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**Notification No. B 2** — The Evidence (Amendment) Bill is hereby published for general information. It was introduced in Parliament on the 16th day of January 2012.

# **Evidence (Amendment) Bill**

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**Bill No. 2/2012.**

*Read the first time on 16th January 2012.*

A BILL

*i n t i t u l e d*

An Act to amend the Evidence Act (Chapter 97 of the 1997 Revised Edition) to reform the law of evidence in relation to hearsay evidence in civil and criminal proceedings, evidence of electronic output, expert opinion evidence and legal professional privilege, and matters related thereto, and to make consequential amendments to the Criminal Procedure Code 2010 (Act 15 of 2010) and other written laws.

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

### Short title and commencement

1. This Act may be cited as the Evidence (Amendment) Act 2012 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

### 5 Amendment of section 3

2. Section 3 of the Evidence Act is amended —

(a) by deleting the definitions of “computer” and ““computer output” or “output” ” in subsection (1) and substituting the following definition:

10 ““copy of a document” includes —

(a) in the case of a document falling within paragraph (d) but not paragraph (e) of the definition of “document”, a transcript of the sounds or other data embodied in it;

15 (b) in the case of a document falling within paragraph (e) but not paragraph (d) of that definition, a reproduction or still reproduction of the image or images embodied in it, whether enlarged or not;

20 (c) in the case of a document falling within paragraphs (d) and (e) of that definition, such a transcript together with such a still reproduction; and

25 (d) in the case of a document not falling within paragraph (e) of that definition of which a visual image is embodied in a document falling within that paragraph, a reproduction of that image, whether enlarged or not,

30 and any reference to a copy of the material part of a document must be construed accordingly;”;

(b) by deleting the definition of “document” (including the *Illustrations*) in subsection (1) and substituting the following definitions:

5 “document” includes, in addition to a document in writing —

- (a) any map, plan, graph or drawing;
- (b) any photograph;
- (c) any label, marking or other writing which identifies or describes anything of which it forms a part, or to which it is attached by any means whatsoever;
- 10 (d) any disc, tape, sound-track or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom;
- 15 (e) any film (including microfilm), negative, tape, disc or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom; and
- 20 (f) any paper or other material on which there are marks, impressions, figures, letters, symbols or perforations having a meaning for persons qualified to interpret them;
- 25

30 “electronic record” means a record generated, communicated, received or stored by electronic, magnetic, optical or other means in an information system or transmitted from one information system to another;” and

(c) by inserting, immediately after subsection (5), the following subsections:

5 “(6) For the purposes of sections 23, 128, 130 and 131, a reference to “advocate or solicitor” therein shall include a reference to any public officer in the Attorney-General’s Chambers when he acts as an advocate or a solicitor.

(7) For the purposes of sections 23, 128A, 130 and 131, a “legal counsel” means —

10 (a) a person (by whatever name called) who is an employee of an entity employed to undertake the provision of legal advice or assistance in connection with the application of the law or any form of resolution of legal disputes; or

(b) a public officer in the Singapore Legal Service —

15 (i) working in a ministry or department of the Government or an Organ of State as legal adviser to that ministry or department or Organ of State; or

20 (ii) seconded as legal adviser to any statutory body established or constituted by or under a public Act for a public function.”.

### **Amendment of section 9**

**3.** Section 9 of the Evidence Act is amended by inserting, immediately after *Illustration (f)*, the following *Illustration*:

25 “(g) *A* seeks to adduce evidence against *B* in the form of an electronic record. The method and manner in which the electronic record was (properly or improperly) generated, communicated, received or stored (by *A* or *B*), the reliability of the devices and the circumstances in which the devices were (properly or improperly) used or operated to generate, communicate, receive or store the electronic record, may be relevant facts  
30 (if the contents are relevant) as authenticating the electronic record and therefore as explaining or introducing the electronic record, or identifying it as the relevant electronic record to support a finding that the record is, or is not, what its proponent *A* claims.”.

### **Repeal and re-enactment of section 23**

4. Section 23 of the Evidence Act is repealed and the following section substituted therefor:

#### **“Admissions in civil cases when relevant**

5       **23.**—(1) In civil cases, no admission is relevant if it is made —

          (a) upon an express condition that evidence of it is not to be given; or

10       (b) upon circumstances from which the court can infer that the parties agreed together that evidence of it should not be given.

(2) Nothing in subsection (1) shall be taken —

15       (a) to exempt any advocate or solicitor from giving evidence of any matter of which he may be compelled to give evidence under section 128; or

          (b) to exempt any legal counsel in an entity from giving evidence of any matter of which he may be compelled to give evidence under section 128A.”.

### **Amendment of section 32**

20       **5.** Section 32 of the Evidence Act is amended —

          (a) by deleting the words “Statements, written or verbal, of relevant facts made by a person who is dead or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the court unreasonable,” and substituting the words “Subject to subsections (2) and (3), statements of relevant facts made by a person (whether orally, in a document or otherwise),”;

25

30       (b) by deleting paragraph (b) (including the paragraph heading) and substituting the following paragraph:

**“or is made in course of trade, business, profession or other occupation;**

- 5 (b) when the statement was made by a person in the ordinary course of a trade, business, profession or other occupation and in particular when it consists of —
- 10 (i) any entry or memorandum in books kept in the ordinary course of a trade, business, profession or other occupation or in the discharge of professional duty;
- (ii) an acknowledgment (whether written or signed) for the receipt of money, goods, securities or property of any kind;
- 15 (iii) any information in market quotations, tabulations, lists, directories or other compilations generally used and relied upon by the public or by persons in particular occupations; or
- 20 (iv) a document constituting, or forming part of, the records (whether past or present) of a trade, business, profession or other occupation that are recorded, owned or kept by any person, body or organisation carrying out the trade, business,
- 25 profession or other occupation,
- and includes a statement made in a document that is, or forms part of, a record compiled by a person acting in the ordinary course of a trade, business, profession or other occupation based
- 30 on information supplied by other persons;”;
- (c) by deleting the full-stop at the end of the paragraph heading of paragraph (h) and substituting a semi-colon;
- (d) by deleting the full-stop at the end of paragraph (h) and substituting a semi-colon, and by inserting immediately
- 35 thereafter the following paragraphs:

**“or is made by person who is compellable but refuses to give evidence;**

- 5 (i) when the statement was made by a person who, being compellable to give evidence on behalf of the party desiring to give the statement in evidence, attends or is brought before the court, but refuses to be sworn or affirmed, or is sworn or affirmed but refuses to give any evidence;

10 **or is made by person who is dead or who cannot be produced as witness;**

- (j) when the statement is made by a person in respect of whom it is shown —
- (i) is dead or unfit because of his bodily or mental condition to attend as a witness;
- 15 (ii) that despite reasonable efforts to locate him, he cannot be found whether within or outside Singapore;
- (iii) that he is outside Singapore and it is not practicable to secure his attendance; or
- 20 (iv) that, being competent but not compellable to give evidence on behalf of the party desiring to give the statement in evidence, he refuses to do so;

**or by agreement.**

- 25 (k) when the parties to the proceedings agree that for the purpose of those proceedings the statement may be given in evidence.”; and

- (e) by renumbering the section as subsection (1) of that section, and by inserting immediately thereafter the following subsections:
- 30

“(2) For the purposes of paragraph (a), (c), (d), (e), (f), (g), (h), (i) or (j) of subsection (1), where a person makes an oral statement to or in the hearing of another



5 person who, at the request of the maker of the statement, puts it (or the substance of it) into writing at the time or reasonably soon afterwards, thereby producing a corresponding statement in a document, the statement in the document shall be treated for the purposes of those paragraphs as the statement of the maker of the oral statement.

10 (3) A statement which is otherwise relevant under subsection (1) shall not be relevant if the court is of the view that it would not be in the interests of justice to treat it as relevant.

(4) Except in the case of subsection (1)(k), evidence may not be given under subsection (1) on behalf of a party to the proceedings unless that party complies —

15 (a) in the case of criminal proceedings, with such notice requirements and other conditions as may be prescribed by the Minister under section 428 of the Criminal Procedure Code 2010 (Act 15 of 2010); and

20 (b) in all other proceedings, with such notice requirements and other conditions as may be prescribed in Rules of Court (Cap. 322, R 5) made by the Rules Committee constituted under section 80 of the Supreme Court of Judicature Act (Cap. 322).

25 (5) Where a statement is admitted in evidence under subsection (1), the court shall assign such weight as it deems fit to the statement.

30 (6) Notwithstanding paragraph (k) of subsection (1), an agreement under that paragraph does not enable a statement to be given in evidence in criminal proceedings on the prosecution's behalf unless at the time the agreement is made, the accused or any of the co-accused is represented by an advocate.

5 (7) Notwithstanding paragraph (k) of subsection (1), an agreement under that paragraph shall be of no effect for the purposes of any proceedings before the High Court or any proceedings arising out of proceedings before the High Court if made during proceedings before an examining Magistrate conducting a committal hearing under Division 2 of Part X of the Criminal Procedure Code 2010.”.

### New sections 32A, 32B and 32C

10 6. The Evidence Act is amended by inserting, immediately after section 32, the following sections:

#### **“Protest, greeting, etc., treated as stating fact that utterance implies**

15 32A. For the purposes of section 32(1), a protest, greeting or other verbal utterance may be treated as stating any fact that the utterance implies.

#### **Statement of opinion**

20 32B.—(1) Subject to this section, section 32 applies to statements of opinion as they apply to statements of fact.

(2) A statement of opinion shall only be admissible under section 32(1) if that statement would be admissible in those proceedings if made through direct oral evidence.

25 (3) Where a person is called as a witness in any proceedings, a statement of opinion by him on a relevant matter on which he is not qualified to give expert evidence, if made as a way of conveying relevant facts personally perceived by him, is admissible as evidence of what he perceived.

#### **Admissibility of evidence as to credibility of maker, etc., of statement admitted under certain provisions**

30 32C.—(1) Where in any proceedings a statement made by a person who is not called as a witness in those proceedings is given in evidence by virtue of section 32(1) —

- (a) any evidence which, if that person had been so called, would be admissible for the purpose of undermining or supporting that person's credibility as a witness, is admissible for that purpose in those proceedings; and
- 5 (b) as regards any matter which, if that person had been so called, could have been put to him in cross-examination for the purpose of undermining his credibility as a witness, being a matter of which, if he had denied it, evidence could not have been adduced by the cross-examining party, evidence of that matter may with the leave of the court be given for that purpose.
- 10 (2) Where in any proceedings a statement made by a person who is not called as a witness in those proceedings is given in evidence by virtue of section 32(1), evidence tending to prove that, whether before or after he made that statement, he made another statement (orally, written or otherwise) inconsistent with the first-mentioned statement is admissible for the purpose of showing that he has contradicted himself.
- 15 (3) For the purposes of section 32(1)(b), subsections (1) and (2) apply in relation to both the maker of the statement and the person who originally supplied the information from which the statement was made.
- 20 (4) Section 32(2) applies for the purposes of this section as it applies for the purposes of section 32(1).".
- 25

### **Repeal of sections 35 and 36**

7. Sections 35 and 36 of the Evidence Act are repealed.

### **Repeal and re-enactment of section 47**

8. Section 47 of the Evidence Act is repealed and the following section substituted therefor:
- 30

#### **“Opinions of experts**

- 47.—(1) Subject to subsection (4), when the court is likely to derive assistance from an opinion upon a point of scientific,

technical or other specialised knowledge, the opinions of experts upon that point are relevant facts.

5 (2) An expert is a person with such scientific, technical or other specialised knowledge based on training, study or experience.

(3) The opinion of an expert shall not be irrelevant merely because the opinion or part thereof relates to a matter of common knowledge.

10 (4) An opinion which is otherwise relevant under subsection (1) shall not be relevant if the court is of the view that it would not be in the interests of justice to treat it as relevant.”.

#### **Amendment of section 64**

15 **9.** Section 64 of the Evidence Act is amended by inserting, immediately after the *Illustration to Explanation 2*, the following *Explanation* and *Illustrations*:

“*Explanation 3.*—Notwithstanding *Explanation 2*, if a copy of a document in the form of an electronic record is shown to reflect that document accurately, then the copy is primary evidence.

#### 20 *Illustrations*

(a) An electronic record, which has been manifestly or consistently acted on, relied upon, or used as the information recorded or stored on the computer system (the document), is primary evidence of that document.

25 (b) If the electronic record has not been manifestly or consistently acted on, relied upon, or used as a record of the information in the document, the electronic record may be a copy of the document and treated as secondary evidence of that document.”.

#### **Amendment of section 65**

**10.** Section 65 of the Evidence Act is amended —

30 (a) by inserting, immediately before the words “copies made” in paragraph (b), the words “except for copies referred to in *Explanation 3* to section 64,”; and

(b) by deleting *Illustration (c)*.

### **New section 67A**

**11.** The Evidence Act is amended by inserting, immediately after section 67, the following section:

5           **“Proof of documents in certain cases**

**67A.** Where in any proceedings a statement in a document is admissible in evidence by virtue of section 32(1), it may be proved by the production of that document or (whether or not that document is still in existence) by the production of a copy  
10           of that document, or of the material part of it, authenticated in a manner approved by the court.”.

### **Amendment of section 68A**

**12.** Section 68A of the Evidence Act is amended —

15           (a) by deleting the words “, computer output or other explanatory material” in subsection (1) and substituting the words “or other explanatory material, in electronic or other medium,”; and

20           (b) by deleting the words “in any form, including computer output” in subsection (3)(a) and substituting the words “in electronic or other medium”.

### **New section 116A**

**13.** The Evidence Act is amended by inserting, immediately after section 116, the following section:

**“Presumptions in relation to electronic records**

25           **116A.—**(1) Unless evidence sufficient to raise doubt about the presumption is adduced, where a device or process is one that, or is of a kind that, if properly used, ordinarily produces or accurately communicates an electronic record, the court shall presume that in producing or communicating that electronic  
30           record on the occasion in question, the device or process produced or accurately communicated the electronic record.

*Illustration*

5 A seeks to adduce evidence in the form of an electronic record or document produced by an electronic device or process. A proves that the electronic device or process in question is one that, or is of a kind that, if properly used, ordinarily produces that electronic record or document. This is a relevant fact for the court to presume that in producing the electronic record or document on the occasion in question, the electronic device or process produced the electronic record or document which A seeks to adduce.

10 (2) Unless evidence to the contrary is adduced, the court shall presume that any electronic record generated, recorded or stored is authentic if it is established that the electronic record was generated, recorded or stored in the usual and ordinary course of business by a person who was not a party to the proceedings on the occasion in question and who did not generate, record or store it under the control of the party seeking to introduce the electronic record.

*Illustration*

20 A seeks to adduce evidence against *B* in the form of an electronic record. The fact that the electronic record was generated, recorded or stored in the usual and ordinary course of business by *C*, a neutral third party, is a relevant fact for the court to presume that the electronic record is authentic.

25 (3) Unless evidence to the contrary is adduced, where an electronic record was generated, recorded or stored by a party who is adverse in interest to the party seeking to adduce the evidence, the court shall presume that the electronic record is authentic in relation to the authentication issues arising from the generation, recording or storage of that electronic record.

*Illustration*

30 A seeks to adduce evidence against *B* in the form of an electronic record. The fact that the electronic record was generated, recorded or stored by *B*, who opposes the relevance of the evidence, is a relevant fact for the court to presume that the electronic record is authentic.

35 (4) For the purposes of subsection (2), in criminal proceedings a party to the proceedings shall include —

(a) the police officer or other officer of a law enforcement agency who was involved in the investigation of offences allegedly committed by the accused person; or

5 (b) an accomplice of the accused person even though he is not charged with an offence in the same proceedings.

(5) The Minister may make regulations providing for a process by which a document may be recorded or stored through the use of an imaging system, including providing for  
10 the appointment of one or more persons or organisations to certify these systems and their use, and for any matters incidental thereto, and an “approved process” in subsection (6) means a process that has been approved in accordance with the provisions of such regulations.

15 (6) Where an electronic record was recorded or stored from a document produced pursuant to an approved process, the court shall presume, unless evidence to the contrary is adduced, that the electronic record accurately reproduces that document.

20 (7) The matters referred to in this section may be established by an affidavit given to the best of the deponent’s knowledge and belief.”.

### **New section 128A**

**14.** The Evidence Act is amended by inserting, immediately after section 128, the following section:

#### **“Communications with legal counsel in entity**

25 **128A.**—(1) A legal counsel in an entity shall not at any time be permitted, except with the entity’s express consent, to disclose any communication made to him in the course and for the purpose of his employment as such legal counsel, or to state  
30 the contents or condition of any document with which he has become acquainted in the course and for the purpose of his employment as such legal counsel, or to disclose any legal advice given by him to the entity, or to any officer or employee

of the entity, in the course and for the purpose of such employment.

(2) Nothing in subsection (1) shall protect from disclosure —

- 5 (a) any such communication made in furtherance of any illegal purpose;
- 10 (b) any fact observed by any legal counsel in an entity in the course of his employment as such legal counsel showing that any crime or fraud has been committed since the commencement of his employment as such legal counsel;
- (c) any such communication made to the legal counsel which was not made for the purpose of seeking his legal advice; or
- 15 (d) any document which the legal counsel was made acquainted with otherwise than in the course of and for the purpose of seeking his legal advice.

(3) For the purposes of subsection (2)(b), it is immaterial whether the attention of the legal counsel was or was not directed to that fact by or on behalf of the entity.

20 (4) Where a legal counsel is employed by one of a number of corporations that are related to each other under section 6 of the Companies Act (Cap. 50), subsection (1) shall apply in relation to the legal counsel and every corporation so related as if the legal counsel were also employed by each of the related corporations.

25

(5) Where a legal counsel is employed by a public agency and is required as part of his duties of employment or appointment to provide legal advice or assistance in connection with the application of the law or any form of resolution of legal dispute to another public agency or agencies, subsection (1) shall apply in relation to the legal counsel and the second-mentioned public agency or agencies as if the legal counsel were also employed by the second-mentioned public agency or agencies.

30



(6) For the purposes of subsection (5), “public agency” includes —

- 5 (a) the Government, including any ministry, department, agency, or Organ of State or instrumentality of the Government;
- (b) any board, commission, committee or similar body, whether corporate or unincorporate, established under a public Act for a public function (referred to in this subsection as a statutory body);
- 10 (c) any other board, commission, committee or similar body appointed by the Government, or by a statutory body, for a public purpose.”.

#### **Repeal and re-enactment of section 129**

15 **15.** Section 129 of the Evidence Act is repealed and the following section substituted therefor:

##### **“Sections 128 and 128A to apply to interpreters, etc.**

**129.** Sections 128 and 128A shall apply to interpreters and other persons who work under the supervision of legal professional advisers.”.

#### 20 **Repeal and re-enactment of section 130**

**16.** Section 130 of the Evidence Act is repealed and the following section substituted therefor:

##### **“Privilege not waived by volunteering evidence**

25 **130.—**(1) If any party to a suit gives evidence therein at his own instance or otherwise, he shall not be deemed to have consented thereby to such disclosure as is mentioned in section 128 or 128A.

30 (2) If any party to a suit or proceeding calls any advocate or solicitor as a witness, that party shall be deemed to have consented to such disclosure as is mentioned in section 128 only if that party questions the advocate or solicitor on matters

which but for the question the advocate or solicitor would not be at liberty to disclose.

5 (3) If any party to a suit or proceeding calls any legal counsel in an entity as a witness, that party shall be deemed to have consented to such disclosure as is mentioned in section 128A only if that party questions the legal counsel on matters which but for the question the legal counsel would not be at liberty to disclose.”.

### **Amendment of section 131**

10 **17.** The Evidence Act is amended by renumbering section 131 as subsection (1) of that section, and by inserting immediately thereafter the following subsection:

“(2) In subsection (1) and section 129, “legal professional adviser” means —

- 15 (a) an advocate or solicitor; or
- (b) in the case of any communication which has taken place between any officer or employee of an entity and a legal counsel employed, or deemed under section 128A(4) or (5) to be employed, by the entity in the course and for the purpose of seeking his legal advice as such legal counsel, that legal counsel.”.
- 20

### **Amendment of section 157**

**18.** Section 157 of the Evidence Act is amended —

- 25 (a) by deleting the semi-colon at the end of paragraph (c) and substituting a full-stop; and
- (b) by deleting paragraph (d).

### **New section 160A**

**19.** The Evidence Act is amended by inserting, immediately after section 160, the following section:

**“Evidence not capable of corroboration**

**160A.** For the purpose of any rule of law or practice that requires evidence to be corroborated or that regulates the manner in which uncorroborated evidence is to be treated —

- 5           (a) a statement that is admissible in evidence by virtue of section 32(1) is not capable of corroborating evidence given by the maker of the statement; and
- (b) a statement that is admissible in evidence by virtue of section 32(1)(b) is not capable of corroborating evidence given by the person who originally supplied the information from which the statement was made.”.
- 10

**Miscellaneous amendments**

**20.** The Evidence Act is amended —

- 15           (a) by deleting the words “section 32(a)” in the third paragraph of *Illustrations (j)* and *(k)* of section 8 and substituting in each case the words “section 32(1)(a)”; and
- (b) by deleting the words “section 32(b)” in the third paragraph of *Illustration (b)* and the second paragraph of *Illustration (c)* of section 21 and substituting in each case the words “section 32(1)(b)”.
- 20

**Consequential amendments to Criminal Procedure Code 2010**

**21.** The Criminal Procedure Code 2010 (Act 15 of 2010) is amended —

- 25           (a) by deleting the words “section 32(a)” in section 259(1)(e) and substituting the words “section 32(1)(a)”; and
- (b) by repealing section 268 and substituting the following section:

**“Hearsay evidence in criminal proceedings**

30           **268.** In any criminal proceedings, a statement is admissible as evidence of any fact stated therein to the

extent that it is so admissible by this Code, the Evidence Act (Cap. 97), or any other written law.”; and

(c) by repealing sections 269 to 277.

### **Consequential amendments to other written laws**

5     **22.**—(1) Section 11C(5) of the Boundaries and Survey Maps Act (Cap. 25) is amended by deleting the words “Notwithstanding section 35 of the Evidence Act (Cap. 97), a” and substituting the word “A”.

10     (2) The Land Titles Act (Cap. 157) is amended by deleting the words “Notwithstanding section 35 of the Evidence Act (Cap. 97), a” in sections 36(2) and 164(3) and substituting in each case the word “A”.

(3) Section 94(1) of the Singapore Armed Forces Act (Cap. 295) is amended by deleting “276” and substituting “268”.

### **15     Saving and transitional provision**

20     **23.**—(1) Notwithstanding the repeal of section 35 of the Evidence Act, the regulations made under the repealed section 35(5) and in force immediately before the commencement of section 7 of the Evidence (Amendment) Act 2012 shall continue to be in force as if the regulations had been made under section 116A(5) of the Evidence Act.

25     (2) Section 18 of the Evidence (Amendment) Act 2012 shall not affect any inquiry, trial or other proceeding commenced or pending before the date of commencement of that section, and every such inquiry, trial or other proceeding may be continued and everything in relation thereto may be done in all respects on and after that day as if section 18 of that Act had not been enacted.

30     (3) For a period of 2 years after the commencement of this section, the Minister may, by regulations, prescribe such additional provisions of a saving or transitional nature consequent on the enactment of the Evidence (Amendment) Act 2012 as he may consider necessary or expedient.

## EXPLANATORY STATEMENT

This Bill seeks to amend the Evidence Act (Cap. 97) —

- (a) to give effect to the recommendations of the Technology Law Development Group of the Singapore Academy of Law in its Consultation Paper “Computer Output as Evidence”, September 2003 and the Final Report, December 2004;
- (b) to reform the legal framework for hearsay evidence;
- (c) to expand the scope of admission of expert opinion evidence; and
- (d) to extend legal professional privilege to legal counsel.

The Bill also makes consequential amendments to the Criminal Procedure Code 2010 (Act 15 of 2010), the Boundaries and Survey Maps Act (Cap. 25), the Land Titles Act (Cap. 157) and the Singapore Armed Forces Act (Cap. 295).

Clause 1 relates to the short title and commencement.

Clause 2 amends section 3 —

- (a) by deleting the definitions of “computer” and ““computer output” or “output”” which are no longer necessary in view of the repeal of sections 35 and 36;
- (b) by inserting a new definition of “copy of a document” which mirrors section 269(2) of the Criminal Procedure Code 2010 (to be repealed by clause 21(c));
- (c) by inserting a new definition of “document” which mirrors section 29 of the Penal Code (Cap. 224);
- (d) by inserting a new definition of “electronic record” which mirrors the definition of that term in section 2(1) of the Electronic Transactions Act (Cap. 88);
- (e) by inserting a new subsection (6) to make clear that any public officer in the Attorney-General’s Chambers (Government law officer) is to be treated as “advocate or solicitor” for the purposes of sections 23, 128, 130 and 131 (dealing with legal professional privilege) when he acts as an advocate or a solicitor. The express inclusion of a Government law officer as “advocate or solicitor” for the purposes of the provisions relating to legal professional privilege does not affect the right of a Government law officer to claim privilege under any other ground, whether under the Act or common law, that may be applicable in the particular case; and
- (f) by inserting a new subsection (7) to define “legal counsel” for the purposes of sections 23, 128A, 130 and 131.

Clause 3 amends section 9 by inserting a new *Illustration* relating to evidence adduced in the form of an electronic record if the record proves a relevant fact. The expression “generated, communicated, received or stored” is adapted from the definition of an “electronic record” in section 2(1) of the Electronic Transactions Act. The references to “reliability of devices” and “circumstances in which the devices were used or operated” are intended to encompass all issues relating to the reliability of the devices as well as the human or automated agents that use or operate the devices.

Clause 4 repeals and re-enacts section 23 as a consequence of new section 128A (inserted by clause 14).

Clause 5 amends section 32 (which contains several exceptions that allow for the admission of hearsay evidence) —

- (a) to expand the scope of the existing exceptions, especially the exception for statements made in the course of a trade, business, profession or other occupation;
- (b) to better align the hearsay exceptions in civil and criminal proceedings by including exceptions that currently exist only in respect of criminal proceedings;
- (c) to provide the court with the overriding discretion to exclude evidence falling within the exceptions if it would not be in the interests of justice to treat it as relevant;
- (d) except in the case of admission by agreement, to require a party who intends to introduce hearsay evidence to give notice in accordance with any applicable rules of procedure; and
- (e) to include some related provisions from the Criminal Procedure Code 2010.

Clause 6 inserts new sections 32A, 32B and 32C, which are supplemental provisions to be read together with the amendments to section 32 and which replace sections 269(3), 277 and 275, respectively, of the Criminal Procedure Code 2010 (to be repealed by clause 21(c)).

Clause 7 repeals sections 35 and 36. The Report “Computer Output as Evidence” recommended the adoption of a non computer-specific approach but to provide presumptions to facilitate the admissibility of certain electronic evidence. This approach is based on the principle of non-discrimination, which requires that electronic evidence be treated no differently from evidence not in electronic form. In this approach, the existing rules in sections 35 and 36 will be repealed and will no longer regulate the admissibility of electronic evidence. Instead the existing rules providing for the relevancy and admissibility of evidence (such as hearsay, the best evidence rules and rules on authentication) will regulate the admissibility of electronic evidence in the same manner as any other item of evidence. The courts are given a wide discretion to call for

evidence to authenticate the electronic evidence in any manner that the courts deem appropriate. By avoiding the prescription of express requirements, such as that under the repealed section 35, that the proponent of the electronic evidence has to satisfy before the evidence can be considered for admissibility, full flexibility is preserved.

Clause 8 repeals and re-enacts section 47 to extend the scope of admission of expert evidence to points of “*scientific, technical or other specialised knowledge*” generally. The new section 47(2) abolishes the “common knowledge rule” and is modelled after section 25(2)(b) of the New Zealand Evidence Act 2006. Under the “common knowledge rule”, opinions of experts on matters of common knowledge and experience are strictly not relevant and therefore not admissible. The express abolition of the rule is accompanied by the judicial discretion in section 47(4) to exclude expert opinion evidence where it is not in the interests of justice to treat it as relevant. This discretion is similar to that in the new section 32(3).

Clause 9 amends section 64 by inserting a new *Explanation* to the effect that if a copy of a document in the form of an electronic record is shown to reflect the “original document” accurately, the copy is primary evidence. The concept of “original document” is of little or no relevance in the context of electronic copies which are identical and perfect. This amendment recognises that electronic copies that are shown to reflect the contents of the original document accurately are original or primary evidence.

Clause 10 amends section 65 as a consequence to the amendment to section 64. The amendment to section 65(b) will make it clear that copies of documents in electronic form that are treated as primary evidence by virtue of *Explanation 3* to section 64 do not fall within the category of copies of documents treated as secondary evidence under section 65(b).

Clause 11 inserts a new section 67A, which is a supplemental provision to be read together with the changes to section 32 (to be inserted by clause 5) and which mirrors sections 273(1) and 274(4) of the Criminal Procedure Code 2010 (to be repealed by clause 21(c)).

Clause 12 amends section 68A as a consequence of deleting the definition of “computer output”.

Clause 13 inserts a new section 116A which introduces 4 new presumptions in relation to electronic records.

The new section 116A(1) prescribes an evidential burden similar to sections 146 and 147 of the Australian Commonwealth Evidence Act 1995. Section 116A(1) is a restatement of the common law maxim *praese-muntur omnia rite esse acta*, which is the presumption that “mechanical instruments were in order when they were used”.

The new section 116A(2) is modelled after section 5(c) of the Canadian Uniform Electronic Evidence Act (Canadian UEEA). Section 116A(2) creates a presumption of authenticity of business records of a person who is not a party to the civil or criminal proceedings, where the proponent of the record did not control the making of the record. The concept of business records here is intended to include more than strictly commercial operations. It will apply broadly to enterprise records of organisations not devoted to making a profit, such as Government bodies or non-profit organisations.

The new section 116A(3) also prescribes a legal burden and is modelled after section 5(b) of the Canadian UEEA. Section 116A(3) deals with an electronic record obtained by a proponent from an adverse party to civil or criminal proceedings and used against that party. The record is presumed authentic. If it is not authentic, then the adverse party has the means to disprove the authenticity of the record and rebut the presumption, since that party was in control, at the material time, of the record-generation or record-keeping system.

The new section 116A(4) provides that in the application of section 116A(2) and (3) to criminal proceedings, a party to the proceedings will include the police officer or other officer of a law enforcement agency who was involved in the investigation of offences allegedly committed by the accused person or an accomplice of the accused person even though he is not charged with an offence in the same criminal proceedings.

The new section 116A(5) defines an “approved process” in a manner consistent with the repealed subsections (4) and (5) of section 35.

The new section 116A(6) introduces the presumption consistent with the repealed section 35(10)(b) that a document produced pursuant to an approved process is presumed to accurately reproduce the contents of that document. The effect is that such an electronic record may be primary evidence of that document pursuant to *Explanation 3* to section 64.

The new section 116A(7) provides that the matters referred to in the section may be established by an affidavit given to the best of the deponent’s knowledge and belief.

Clause 14 inserts a new section 128A. The new section 128A protects professional communications with or by a legal counsel in an entity against disclosure except in specified circumstances. Section 128A essentially extends the statutory protection of professional communications with advocates or solicitors conferred by section 128 to “legal counsel” (including legal officers in the public sector).

Clause 15 repeals and re-enacts section 129 to provide that the provisions of section 128 and new section 128A (relating to protection against disclosure of professional communications with advocates, solicitors and legal counsel) will apply to interpreters, and persons who work under the supervision of legal



professional advisers (which term is defined in new subsection (2) of section 131).

Clause 16 repeals and re-enacts section 130 to provide that a party to a suit or proceeding does not waive privilege by volunteering evidence except in certain circumstances. The new section essentially extends the provisions of existing section 130 to “legal counsel”.

Clause 17 amends section 131 to define the term “legal professional adviser” for the purposes of sections 129 and 131.

Clause 18 amends section 157 by deleting paragraph (d), which permits the credit of an alleged rape victim to be impeached by showing that she is of a “generally immoral” character. The deletion does not prevent relevant issues of character from being raised on the facts of individual cases, under the other provisions of the Act or at common law.

Clause 19 inserts a new section 160A, which is a supplemental provision to be read together with the changes to section 32 (to be inserted by clause 5) and which mirrors section 273(4) of the Criminal Procedure Code 2010 (to be repealed by clause 21(c)).

Clause 20 makes miscellaneous amendments to sections 8 and 21.

Clause 21 makes consequential amendments to the Criminal Procedure Code 2010.

Clause 22 makes consequential amendments to 3 other Acts arising from the repeal of section 35 of the Evidence Act and the repeal of sections 269 to 277 of the Criminal Procedure Code 2010.

Clause 23 provides as a transitional measure the continuance of the regulations relating to approved process and certifying authority made under the repealed section 35(5). The clause also provides that the amendment to section 157 (which permits the credit of a rape victim to be impeached by showing that she is of a “generally immoral” character) will not affect any inquiry, trial or other proceedings commenced or pending before the date of commencement of section 18 of the Evidence (Amendment) Act 2012.

## EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.

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