政司認為擬議《條例草案》容許考慮相關和可靠的證據，有助加強刑事審訊尋求真相的作用。實際上，在某

[7] *香港特別行政區 訴 韓明光* [2014] 2 HKLRD 710 案，第 469 至 470 段，在 *香港特別行政區 訴 鄒幸彤* [2025] 5 HKLRD 270 案第 24 至 26 段予以確認。

		些情況下(例如證人已離世、不適宜作供或即使已盡合理努力仍不能尋獲時)，堅持只接納直接證供可能有損司法公正。在該等情況下，豁除傳聞證據實質上或會有礙找出真相和秉行公義。
9 對進行審訊的影響	(1) 第 3 分部很可能令控辯雙方把資源轉向搜尋過往的傳聞資料和搜尋證據以反駁對方所援引的傳聞資料的可靠性。此舉可能會加長刑事審訊的時間和增加雙方的訟費。	第 3 分部讓控辯雙方可援引本已豁除的相關和可靠的證據，從而擴大尋求公義的渠道。雙方仍可全權酌定其案件應如何處理，包括決定援引何種證據，以及是否就對方所援引傳聞證據的可靠性提出質疑。 就資源轉向提出關注的意見預設假定，控辯雙方均會大舉搜尋有關傳聞資料並對該等證據提出質疑。然而，該項意見忽略了兩個重要的考慮因素。 首先，傳聞證據須同時符合必要性條件及可靠性門檻條件，方可獲得接納。上述必要性條件的規定旨在確保當直接口頭證據屬合理可得時，傳聞證據不會獲得接納。此舉從根本上限制各方就傳聞證據進行多方面搜尋的範圍。 其次，第 55L(2)條規定傳聞證據通知須於聆訊日期擇定後的 28 日內發出；而第 55M(2)條規定反對通知須於傳聞證據通知發出後的 14 日內發出。如有任何更改時限要求的申請，法庭只有在符合第 55N(6)條所訂

		其中一項條件的情況下，才會根據第 55N 條作出批准。法庭備有強大的案件管理權力，可確保有關法律程序得以有效地進行，也有權駁回缺乏理據而逾期援引傳聞證據的申請，或就反對該等證據而提出押後聆訊的不合理要求。 無論如何，律政司認為，容許考慮相關和可靠的證據所得的好處，大於評估是否接納傳聞證據所需的額外時間或資源。
第 55J 條—因應未遭反對的傳聞證據通知，傳聞證據可獲接納		
10 傳聞證據因未遭反對而獲接納	(1) 擬議《條例草案》釐清了法庭延展反對接納傳聞證據時限的廣泛權力(第 55N 條)，回應了先前有意見關注傳聞證據僅因未遭反對而獲接納的問題。這既有助促進更廣泛地接納傳聞證據，亦可推動法律執業者努力及時提交適當的通知，同時也符合法改會在《報告書》中提出關於接納傳聞證據須經當事人同意的建議。[8]	我們歡迎回應者贊同因應未遭反對的傳聞證據通知接納傳聞證據的擬議機制。

[8] 見《報告書》第 9.40 至 9.41 段

第 55L 及 55M 條—傳聞證據通知及反對通知須符合的規定		
11 傳聞證據通知及反對通知的格式	(1) 可否在《證據條例》的附表載列傳聞證據通知及反對通知的標準格式，以作出一定程度的統一？採用訂明表格有助提高司法效率，令法律程序得到及時解決。	我們同意採用標準表格對法庭及法律程序各方均有好處。由於發出傳聞證據通知及反對通知關乎法庭程序的進行，我們會研究載列該等通知的標準格式是否可行。
12 根據第 55L(1)(c)(iii)條指明尋求證明其內容屬實的陳述或斷言	(1) 第 55L(1)(c)(iii)條訂明，如有關傳聞證據既不是口頭陳述，亦不是書面陳述，有關傳聞證據通知須載有“對該傳聞證據的描述”。換言之，有關傳聞證據的形式是行為，但有些情況未必能明確顯示有關行為要證明什麼陳述或斷言的內容屬實。有見及此，我們建議修訂第 55L(1)(c)(iii)條，訂明如某陳述或斷言須藉有關行為證明內容屬實，必須描述或指明該陳述或斷言。	我們同意就第 55L(1)(c)(iii)條而言，規定申請人如藉有關行為證明某陳述或斷言的內容屬實，必須在傳聞證據通知中描述或指明該陳述或斷言，此舉有助法庭及法律程序的其他各方清楚了解有關申請的實質內容。我們會研究可否改善草擬用語。
第 55Q 條—必要性條件		
13 舉證責任	(1) 如尋求法庭接納傳聞證據的申請人	“排除合理疑點”這標準一向是控方履行舉證責任證明

	是控方，則控方必須排除合理疑點，證明符合必要性條件。這可能會引伸需要進一步釐清的實際問題，例如有人可能會問，控方須呈上何種證據以排除合理疑點，證明陳述者不適宜擔任證人。	刑事罪行構罪元素時所須達到的標準，時常涉及錯綜複雜的案情和主觀精神狀態。在證明符合必要性條件方面應用同一標準不會產生嶄新或難以克服的困難。法庭及控方均熟悉這標準。 此外，採用"排除合理疑點"這標準，以證明一項證據的可接納性，亦非新鮮事。例如，根據《證據條例》(第 8 章)第 22 條，如符合某些條件，審訊的任何一方在刑事法律程序中，可援引文件記錄作為所述任何事實的表面證據。若要證明已符合該等條件，控方必須達到"排除合理疑點"的舉證標準。[9] 就證明陳述者屬於第 55Q 條第(1)(b)項的情況而言，須援引可獲接納的證據，同時現有的證據規則適用。這或涉及傳召斷定陳述者不適宜在法庭上作供的醫生，或依據《刑事訴訟程序條例》(第 221 章)第 65B 條接納由該醫生作出的證人陳述書。
	(2) 鑑於被告沒有機會盤問陳述者，且不負有自證無罪的責任，因此應以提證而非相對可能性衡量的標準來證明已符合必要性條件。	律政司不同意辯方應以提證為舉證標準來證明已符合必要性條件。控方的擬議舉證標準是排除合理疑點，而辯方的擬議舉證標準則是相對可能性的衡量，這點貫徹法改會的建議 30。值得一提的是，這項建議旨在直

[9] 見 *R 訴 Mattey & Queeley* [1995] Crim LR 308 案及 Archbold Hong Kong 2026，第 9-71 段

		接回應大律師公會在諮詢期間提出的關注。 法改會起初曾建議控辯雙方均須按相對可能性衡量的標準來證明已符合必要性條件。大律師公會對該項初步建議提出異議，並指控辯雙方在刑事法律程序的舉證標準根本就不對等。法改會在仔細考慮大律師公會的意見後相應修訂立場，建議控方須排除合理疑點證明已符合必要性條件，辯方則須以相對可能性衡量的標準證明。[10] 我們認為，規定辯方以相對可能性衡量的標準來舉證，實屬恰當，理由如下： 第一，必要性條件關乎證人可否出庭作證，而與被告是否有罪無關。規定辯方以相對可能性衡量的標準來證明必要性，純粹是要求辯方證明較大可能無法取得直接口頭證據。被告無須承擔證明自己清白的責任。 第二，若就辯方援引傳聞證據設立提證標準，將使門檻設得過低。嚴格來說，提證責任並非"舉證責任"，因為沒有要求要"證明"該事實或爭議點。提證責任在於援引足夠的證據，使該事實獲適當地視為案中的爭議

[10] 法改會《報告書》第 9.83 至 9.85 段

		點。[11] 如此低的標準將不足以確保法庭只在有合理事實基礎證明確實有"必要性"時才准許接納傳聞證據。 第三，鑑於證明必要性所涉的事實性質，進一步加深了我們對標準過低的憂慮。證人是否經已去世、患上重病或無法尋獲等事宜通常只有尋求援引傳聞證據的一方知道。如辯方在僅有提證責任的情況下尋求援引傳聞證據，則辯方只須援引一些能證明必要性存在的證據，而該些證據即使是微不足道亦可。一旦辯方符合這個低門檻，控方便面臨相當大的實際困難，難以質疑或反對辯方關於證人無法出庭的斷言，特別是當該等斷言是基於只有辯方知道，而控方無法透過實際可行的調查方法知道的事實。雖然不論適用的標準為何，控方都必須審查辯方的傳聞證據的必要性，但這審查工作的性質隨辯方所需承擔的舉證責任不同而有根本性的差異。根據相對可能性衡量的標準，辯方必須確切地令法庭信納必要性有較大可能存在。法庭會衡量控辯雙方的證據，包括辯方就必要性提出的論據，以及控方對該斷言提出的質疑。這恰當地把舉證責任加諸於可取覽相關資訊的一方，與第 55Q(3)(a)條相符。該條文訂明申請人負有證明必要性條件獲符合的舉證責任。這個做法亦與普通法法則一致。根據普通法例外規定尋求

[11] 見 Phipson on Evidence (第 21 版)第 6-02 段

		援引傳聞證據的一方，必須承擔證明例外規定適用的責任。[12]
14 證明確使證人出席不屬合理地切實可行	(1) 就第 55Q(1)(c)條而言，何謂"不屬合理地切實可行"會有不同詮釋。為求明確清晰，建議條文訂明根據什麼準則來決定是否構成"確使陳述者親身出席不屬合理地切實可行"。	我們在草擬第 55Q(1)(c)條時，參考了英國《2003 年刑事司法法令》第 116(2)(c)條，當中訂明"該人不在英國，而確使其出席並不屬合理地切實可行"。此外，新西蘭《2006 年證據法令》第 16(2)(b)條載列類似的必要性條件，訂明"該人不在新西蘭，而要使其作證人並不屬合理地切實可行"。與之相比，第 55Q(1)(c)條的條文更為詳盡，當中明文規定(i)"確使陳述者出席"和(ii)"致使陳述者能夠以另一合乎規定的方式接受訊問及盤問"均不屬合理地切實可行。實際上，這意味依據此條件的一方須作出合理努力，安排陳述者返回香港或以其他方式作證(例如透過視像聯繫或遙距聆訊)。 若在第(c)款中訂立更多具體準則，未免欠缺彈性，削弱對于秉行公義至為重要的靈活性及司法酌情權。由法庭評估每宗申請特有的事實，然後裁定所援引的證據(不論是醫療報告、出入境記錄，或是醫療專業人員或調查人員的口頭證供)是否符合此項條件最為合適。法庭在詮釋及應用 "屬合理地切實可行"這驗證準則

[12] 法改會《報告書》第 9.83 段

		時，亦可借鑒英國及新西蘭的相關法理。
	(2) “不屬合理地切實可行”的情況大抵會涵蓋身處海外的陳述者經已去世或不適宜擔任證人的情形。這會衍生一些問題：會否接納外地機構發出的死亡證明書或海外醫生發出的醫學證明書作為證據，證明要陳述者出席法律程序或要陳述者使自己能夠以其他方式接受訊問及盤問均不屬合理地切實可行。	擬議《條例草案》就接納傳聞證據訂定清晰明確的必要性條件。不論陳述者是否在香港，凡陳述者缺席的主要原因是已去世或不適宜擔任證人，申請人都應主要依據具體處理該等條件的款目(即如該人經已去世，依據第(1)(a)款；如該人不適宜擔任證人，則依據第(1)(b)款)提出申請。 不過，各項必要性條件並非互相排除。舉例來說，即使援引證據的一方不能確切證明符合某項條件(例如懷疑陳述者經已去世，但未有尋獲其遺體，或者對某項醫學診斷有爭議)，也不會妨礙該方引用其他較廣泛的條文部分。即使未能按所需的標準確立陳述者經已去世或不適宜擔任證人這項具體事實，但法庭仍會考慮整體情況，決定要該人出庭是否屬切實可行，或者是否已採取一切合理步驟尋覓該人。
	(3) 此外，如控方援引所需文件證明(例如死亡證明書或醫生證明書)以證符合必要性條件，但沒有傳召該等文件證明的發出者提供證據，則依據經修訂的條文，控方似乎必須證	視乎文件證據的性質，可依據普通法規則的例外規定或香港成文法訂明的例外規定援引文件證據，以證明證據內容的真實性。如文件屬公共性質，該文件很可能

	明傳召該發出者提供證據並非合理地切實可行，才能申請法庭接納有關文件證明為傳聞證據。	會被視為傳聞規則的現行普通法例外情況[13]，而第55T條保留了這做法。除了普通法的例外規定外，亦可依據《證據條例》(第8章)第18條援引公共文件。如有關公共文件屬外地文件，可依據《證據條例》(第8章)第19A條援引該等文件，惟須符合該條訂明的條件。如所涉文件屬私人性質文件，《證據條例》(第8章)亦訂有條文(例如第20、22及22A條)利便在審訊中交出這些文件。 舉例來說，假若確認陳述者死亡或患病的人士(例如發出陳述者的死亡證明書或醫生證明書的人士("發出證明書的人士")無法在法庭席前作供，只要在符合第55P(2)條的所有規定的情況下，發出證明書的人士的陳述便可獲接納，以證明陳述者死亡或患病。因此，如法庭信納陳述者和發出證明書的人士的陳述均已符合第55P(2)條的所有規定，該等陳述均可獲接納為證據(見擬議第55X條)。
15 第55Q(1)(c)條的草擬方式	(1) 第55Q(1)(c)條現時的草擬方式使用了"以下兩項均不屬"的字眼，對讀者而言不夠清晰。	在草擬有關條文時，我們亦考慮了同一條文中文版本的草擬方式。有鑑於此，加上"以下兩項均不屬合理地切實可行"等字眼準確地表達了有關條件(即確使陳述者出席該法律程序，以及致使陳述者能夠在該法律程

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

		序中，以另一合乎規定的方式接受訊問及盤問，兩者均不屬合理地切實可行)，故我們選用了現時的草擬方式。
16 證明已採取一切合理步驟尋覓陳述者	(1) 第 55Q(1)(d)條規定須採取一切合理步驟尋覓陳述者。這引起了何謂合理步驟的問題，而這個問題很可能會在接納傳聞證據的申請中引發激烈爭論。	某一方是否"已採取一切合理步驟"這個問題對法庭來說並不陌生。舉例而言，如某一方擬援引某些文件記錄作為證據，該方可依據《證據條例》(第 8 章)第 22 條援引該等記錄。在依據該條文之前，該方須證明有關情況符合《證據條例》(第 8 章)第 22(1)(a)、(b)及(c)條所訂條件，當中包括"*不能識別，而**一切**識別該人的**合理步驟**亦已採取*"(第 22(1)(c)(iii)條)及"*身分已知悉，但不能尋獲，而**一切**尋覓該人的**合理步驟**亦已採取*"(第 22(1)(c)(iv)條)。因此，法庭在考慮是否依據《證據條例》(第 8 章)第 22 條接納某份文件時，須確定的事項包括申請人是否已採取一切合理步驟識別或尋覓證人。此外，法庭在考慮是否因證人失蹤而批准擱置法律程序時，其中一項須予考慮的因素是申請人是否已為確使失蹤證人出席有關法律程序而採取一切合理步驟。因此，法庭具備裁定此事的專業知識。 無論如何，申請人為尋覓陳述者而理應採取的步驟必須就所有相關情況而言屬合理，並須按個別情況予以考慮。在詮釋和應用"一切合理步驟"的驗證準則時，法

		庭也可參考英國及新西蘭的相關法理觀點。[14]
17 導致自己入罪這項理由不適用於可能成為控方證人的人士	(1) 根據第 55Q(1)(e)條，沒有充分政策理由以"陳述者擔心導致自己入罪而拒絕作證"為由，剝奪控方申請接納陳述者的傳聞陳述的機會。	在《2018 年證據(修訂)條例草案》中，第 55Q(1)(e)條原本不只適用於被告一方的陳述者。然而，張宇人議員對該擬議條款表示關注。經審議後，政府建議修改第 55Q(1)(e)條，故該款現只適用於被告。 我們明白，可能成為控方證人的陳述者也可能會擔心其證供會使自己面臨與某項罪行有關的法律程序。然而，如陳述者的證據被視為足以協助控方但會導致陳述者入罪，該證人可獲考慮免受起訴，使陳述者能出庭作證而不會導致自己入罪。因此，控方無需依據這個理由來援引陳述者的陳述作為傳聞證據。
第 55R 條—可靠性門檻條件		
18 舉證標準	(1) 根據第 55R 條所訂的可靠性門檻條件，關乎某傳聞證據的情況須"對該傳聞證據屬可靠證據提供合理保證"。然而，任何刑事審訊以至定罪均不應取決於只能"合理保證"其可	擬議《條例草案》所訂的可靠性門檻條件旨在落實法改會的建議 26 及 27。法改會小組委員會研究其他司法管轄區的不同表述方式後，最終採納新西蘭《2006 年證據法令》的方式。根據新西蘭《2006 年證據法令》第 18(1)(a)條，如"關乎該陳述的情況，對該陳述的可靠性

[14] 英國《2003 年刑事司法法令》第 116(2)(d)條訂明，接納傳聞證據的條件之一是"雖已採取屬合理地切實可行的步驟尋覓相關人士，但無法尋獲"。新西蘭《2006 年證據法令》第 16(2)(d)條則訂明，如某人"盡了合理努力後仍未能識別或尋獲"，則該人無法作證人。

	靠性的證據。	提供了合理保證”，該傳聞證據可獲接納。小組委員會認為此表述方式簡潔，而且“‘保證’一詞意味着有合理的高門檻適合用於如此規範”，因此最具吸引力。[15] 理解可靠性門檻驗證準則的性質和作用十分重要。根據新西蘭的法學理論，“對可靠性提供合理保證”這項提述是指證據相當可靠，足以讓事實裁斷者考慮該證據並就其分量作出結論。[16] 正如新西蘭上訴法庭在*Adams v R*案[17]中指出，“法官必須在法律上裁斷是否已達到有關門檻。這個把關角色與陪審團在評估證人是否可信和在審訊中提供的證據是否可靠方面的角色頗不相同。法官和陪審團的憲制職責截然不同，不容混淆。”此外，新西蘭上訴法庭在*TK v R*案[18]中表示，“法庭……無須按照刑案的舉證準則來評定傳聞陳述的可靠性，反而須審視環繞該陳述的情況，並按此評估該陳述的可靠性是否有‘合理保證’。如該陳述獲接納，則轉由陪審團負責權衡環繞傳聞證據的情況，以及評估該證據的整體可靠性。” 因此，傳聞證據一旦獲接納，其最終可靠性即成為陪審

[15] 法改會《報告書》第 9.56 段

[16] *Rv Burr* [2015] NZHC 1623 at [12]

[17] [2012] NZCA 386 at [26]

[18] [2012] NZCA 185, at [23]

		團(或在不設陪審團的審訊中，則為法庭)須以事實裁斷者的身分、按刑案的舉證準則評估的事宜，以裁定被告有罪或無罪。陪審團可接納或拒絕接納已獲法庭接納的傳聞證據，並可給予該證據陪審團認為適當的分量。 此外，第 55V 條訂明一項重要保障，容許接納以下證據：假使陳述者曾提供口頭證據，則會與該陳述者的可信性相關的證據；以及與陳述者先前陳述不相符的證據。這項保障確保傳聞證據的可靠性能夠受到適當驗證和質疑。
	(2) 此外，應採用不同的舉證標準：在證明符合可靠性條件時，控方必須排除合理疑點，而被告只須達到提證標準。	必要性條件和可靠性門檻條件在性質上有所不同。必要性涉及事實問題，須採用適當的舉證標準；可靠性門檻則涉及法律問題，須作出評價性判斷。不同舉證標準這概念不適用於可靠性門檻，因為可靠性門檻並非關乎事實的判定，而是關乎對一些情況能否為可靠性提供合理保證作出法律評估。 法改會小組委員會在審慎考慮舉證標準的問題時，確認了這個區別。小組委員會的結論是必要性驗證準則"關乎事實，須確立適當的舉證標準"，而可靠性門檻驗證準則則"要求法官須信納有關情況對該陳述屬可靠證據提供了'合理保證'"。這點反映出這兩項條件在性質上有根本差異。因此，儘管小組委員會就必要性條件

		提出不同的舉證標準(即控方須排除合理疑點，而辯方則須以相對可能性的衡量為標準)，但並無就可靠性門檻建議類似的不同標準。[19]
第 55S 條—傳聞證據在法庭准許下獲接納後的豁除		
19 一般條文	(1) 支持新訂第 55S 條，原因是實際上如何基於比"無須答辯"準則範圍更廣的理由，運用指示裁定無罪的權力[20]，始終模糊不清。 (2) 建議的條文絕非新穎，亦未必必要，因為法庭大概可以運用固有司法管轄權來重新檢視接納證據的決定，而且法庭如在審訊結束前更改其決定，也會處理後續影響。 (3) 第 55S 條原則上非屬必要，但訂立亦無妨，且或許有助釐清須予依循的相關程序。	我們備悉和感謝回應者支持第 55S 條，還提出即使法庭已具有固有司法管轄權，訂立清晰法例也具益處的觀點。然而，我們認為這項條文實屬必要。第 55S 條明確載述各方申請豁除之前已獲接納的傳聞證據的機制，更重要的是劃定司法酌情權的特定適用範圍。該條文規定，法庭在裁定公義所在時須考慮第 55S(6)條所列的六項因素，此條文確保一定程度的確定性和一致性，而這單靠固有司法管轄權也許未能做到。我們訂立第 55S 條旨在確保法庭為秉行公義作出干預時會有清晰的法定依據，從而避免有關固有司法管轄權範圍的潛在爭議。

[19] 法改會《報告書》第 9.85 段

[20] 《2018 年證據(修訂)條例草案》第 55Q 條

20 被濫用的風險	(1) 由於並無明文限制何時可提出申請，而且第(6)款所列的首四項因素似乎基本上與法庭當初接納傳聞證據時所考慮的因素相同，因此有意見關注第 55S 條訂明的豁除機制可能會被訴訟任何一方濫用，以可再次反對法庭接納傳聞證據。 (2) 建議就豁除機制的適用時間及情況訂立限制。	第 55S 條提供了重要的保障，防止出現司法不公及定罪不穩妥的情況。雖然法庭根據第 55P 條初步批予准許時，須權衡傳聞證據的證案價值與不利影響，但法庭通常是在尚未掌握所有證據的審訊前階段作出該等是否接納傳聞證據的判定。第 55S 條賦權法庭在全面審訊的背景下，對該傳聞證據再作覆核，以解決此問題。因此，假如在審視全部證據後，法庭隨後發現控方的傳聞證據會造成不公平的偏見，法庭可將該證據豁除，以確保被告獲得公正審判。 法庭具有充分的權力維持法律程序得到妥善管理，不會批准瑣屑無聊、無理取鬧或缺乏理據的申請。因此，我們相信第 55S 條不會被濫用作干擾或拖延法律程序的手段。
21 豁除之前獲接納的傳聞證據後須作出的指示／命令	(1) 一名回應者要求釐清，法庭根據第 55S 條豁除傳聞證據後，其考慮因素和須作出的相應命令是否會視乎以下情況而有所改變： a. 審訊是否在有陪審團的情況下進行，以決定是否繼續進行審訊；以及 b. 豁除的傳聞證據由控方還是辯方援引，以評估被告是否仍須答辯	第 55S 條在有陪審團和無陪審團的情況下進行的審議均適用，而法庭的考慮因素和須作出的相應命令相同。換言之，就第 55S 條的施行而言，有陪審團的審訊與無陪審團的審訊也沒有分別。 如豁除的傳聞證據由控方援引，豁除傳聞證據可能會削弱控方的案情，以至不再存在針對被告的表面證據。由於法庭純粹基於控方的證據是否充足來決定被告是否須答辯，豁除辯方的傳聞證據(而該證據在本質上可

		為被告辯白)不會削弱控方已提出針對被告的案情。然而，如法庭根據第 55S(2)條豁除一項由辯方援引的傳聞證據，法庭仍須根據第 55S(3)條考慮在豁除該項證據後，是否適宜繼續進行有關審訊，並據此作出適當的指示或命令。
	(2) 在 55S(3)(a)條中，應使用"須"而非"可"一字，因為遭豁除的傳聞證據不應獲得考慮，也不應具有任何分量。	我們同意，一項傳聞證據一旦遭豁除，便不具有任何分量。我們會研究可否改善草擬用語。
	(3) 根據第 55S(3)(b)條，法庭只應在有利於秉行公義時，才命令進行進一步審訊。述明有關準則會更好。	我們預料，經考慮所有情況後，可能在某些情況下，進行進一步審訊並不公正恰當。因此，我們在該款中使用"可"一字，以賦予法庭相關酌情權。
	(4) 如在沒有陪審團的情況下由專業法官進行審訊，實在不大清楚為何仍有必要在第 55S(3)(b)條下賦予法庭命令進行進一步審訊的權力。	法改會建議同一套規則應同樣適用於有陪審團的審訊和無陪審團的審訊，因為此舉可避免不必要的複雜情況，以及不會令人覺得被告所受保護可能要視乎檢控人員所選審訊地點而定[21]。因此，擬議第 55S 條的草擬方式並沒有區分在有陪審團或無陪審團的情況下進行的審訊。

[21] 法改會《報告書》第 9.102 段

	(5) 應把第 55S(4)(a)條整條刪除，原因是在法律及程序上，如法庭判定被告無須就某罪行答辯，便會就該罪行指示裁定被告無罪。	在法律及程序上，法庭判定被告無須就某罪行答辯後，便會就該罪行指示裁定被告無罪。為更全面闡述在豁除先前獲接納的傳聞證據後須予遵循的程序，我們認為宜保留該款。
	(6) 不大清楚為何根據第 55(4)(a)條，在法庭判定被告無須答辯的情況下，法庭仍然可以不指示裁定被告無罪。	我們同意，如法庭判定被告無須就罪行答辯，法庭應就該罪行，指示裁定被告無罪。我們會研究可否改善草擬用語。
	(7) 第 55S(6)(e)條似乎暗示法庭可能會基於完全屬傳聞性質的控方證據來把被告定罪。若果真的如此，這會徹底改變普通法刑事審訊的本質，是完全不能接受的。	第 55S 條賦予法庭一般的司法酌情權，讓法庭可在接納傳聞證據並非有利於秉行公義的情況下豁除該證據。如辯方認為傳聞證據應予豁除，例如控方僅依賴傳聞證據舉證，辯方仍可根據第 55S 條，以"接納傳聞證據並非有利於秉行公義"為由，申請豁除該傳聞證據。法庭在決定豁除該傳聞證據是否有利於秉行公義時，須考慮全部且僅限於擬議第 55S(6)條所訂明的六項因素。這些因素包括有關傳聞證據對於針對被告的案情的重要性(第 55S(6)(d)條)，以及接納有關傳聞證據可能對被告造成的不利影響(包括因不能盤問有關陳述者而可能造成的任何不利影響)(第 55S(6)(e)條)。如控方案情完全或主要是依賴傳聞證據，有關證據對於針對被告的案情尤為重要，而不能進行盤問所造成的不利影

		響亦可能會更嚴重。法庭作為把關者，在裁定接納傳聞證據是否有利於秉行公義時會權衡這些因素。視乎具體情況，法庭作出權衡後，是可能會豁除有關傳聞證據的。 因此，本條文既維持法庭基於具體情況就案件作出判斷時所需的靈活性，也保障被告免受不公平的對待或不可接受的不利影響。
第 55T 條—某些關乎豁除傳聞規則的例外情況的普通法規則，予以保存		
22 保存普通法規則	(1) 一名回應者認同此條的目標，即保存在普通法中獲普遍認可(而擬議《條例草案》本身尚未涵蓋)的傳聞證據例外情況。第 55T 條的措辭清晰明確，準確反映了立法意圖。至於載列予以保存的普通法規則的附表 2，回應者亦同意其措辭。	我們感謝回應者支持保存普通法中關乎傳聞規則的例外情況。
23 標題的草擬方式	(1) 有回應者建議，為了清晰起見，可以修改第 55T 條英文本的標題，在“relating to exception to”之後加上“the”。	我們會研究可否改善草擬用語。

第 55U 條—隱含斷言		
24 第 55U 條的草擬方式	(1) 一名回應者認同廢除源自 *Kearley* 案、備受批評的傳聞證據“隱含斷言”規則的目的。其唯一的意見是該條可以簡化如下：“以屬傳聞為由豁除隱含斷言的普通法規則現予廢除。”	我們備悉該意見，並會考慮可否改善草擬用語。
第 55V 條—用以證明可信性的證據		
25 證明可信性的證據的目的	(1) 關於第 55V(2)條，一名回應者同意建議 31 及諮詢文件的註腳 13 所述目的，即一方應可援引影響缺席的傳聞證據陳述者可信性的證據，猶如該人提供口頭證據時受到盤問一樣。該名回應者假定如此措辭將容許接納多種證據，包括證明缺席的陳述者不良品格的一般證據。	凡根據擬議第 IVA 部接納某傳聞證據，與陳述者可信性相關的證據如在該人以證人身分作供時可獲接納，該證據便可獲接納。
	(2) 第 55V(2)條的措辭看來也容許尋求援引缺席證人作出的傳聞證據的一方，可援引支持該證人可信性的證據。現時，本款的措辭似乎容	擬議第 55V(2)條釐清了一點，就是並非各種與陳述者可信性相關的證據均可獲接納，而是只有在有關陳述的陳述者在法律程序中提供口頭證據時可獲接納的證據，方可獲接納。這意味着適用於作供證人的可信性證

	許支持及打擊缺席證人可信性的證據皆被援引，這會超出建議31及諮詢文件的註腳13所述目的。	據的規則及限制，同樣適用於與傳聞陳述的陳述者相關的可信性證據。因此，我們認為擬議第55V(2)條目前的草擬方式沒有超出建議31及諮詢文件的註腳13所述目的。
	(3) "假使……的陳述者，有在該法律程序中，*就該陳述*提供口頭證據"一詞實屬多餘，並可能造成混淆。倘若立法原意是凡根據擬議《條例草案》接納某傳聞證據，與該傳聞證據的陳述者"可信性"有關的證據便可獲接納，則該證據即可獲接納。上述強調字眼毫無意義，應予刪除。	擬議第55V(2)條中"就該陳述"一詞旨在說明陳述者理應就陳述所載事宜在庭上作供，而該陳述應與案件的爭議點有關。我們會考慮可否進一步改善草擬用語。
	(4) 一名回應者同意本條文及其目的是向審判庭提供證據，證明傳聞證據的陳述者過往曾作出不一致的陳述。	律政司歡迎回應者對本條文表示支持。
26 第55V(3)條的草擬方式	(1) 一名回應者建議第55V(3)條英文本的首字"Also (此外)"可修訂為"Further (此外)"，以求一致。	我們會研究可否改善草擬用語。

第 55W 條—證人的過往陳述		
27 過往作出的一致陳述(用以恢復記憶和用作盤問主題)	(1) 雖然本條文與英國等其他普通法司法管轄區的法例發展大致一致，但本條文並不包含英國《2003 年刑事司法法令》第 120 條所載"過往作出的一致陳述"這個特定類別。這類陳述是用以恢復記憶的工具和用作盤問的主題。倘若立法原意是全面涵蓋普通法關於過往作出的一致陳述的所有例外情況，則建議加入英國法例中的相關措辭，以涵蓋這些特定情況。	第 55W 條落實法改會的建議 39。正如《報告書》第 10.82 段所述，法改會小組委員會原本建議，證人用以恢復本身記憶的過往陳述應基於內容屬實而獲接納；如證人確實無法記得自己在過往陳述中記錄的事件，則過往陳述亦應基於內容屬實而獲接納。然而，考慮到部分受諮詢者表達的關注(即過往作出的一致陳述可能獲給予過重分量；提交該等陳述可能成為慣例，因而減低證人在庭上提供口頭證據的重要性；以及證人原本可能捏造陳述，其後聲稱無法記得有關事件這項風險)，法改會建議證人用以恢復記憶的過往陳述，不應基於內容屬實而獲接納。
28 "盡該人所信"的規定	(1) 一名回應者建議第 55W(1)(b)條可修訂為只要求"在提供口頭證據時，該人確認(i)該陳述是由該人作出的；及(ii)該陳述的內容屬實。"	我們會研究可否改善草擬用語。
第 55X 條—多重傳聞		
29 多重傳聞	(1) 一名回應者同意本條文及其目的是釐清接納多重傳聞的條件。	律政司歡迎回應者對本條文表示支持。

30 第 55X 條的草擬方式	(1) 第 55X 條的措辭看來難以理解，而該條文似乎未能反映多重傳聞的證據並非只為證明某陳述曾在較早前作出，還為證明該陳述屬實。	第 55C 及 55D 條已分別界定“陳述”和“傳聞”的定義。因此，按照上文下理，我們認為“真實性”的元素已包含在內。我們會研究可否改善草擬用語。

律政司
2026 年 3 月

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