

Administration of Justice (Miscellaneous Provisions) Bill 2014

Submission of Hong Kong Bar Association

1. The Legislative Council Bills Committee on the Administration of Justice (Miscellaneous Provisions) Bill 2014 (“the Bill”) has requested the Hong Kong Bar Association (“the HKBA”) to provide its views on the Bill.

2. The HKBA makes this Submission in respect of the Bill, which is in six substantive Parts: (1) audio-visual facilities in criminal proceedings; (2) professional qualifications of permanent magistrates; (3) the delivery of reasons for verdict and sentences of criminal cases in the District Court; (4) abolition of civil appeals to the Hong Kong Court of Final Appeal as of right; (5) jurisdiction and powers of the Labour Tribunal; and (6) suitors’ funds in various courts and tribunals.

3. The HKBA was consulted by the Judiciary on most of the above subject matters during the formulation of the proposals now contained in the Bill. The HKBA now provides its views on each of the substantive Parts of the Bill.

Amending the Criminal Procedure Ordinance (Cap 221) regarding “live television link”

4. The proposed amendment to section 79A of the Criminal Procedure Ordinance (Cap 221) is to change the definition in the section of “live television link” by replacing the expression “closed circuit television system” with the broader expression of “audio-visual facilities”. The Judiciary has explained that the proposed amendment would allow the use of other suitable information technology, such as video conferencing facilities, for the conduct of evidence taking by live television link.

5. The HKBA does not object to the general tenor of the proposed amendment of broadening the scope or kinds of information technology facilities that can be used for the purpose of conducting evidence taking by live television link. However, the HKBA is concerned that the replacing “closed circuit television system” with “audio-visual

facilities” would leave aside from proper consideration the relevant safeguards or necessary features of reliability and closed loop nature of the live television link for the purpose of taking evidence in a trial or other proceedings which may be closed to the public for many different and legitimate reasons. One possible arrangement that takes care of this concern is to prescribe either by express language in section 79A or by subsidiary legislation the endorsed technologies or the endorsed features of technologies that are considered suitable and appropriate following consultation with all stakeholders in the administration of criminal justice.

Amending the Magistrates Ordinance (Cap 221) regarding professional qualifications of permanent magistrates

6. Part 3 of the Bill proposes principally the replacement of section 5AA(1) and (2) of the Magistrates Ordinance (Cap 221) with new provisions that prescribe the qualification for appointment as a permanent magistrate and the reckoning of the not less than five years’ “required experience”, so that a legally qualified person may be able to combine periods of private practice or relevant working experience in the HKSAR Government or sitting as a special magistrate to accumulate the said five years of “required experience”.

7. The HKBA does not object to this proposed amendment and has no further comments.

Amending the District Court Ordinance (Cap 336) regarding delivery of reasons for verdict and sentence in criminal proceedings

8. Part 4 of the Bill proposes the substitution of section 80(2) of the District Court Ordinance (Cap 336) with new provisions that enable the trial judge in a criminal trial in the District Court to have the option of delivering the reasons for the verdict in writing together with the verdict.

9. The HKBA agrees with the proposed amendment, which addresses the problem that the present requirements of section 80 have generated in criminal trials in the District

Court, particularly in long and/or complex cases, where the reasons for verdict at present have to be delivered orally by the trial judge, a laborious process that unjustifiably takes up court time and judicial resources, as well as professional time. The HKBA considers that the needs of open and transparent justice can be served by the proposed section 80(6) of requiring copies of the reasons delivered in writing to be given to the parties, lodged with the High Court Library and made available for public inspection in the Registry of the District Court. The HKBA trusts that in appropriate cases, the trial judge may announce orally the verdict plus with a summary of the reasons for verdict for public information, after expressly stating that the summary does not form part of the reasons for verdict in writing. More importantly, in order to ensure that the accused person may know of the reasons why he or she is acquitted or convicted in a timely manner, the HKBA considers that it is highly desirable to provide by way of Practice Direction or some other means that where the expedient of handing down reasons for verdict is adopted, the accused person and his or her representatives should be given time in advance to read, understand and digest the reasons in order to prepare for consequential hearings such as (where the verdict is guilty) the sentence hearing or (where the verdict is not guilty) applications for costs.

Amending the Hong Kong Court of Final Appeal Ordinance (Cap 484) regarding abolition of the category of appeal as of right in civil appeals

10. Part 5 of the Bill proposes amendments to the Hong Kong Court of Final Appeal Ordinance (Cap 484) to remove in section 22 the right to appeal to the Court of Final Appeal in a civil cause or matter where, generally speaking, the subject matter in question exceeds a prescribed monetary value.

11. The HKBA understands that the Court of Final Appeal has constantly urged the removal of the category of appeal as of right in civil appeals. The Court of Final Appeal had over the years had to allocate a substantial portion of its time to many such civil appeals which do not involve the resolution of important legal issues but rather disputes as to findings of fact that had been adjudicated in the two levels of court below, ie at the first instance trial and the intermediate level appeal.

12. The Judiciary had earlier consulted stakeholders, including the HKBA, on this proposal. The HKBA had expressed support of the proposal to repeal the category of appeal as of right in civil appeals presently prescribed in section 22(1)(a) of the Hong Kong Court of Final Appeal Ordinance. The HKBA had specifically endorsed the Judiciary's proposal that all appeals in a civil cause or matter to the Court of Final Appeal would be subject to discretionary leave administered by the Appeal Committee of the Court of Final Appeal. The HKBA considers that the Judiciary's proposal of repealing the category of appeal as of right in civil appeals and requiring all intended civil appeals to the Court of Final Appeal to be subject to discretionary leave is well justified since the Court of Final Appeal's primary function as a court of final adjudication is to determine questions of law of sufficient importance, be it in respect of the development of the law or the public interests or impact associated with the proper clarification of it. And the "or otherwise" limb of section 22(1)(b) serves as an adequate basis for the Court of Final Appeal to exercise its secondary function of righting serious departures from accepted norms in the administration of civil justice. The HKBA is satisfied that the proposal will not deprive litigants of access to Hong Kong's court of final adjudication.

Amending the Labour Tribunal Ordinance (Cap 25) and its rules regarding the jurisdiction and powers of the Labour Tribunal

13. Part 6 of the Bill contains proposed amendments to improve the operation of the Labour Tribunal, including the introduction of a power to require the giving of security and the better provision of enforcement of awards and orders of the tribunal through registration in the District Court.

14. The HKBA supports these proposals and has no further comments.

Amendments relating to Suitors' Funds

15. Part 7 of the Bill contains proposed amendments relating to suitors' funds in the High Court, the Labour Tribunal, the District Court, the Small Claims Tribunal and the Court of Final Appeal.

16. The HKBA supports these proposals and has no further comments.

Dated 18th July 2014.

HONG KONG BAR ASSOCIATION