

## Fact Sheet on Key Proposed Legislative Changes to the Criminal Procedure Code (“CPC”) and the Evidence Act<sup>1</sup>

| S/N | Proposed Legislative Changes   | S/N in Annex B |
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| 1   | <p><u>Introducing video recording of interviews</u></p> <ul style="list-style-type: none"> <li>• Law enforcement agencies will be able take statements from witnesses either in writing or <i>via</i> video recording. For some offences, suspects’ statements must be taken <i>via</i> video recording.</li> <li>• Video recording will enable the court to quickly determine voluntariness and weight by showing the flow of the interview and the demeanour of the interviewer and interviewee.</li> <li>• Safeguards will be introduced to prevent misuse of the video-recorded statements.</li> <li>• Video-recorded statements of vulnerable victims, such as victims of serious sexual offences, can be used in place of their oral evidence-in-chief, to minimise the trauma they face in repeatedly recounting their ordeal.</li> </ul> | 1              |
| 2   | <p><u>Protecting legal professional privilege during investigations</u></p> <ul style="list-style-type: none"> <li>• Amendments will clarify when legal professional privilege (“LPP”) applies in criminal investigations, and sets out clear procedures for resolving disputes on LPP.</li> <li>• LPP (comprising legal advice privilege and litigation privilege) will expressly apply to investigators’ searches, seizures and production orders.</li> <li>• Procedures will be established to state how LPP must be asserted.</li> <li>• Material over which LPP is asserted will be seized but sealed. The High Court will determine if those materials are subject to LPP. If not, the material will be unsealed and accessed by investigators and the Prosecution.</li> </ul>   | 5              |

<sup>1</sup> All proposed amendments are to the CPC unless otherwise stated.

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| 3 | <p><u>Strengthening the bail regime</u></p> <ul style="list-style-type: none"> <li>• Securing cooperation with investigators and attendance in court through bail is essential to doing justice in criminal cases.</li> <li>• The courts’ powers concerning bail will be clarified and enhanced – e.g. electronic tagging will be made a possible bail condition.</li> <li>• Those who wish to become sureties (bailors) must provide evidence that they have the means to cover the amount of money pledged.</li> <li>• It will be an offence to abscond while on bail, leave jurisdiction without permission when one’s travel documents have been impounded by investigators, or to agree to indemnify a surety (or for a surety to agree to be indemnified).</li> </ul>                | 9  |
| 4 | <p><u>Enhancing protection for complainants of sexual and child abuse offences during the court process</u></p> <ul style="list-style-type: none"> <li>• It is important to minimise the trauma faced by persons who complain of sexual or child abuse offences</li> <li>• Complainants’ identity will be automatically protected from publication from the moment the offence is reported, and <i>in camera</i> (closed-door) hearings will also be automatic when they are testifying in court.</li> <li>• Physical screens may be used in court to shield them from the accused person.</li> <li>• They may not be asked questions about their sexual history and behaviour that do not relate to the charge, including their appearance, unless the court gives permission.</li> </ul> | 13 |
| 5 | <p><u>Enhancing the court’s discretion to order exceptions to open court proceedings</u></p> <ul style="list-style-type: none"> <li>• At present, courts have a discretion to order closed-door hearings in “the interests of justice, public safety, public security or propriety, or other sufficient reason”.</li> </ul>  | 14 |

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|   | <ul style="list-style-type: none"> <li>• This will be further clarified by listing the grounds for such orders, including the prevention of damage to a party's legitimate interest in privacy or in the confidentiality of certain information, as well as protecting the confidentiality of information with national security implications.</li> <li>• The court may exclude the general public while permitting certain persons present, such as representatives of the press or the families of the victim or accused person.</li> </ul>  |    |
| 6 | <p><u>Enhancing and rationalising the fitness to plead/unsoundness of mind regime</u></p> <ul style="list-style-type: none"> <li>• The present law provides special procedures to deal with accused persons who are incapable of making their defence (a situation also referred to as being "unfit to plead") at the time of trial, or who are acquitted on the basis that they were of unsound mind at the time of their alleged offences.</li> <li>• Amendments are proposed to enhance and rationalise these procedures.</li> <li>• Such persons may be released with certain conditions where they are not assessed to be a danger to themselves or others.</li> <li>• A maximum duration will be set for the Minister's orders over these accused persons.</li> <li>• The courts and medical professionals will be given a greater role in supervising such persons and determining what measures to take with respect to such accused persons.</li> </ul> | 15 |
| 7 | <p><u>Establishing a Criminal Procedure Rules Committee</u></p> <ul style="list-style-type: none"> <li>• Society is changing rapidly, making it more important that criminal court procedure be nimble and up-to-date.</li> <li>• A Criminal Procedure Rules Committee chaired by the Chief Justice will be set up to create rules relating to court procedure.</li> </ul>   | 18 |

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|   | <ul style="list-style-type: none"> <li>• The committee will comprise representatives from the Judiciary, the Attorney-General's Chambers, the bar, and the Government.</li> </ul>  |    |
| 8 | <p><u>Streamlining pre-trial procedures in the High Court – extending the transmission procedure to replace the committal hearing procedure</u></p> <ul style="list-style-type: none"> <li>• Presently, most cases to be tried in the High Court go through an additional committal hearing to determine if there is sufficient evidence to commit an accused person for trial.</li> <li>• Cases involving serious sexual offences go through a separate transmission procedure, where the case is automatically transmitted to the High Court for trial without the need to hold a committal hearing.</li> <li>• It is proposed to extend the transmission procedure to all cases to be tried in the High Court to replace the committal hearing process so as to streamline procedures for all cases for trial before the High Court.</li> </ul> | 19 |
| 9 | <p><u>Extending video link hearings to pleas of guilty and sentencing</u></p> <ul style="list-style-type: none"> <li>• Expanding the use of video link hearings helps minimise the security risk involved in transporting remandees between prison and the courts multiple times.</li> <li>• At present, video links can be used only for procedural hearings, such as when a remanded accused person is first produced in court, or for pre-trial conferences.</li> <li>• It is proposed to give the Minister the power to make rules allowing and regulating the use of video links in hearings for pleas of guilty and sentencing for remandees.</li> <li>• Necessary safeguards for such hearings will be introduced to ensure the remandees understand and can fully participate in the process.</li> </ul>                                   | 20 |

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| 10 | <p><u>Regulating psychiatric expert evidence</u></p> <ul style="list-style-type: none"> <li>• Psychiatric expert evidence is increasingly common in criminal proceedings. However, the courts have observed in past cases that the psychiatrists who gave evidence in those specific cases lacked competence or objectivity.</li> <li>• It proposed that psychiatrists will only be allowed to give expert evidence in criminal cases if they are on a court-administered panel of psychiatrists.</li> <li>• This will ensure that evidence given by psychiatrists in court is competently arrived at and objective, which is in the interest of all parties in a case.</li> <li>• The law will specify the qualifications and other criteria needed to be admitted to this panel.</li> <li>• If psychiatrists are not sufficiently objective or competent as expert witnesses, they may be removed from the panel or refused re-admission to it.</li> </ul> | 28 |
| 11 | <p><u>Expanding the community sentencing regime</u></p> <ul style="list-style-type: none"> <li>• Amendments are proposed to expand, in a controlled way, the number of offenders who are eligible for community sentences. This will allow more offenders to benefit from rehabilitative opportunities.</li> <li>• Offenders who have a previous short sentence of imprisonment or a previous sentence of Reformatory Training will be eligible for community sentences.</li> <li>• More offences will be eligible for Mandatory Treatment Orders (which require the offender to undergo treatment for mental health conditions), and the flexibility of such orders will be enhanced.</li> <li>• Courts may impose a suspended imprisonment sentence together with a community sentence. Upon breach of the community sentence, this imprisonment sentence will automatically apply. This will encourage compliance with the community sentence.</li> </ul> | 31 |

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| 12 | <p><u>Improving the victim compensation order regime</u></p> <ul style="list-style-type: none"> <li>• At present, criminal courts have the power to order compensation payments to victims when they sentence the accused person. Amendments are proposed to ease the process of victims obtaining compensation through the criminal courts.</li> <li>• At present, the court is also obliged to actively consider whether or not to order compensation. It is proposed that where they do not order a compensation payment, they will be required to give reasons for this.</li> <li>• The court will be empowered to order certain forms of compensation to the dependents of a victim whose death was caused by an offence.</li> <li>• Victims will be able to participate in the compensation order process by giving evidence and making submissions, through a lawyer or personally.</li> </ul> | 32 |
| 13 | <p><u>Introducing new procedures to prevent abuse of court process in concluded criminal cases</u></p> <ul style="list-style-type: none"> <li>• There have been a growing number of applications for re-opening of criminal cases where all avenues of appeal have been exhausted. The Court of Appeal observed that some of these applications were abuses of the process of the court.<sup>2</sup> Amendments are proposed to strike a balance between preventing miscarriages of justice and the need for finality in criminal proceedings where all appeals have already been exhausted.</li> <li>• The court will be given more control over applications to re-open concluded criminal cases where all appeals have been exhausted (and civil applications that have a similar effect), through a requirement of leave of court, a power of summary</li> </ul>                                  | 38 |

<sup>2</sup> For example, in *Kho Jabing v Public Prosecutor* [2016] 3 SLR 1259 at [3], the Court of Appeal stated that for the applicant to withdraw an argument, then file a fresh application premised on the withdrawn argument after dismissal of his application (which it called “drip-feeding” of arguments over multiple applications), was an abuse of process. In *Kho Jabing v Attorney-General* [2016] 3 SLR 1273 at [2] the Court of Appeal noted that the use of a civil action in that case to mount a collateral attack on a decision made by the court in its criminal jurisdiction was an abuse of process which, if allowed, “would throw the whole system of justice into disrepute”.

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|  | <p>dismissal, and a power to hear and determine all related matters in a single hearing.</p> <ul style="list-style-type: none"><li>• In any event, only one application to re-open a concluded criminal case where all appeals have been exhausted will be allowed, with no further appeal from that application. Strict time-lines will also be imposed to avoid delay.</li><li>• The arguments and evidence raised to support such applications will be required to meet a number of requirements. They must be new, such that they could not have been produced earlier with reasonable diligence. They must also be able to compellingly show that there was a miscarriage of justice. The court decision being challenged must also be shown to be clearly wrong or affected by fraud or a breach of natural justice.</li></ul> |  |
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