ANNEX B

Table of Proposed Legislative Changes to the Criminal Procedure Code ("CPC") and the Evidence Act[1]

S/N	Proposed Legislative Changes	Relevant Section or Part in the CPC
A. Powers of investigators		
Making greater use of technology in investigations		
1	<u>Introducing video recording of interviews</u> The CPC currently requires all statements taken by law enforcement agencies to be in writing. Amendments are proposed to allow statements from suspects and witnesses to be taken *via* video recording. Generally, law enforcement agencies will determine whether to take a statement in writing or *via* video recording, depending on the suitability of the medium in each case. In addition, the use of video recording will be made compulsory when taking statements from persons suspected of certain scheduled offences.[2] However, clear guidance will be put in place to ensure that video recording is not imposed in inappropriate scheduled cases, such as: (a) Where it is not feasible to do so because of operational exigent circumstances; (b) Where the available equipment fails and timely repair or replacement is not feasible; (c) Where the interview occurs where no law enforcement officer conducting the interview has knowledge of facts and circumstances that would lead an officer to	Part IV

[1] All proposed amendments are to the CPC unless otherwise stated.

[2] Video recording of interviews with suspects will be implemented in phases. This is to allow for refinements to the systems, procedure and infrastructure for video-recorded interviews to be made with experience over time before more types of offences are added.

	reasonably believe that the individual being interviewed may have committed an offence in the Schedule; or (d) Where the individual to be interviewed has requested that his statement not be video-recorded, and the law enforcement officer reasonably believes that it would facilitate investigations or law enforcement operations if the individual is not required to have his statement video-recorded. In situations where a suspect's statement was taken in writing where the law required it to be taken *via* video recording, the CPC will provide that the statement will not for this reason alone be made inadmissible or subject to an adverse inference as to its truth or accuracy. While video recording will not completely eliminate the possibility of a suspect's statement being obtained by threat, inducement or promise, it will enable the court to quickly adjudicate on voluntariness and weight by objectively showing the flow of the interview and the demeanour of the interviewer and interviewee. The experience of other countries has shown that video-recorded statements can be misused by being posted on the internet or even sold on a black market. As such, safeguards will be instituted to prevent unauthorised use of the video recordings. The Minister will be given the power to make rules regarding the disclosure of such statements. To this end, it is proposed that the disclosure of a video-recorded statement to the Defence will be by means of viewing at an approved place (such as a police station). Unauthorised copying, use or distribution of the video will be an offence. To facilitate the preparation of an accused person's defence, when a video-recorded statement is disclosed to the Defence, a written transcript of the statement will also be provided to the Defence.	

	Video-recorded statements can also be used to minimise the trauma faced by vulnerable victims of crime in having to recount their ordeal multiple times. For this purpose, amendments are proposed to allow the video-recorded statements of vulnerable victims, such as victims of serious sexual offences, to be used in place of their oral evidence-in-chief in court.	
2	<u>Allowing greater use of digital signatures</u> Under the present law, only documents signed by judges can be signed with digital signatures. Amendments are proposed to allow all documents provided for in the CPC to be signed with digital or electronic signatures, to facilitate the use of electronic systems in the criminal justice process. Examples include written orders by investigators for the production of documents, or investigation statements taken from witnesses.	s 2
3	<u>Allowing service of notice, order or document by e-mail</u> Under the present law, service of documents under the CPC cannot be done by email – it has to be done by personal service, post, fax, or leaving at a person's last known address. To enhance operational efficiency and enhance the ease with which notices and other documents are brought to the attention of the person on whom the document is served, amendments are proposed to allow any notice, order or document to be served on an individual by emailing it to his lawyer. In the case of a body corporate, limited liability partnership, partnership or unincorporated association, service can be done by emailing the notice, order or document to that entity or its lawyer.	s 3(1)

	To make sure that the position of the person on whom the document is served is not compromised, this form of service will not apply to a summons or notice to attend court, which mark the commencement of a criminal proceeding. Non-compliance in respect of such documents has especially serious consequences for the person on whom they are served. In addition, where an individual is not represented by a lawyer, email service will not apply and non-electronic service of all notices, orders and documents will continue to be required.	
4	<u>Introducing increased computer-related powers of investigation</u> Under the present law, investigative agencies have the power to access, inspect and search data on computers when investigating crimes. To enhance the ability of investigative agencies to obtain evidence stored on computers, including computers outside Singapore (e.g. servers of cloud service providers), amendments are proposed to allow investigators to order the production of evidence stored on computers, and/or order a person to assist them in accessing such evidence. Investigators will also be given powers to access, secure and safeguard such evidence in the course of an investigation. They will be allowed to order a person to provide login credentials to a computer or cloud services account, and may also prevent a person from accessing a computer or account by changing its password or by other means. These measures will ensure investigators can access evidence of crime and that such evidence is not tampered with. These powers may only be exercised if the officer considers that such evidence is necessary or desirable for an investigation, inquiry, trial or other proceeding under the CPC. Additional safeguards and limitations will be introduced in respect of computers outside Singapore. These will include the following:	ss 20, 39

	(a) Investigators can only exercise their powers over such computers when access has been granted to them by a person legally authorised to do so; and (b) Where investigators exercise their powers over such a computer, they must inform the government of the jurisdiction in which the computer is located within a reasonable time unless the Minister certifies that it would not be in the public interest to do so. To increase investigation efficiency, amendments are further proposed to allow regulations to be made to specify how such production orders must be complied with. The requirements imposed through these regulations may include: (i) That documents be produced within a certain time limit; (ii) That the material produced be in the form of machine-processable data in a stipulated format; (iii) That the material produced have certain authentication features; (iv) That the material produced include sample data to facilitate investigators processing further data in the same format; and (v) That systems be set up to receive and respond to production orders automatically, and the details of such systems. Non-compliance with an order for production of evidence, or to the regulations governing such production, will be an offence. However, before such regulations are created, there will be consultation with affected parties.	

Enhancing and clarifying investigative powers for greater effectiveness		
5	<u>Protecting legal professional privilege during investigations</u> Amendments are proposed to clarify that when investigators exercise powers of search and seizure or to issue orders for production under any written law, their powers are subject to legal professional privilege ("LPP") unless the statute provides otherwise. LPP covers in-house counsel, and includes both legal advice privilege and litigation privilege. However, there is uncertainty over whether the powers of search and seizure or to order production in the CPC provide for the protection of LPP during investigations. The following procedures will be introduced to deal with material over which such LPP is asserted: (a) Searches of lawyers' offices should only be carried out in the presence of the lawyer, their representative, or a Law Society representative; (b) A lawyer shall be entitled to assert LPP on behalf of his client; (c) When material over which LPP is asserted is seized by investigators, they shall be sealed and a list of materials will be created, in the presence of the person claiming LPP, the lawyer, or the lawyer's representative; and (d) The seizing officers must not break the seal and shall convey the material to a place of safe custody. The following procedures will be introduced to deal with disputes over LPP:	Part IV

	(i) The person asserting LPP shall apply to the High Court for a determination on LPP within a prescribed period of time, failing which the material will no longer be protected by privilege and can be accessed by investigators and the Prosecution; (ii) Any person asserting that any material sought is subject to LPP shall be required to make a Statutory Declaration setting out the basis of his claim and to provide particulars of the material allegedly subject to LPP, e.g. date of documents, sender and recipient, general nature of document; (iii) Where such a person is legally represented, his lawyer would certify by way of a solicitor's undertaking that he has reviewed the materials and is of the view that the materials sought are subject to LPP, and that none of the exceptions to LPP apply; and (iv) On an application for a determination on LPP, a High Court Judge will adjudicate whether LPP exists in material for seizure or production and whether disclosure of that material should be permitted. The Judge's decision is final – this is to ensure that there is no undue delay in the completion of investigations.	
6	<u>Allowing civilian analysts on the Home Team Specialist (Criminal Intelligence) Scheme to make s 20 production orders</u> Under the CPC, only police officers above the rank of sergeant can issue production orders. Amendments are proposed to allow production orders to be made under the CPC by criminal intelligence specialists under the Home Team Specialist (Criminal Intelligence) Scheme, or other persons authorised in writing by the Commissioner of Police for this purpose. This will enhance the operational effectiveness of police investigations.	s 20

7	<u>Removing police powers of "any visiting force lawfully present in Singapore"</u> Amendments are proposed to remove reference to "any visiting force lawfully present in Singapore" in ss 60 and 61 of the CPC. This statutory language, which empowers foreign armed forces to exercise police powers in Singapore in certain circumstances, is archaic and outdated.	ss 60, 61
Equipping investigators to deal with a complex security environment		
8	<u>Allowing a male officer to search a woman suspected of a terrorist act</u> Under the present law, only a female officer may search a woman suspected of a criminal offence. Amendments are proposed to allow a male police or Immigration and Checkpoints Authority officer to search a woman suspected of committing, attempting to commit, abetting or conspiring to commit a terrorist act where they believe in good faith that a female officer cannot conduct the search within a reasonable time. This will enable more effective detection and prevention of terrorist threats. A "terrorist act" will have the same definition as in s 2(2) of the Terrorism (Suppression of Financing) Act.	s 83
Ensuring justice is served by securing attendance in court		
9	<u>Strengthening the bail regime</u> The courts' current powers concerning bail need to be reinforced as they do not sufficiently deter accused persons from "jumping bail" (i.e. not complying with bail conditions). The	Part VI

	following amendments are proposed to clarify and enhance the powers of the courts as to the granting, setting conditions for, and revoking of bail/bond: (a) To make clear that the High Court cannot grant or vary bail or personal bond under s 97 of the CPC if the exceptions to bail or personal bond under s 95(1) of the CPC apply; (b) To empower the High Court to revoke bail or personal bond granted by the State Courts; (c) To allow the court to grant bail in extradition cases if special circumstances apply (under the present law, bail cannot be granted at all for such cases); (d) To provide that important bail or bond conditions will be imposed by default unless the court orders otherwise. These will be to surrender travel documents, to surrender to custody, be available for investigations or attend court at the appointed time and place, not to commit any offences, and not to obstruct the course of justice; (e) To allow for electronic tagging as a possible condition of bail; (f) To make offences under Chapter XI of the Penal Code (which concern false evidence and offences against public justice) non-bailable (meaning that the accused person can only be granted bail if he can show why he ought to be), as such alleged offences demonstrate a propensity to interfere with the administration of justice; (g) For bailable offences, to give the court the discretion to withhold bail if they are punishable with imprisonment and there are substantial grounds to believe that the accused person would abscond. These may include the personal characteristics of the accused person and the circumstances of the case; (h) For bailable offences that are punishable with a fine only, to require the court to grant bail, i.e. the exceptions that would otherwise justify the withholding of bail will not apply; (i) To allow the court to impose bail and personal bond concurrently;	

	(j) To require prospective sureties to produce *prima facie* evidence that they have the means to cover the amount pledged in the event of forfeiture e.g. with CPF statements or other proof of income or assets, without which they cannot stand as surety; and (k) To allow the court the discretion to order a stay of execution of grant of bail or bond if the Prosecution is applying for a review of bail or bond. In addition, to strengthen the bail regime, the creation of three offences is proposed: (i) An offence of absconding whilst on bail or personal bond; (ii) An offence of leaving jurisdiction without permission, for persons whose travel documents have been impounded by investigators; and (iii) An offence punishing sureties who agree to be indemnified, or persons who agree to indemnify sureties. This preserves the surety's incentive to monitor the accused person.	
10	<u>Clarifying the procedure governing forfeiture of bonds</u> Amendments are proposed to clarify and simplify the procedure for forfeiture of bail bonds. It will be made clear that for bonds put up by the surety, forfeiture will only be ordered by the court after it has established a breach of the surety's duties. The court will then decide whether to forfeit the whole or part of the bond amount. The law will also make clear that after any kind of bond is forfeited, the person bound by the bond may apply to court to request that the court reduce the amount of the bond and enforce part-payment.	Part VI

11	<u>Making cheating offences under s 420 of the Penal Code non-bailable</u> At present, cheating and dishonestly inducing a delivery of property under s 420 of the Penal Code is bailable as of right. This is inconsistent with the treatment of other offences carrying similar penalties. Cheating under this section is the most serious form of cheating in the Penal Code, punishable with mandatory imprisonment for up to 10 years. By way of comparison, forgery for the purpose of cheating under s 468 of the Penal Code carries the same punishment but is non-bailable (meaning the accused person can only be granted bail if he can show why he ought to be). An amendment is therefore proposed to make cheating under s 420 of the Penal Code non-bailable.	Fifth Schedule
12	<u>Allowing seizure of travel documents by Commercial Affairs Department officers</u> At present, Commercial Affairs Department ("CAD") officers are not empowered to seize travel documents as part of their investigations. Amendments are proposed to empower CAD Heads of Branches to give written consent for such seizures, to facilitate more effective investigations.	s 112

B. Court procedures and evidence		
Protecting the vulnerable in the court process		
13	<u>Enhancing protection for complainants of sexual and child abuse offences during the court process</u> To minimise the trauma faced by vulnerable complainants during court proceedings for sexual or child abuse offences, the following amendments are proposed to better protect them during the court process: (a) The publication of the complainant's identity will be prohibited from the time the complaint is lodged; (b) The court is to decide on whether to allow a witness to give evidence by video link based on a psychiatrist's or psychologist's report on the witness; (c) The court may allow a witness to testify behind a physical screen, to prevent the accused person from seeing them. This will apply to the complainant in any sexual or child abuse offence, any young witness, and any other witness where the court finds that their evidence will be affected by fear or distress; (d) All complainants for sexual or child abuse offences will give testimony *in camera* (i.e. in a closed-door hearing) unless they wish to give evidence in open court; (e) The Defence will not be allowed to ask complainants questions or adduce evidence concerning their sexual history or activities, including their appearance or behaviour, other than those to which the charge relates, without the leave of the court. Such leave will only be granted if it would be manifestly unjust not to allow the question to be asked or the evidence to be adduced. Any application for leave shall be done in chambers in the absence of the complainant; and	Parts XII, XIV and Evidence Act

	(f) The law will state expressly that in criminal proceedings involving sexual or child abuse offences, the general moral character or chastity complainants shall be irrelevant, and questions may not be asked concerning these matters to test their accuracy, veracity or credibility unless such facts would be likely to materially impair confidence in the reliability of the evidence of the complainant such that it would be manifestly unjust not to permit questions about them. Amendments to the Evidence Act will also be made to effect these changes.	
14	<u>Enhancing the courts' discretion to order exceptions to open court proceedings</u> 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". Amendments are proposed to further clarify this discretion (without fundamentally changing it) by listing specific possible grounds for such orders, such as: • The protection of an accused person from prejudice to his defence arising from the presence of the public; • The protection of any party from damage to his legitimate interest in privacy, where such damage would be manifestly greater than the public interest in an open court hearing; • The prevention of the hearing's object being defeated by publicity; • The protection of any party's legitimate interest in the confidentiality of any information that may be disclosed during the proceeding; and • The protection of the confidentiality of any information which, if disclosed, would harm the national interests of Singapore.	Part XII

	The amendments would also clarify that the court may exclude the general public while permitting certain categories of person to be present, such as *bona fide* representatives of the press, persons with a sufficient interest in the proceedings (e.g. the families of the victim or accused person), and other persons as the Court may identify in its discretion.	
15	<u>Enhancing and rationalising the fitness to plead/unsoundness of mind regime</u> The present law provides for special procedures to deal with (a) 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 (b) who are acquitted on the basis that they were of unsound mind at the time they allegedly committed the offences. The following amendments are proposed to enhance and rationalise these procedures. This will allow the courts and medical professionals to play a more involved role in determining the most appropriate action to take in respect of such persons, in the interest of justice. In respect of an accused person who is incapable of making his defence: (a) At present, the special procedures only cover an accused person who is incapable of making his defence because he is of unsound mind. However, there are cases where accused persons are medically incapable of making their defence despite not being of unsound mind (e.g. because they cannot communicate with counsel). Amendments are proposed to cover such persons under the special procedures; (b) A designated medical practitioner who assesses that an accused person is incapable of making his defence will also be required to assess whether he may be released without danger of injuring himself or any other person, whether with or without any specified conditions;	Part XIII, Division 5

	(c) The court will be empowered to release an accused person incapable of making his defence without a surety when he is charged with a bailable offence, where the court is satisfied that certain conditions will be met. These may include residing at a specified place, receiving medical treatment, and any other condition the court specifies. Under the present law, such a person cannot be released without a surety even if he is assessed to be able to comply with such conditions on his own; (d) Where an accused person incapable of making his defence is charged with a non-bailable offence, or if any condition imposed for the release of such a person is not complied with, the court shall report the case to the Minister to make an appropriate order; (e) On report of the court, the Minister must make an order confining the accused person (the present law states that the Minister "may" do so); (f) The confinement may take place at a psychiatric institution, prison or other suitable place of safe custody; (g) At present there is no maximum period of confinement under the Minister's order. However, there is an existing mechanism for a periodic six-monthly review by medical professionals: if the accused person is psychiatrically assessed to be fit for discharge without danger to himself or others, he may be so discharged. Under the proposed amendments, the maximum period under the Minister's orders will be set by the court, based on the term of imprisonment that would likely have been imposed had the accused person been convicted of all the offences charged, or the default sentence if the likely sentence is a fine (where an offence carries the mandatory death penalty, the maximum detention period shall be for life). The court's order will not be appealable but may be subject to criminal revision; (h) As an alternative to detention, the Minister may also order the accused person to be delivered to the care of a relative or friend subject to conditions, or to be released without a surety subject to conditions;	

	(i) An order delivering the accused person to the care of a relative or friend shall be subject to similar procedures as an order of confinement, including the maximum period ordered by the court and supervision of official visitors. After receiving a special report of the visitors or upon breach of any condition of the order, the Minister may make a fresh order in respect of the accused person; (j) If an accused person incapable of making his defence has all the charges against him withdrawn, any order made by the Minister shall be deemed to have lapsed (the present law does not clearly specify what happens upon withdrawal of charges); (k) An accused person under the Minister's order of confinement who is found *capable* of making his defence will not be automatically released – he is still subject to confinement until the discharge of the order. This is to avoid a situation where an accused person is released from detention before investigators and the Prosecution are able to make the necessary bail arrangements to secure his attendance in court; and (l) For an accused person under the Minister's order of confinement who is certified as not posing a danger to himself or another person, the Minister may order an unconditional discharge of the order or make a fresh order in respect of the accused person. In respect of an accused person who is acquitted on the basis that he was of unsound mind at the time of the commission of the alleged offence: (i) Currently, when a court acquits an accused person on the basis of unsoundness of mind, it must order that he be kept in safe custody at a psychiatric institution. Under the proposed amendments, a designated medical practitioner must assess and certify whether he may be released without danger of injuring himself or any other person, whether with or without any specified conditions;	

	(ii)	If a person is acquitted on the basis of unsoundness of mind *and* the Minister does not make any order in respect of him, that person shall be unconditionally released (the present law does not clearly specify what happens in such a situation);	
	(iii)	Currently, the law does not impose a maximum period of confinement under the Minister's order. However, there is an existing mechanism for a periodic six-monthly review by medical professionals: if an accused person is psychiatrically assessed to be fit for discharge without danger to himself or others, he may be so discharged. Under the proposed amendments, the maximum period under the Minister's orders shall be the maximum period of imprisonment prescribed for the most serious offence charged. Where a person is charged with an offence carrying the mandatory death penalty, the maximum period that he may be confined for shall be for life;	
	(iv)	Where the Minister makes an order to confine an accused person acquitted on the basis of unsoundness of mind, after 12 months, the Minister must make an application for a further confinement for 12 months, which the Magistrate may grant or refuse at his discretion. If the application is refused, the accused person must be released unconditionally,	
	(v)	As an alternative to detention, the Minister may also order the accused person to be delivered to the care of a relative or friend subject to conditions, or to be released without a surety but subject to conditions;	
	(vi)	An order delivering the acquitted accused person to the care of a relative or friend shall be subject to similar procedures as an order of confinement, including the maximum period and supervision of official visitors. After receiving a special report of the visitors or upon breach of any condition of the order, the Minister may make a fresh order in respect of the accused person; and	
	(vii)	For an accused person under the Minister's order of confinement who is certified as not posing a danger to himself or another person, the Minister may order an	

	unconditional discharge of the order or make a fresh order in respect of that person. It should be noted that any accused person released under these CPC provisions may still be subject to detention under the Mental Health Care and Treatment Act if he is assessed to be a danger to himself or to others.	
New procedures to meet new criminal justice challenges		
16	<u>Allowing amalgamation of charges in more circumstances</u> Presently, multiple instances of the same criminal offence can only be amalgamated into a single charge for a limited set of offences (criminal breach of trust and dishonest misappropriation). Amalgamation can allow for more effective case management by avoiding the need for dozens or even hundreds of separate charges for repetitions of the same offence, without prejudicing the accused person. Amendments are proposed to widen this category of offences to expressly allow money-laundering offences under ss 43, 44, 46 or 47 of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act to be amalgamated, as well as to allow the Minister to prescribe further offences involving property to allow them to be amalgamated as well. In addition to these changes, it is proposed to create a new general provision permitting the amalgamation of *any* offence where multiple instances of the same offence constitute a course of conduct, having regard to the time, place or purpose of commission. To avoid amalgamation resulting in sentencing discounts for multiple offending, charges	s 124

	amalgamated under this general provision will have their maximum sentences doubled. However, this will not change the maximum sentencing jurisdiction of the courts, nor will it allow the court to exceed the existing specified limit of strokes of the cane that can be imposed on any one offender.	
17	<u>Broadening situations for the joinder of accused persons</u> At present, it is not clear that two accused persons may be tried jointly (i.e. in the same proceeding) on the basis that their alleged offences arose from an agreement between them to commit those offences. Amendments are proposed to clarify that a joint trial is possible in this situation regardless of whether the respective offences formed the same transaction, where a joint trial will not prejudice the accused persons in their defence. This will allow a fuller picture to be given to the court about any agreement between the accused persons which forms the background to their alleged offences.	s 144
Enhancing procedural fairness and effectiveness		
18	<u>Establishing a Criminal Procedure Rules Committee</u> It is proposed that a Criminal Procedure Rules Committee ("CPRC") chaired by the Chief Justice be established and conferred the power to prescribe court-related procedural rules to keep the court process nimble and up-to-date. All rules proposed by the CPRC will be approved by the Chief Justice and the Minister.	Part XXII

	The Committee will comprise 13 members: • The Chief Justice (Chairman); • 2 Judges of the Supreme Court to be appointed by the Chief Justice; • The Presiding Judge of the State Courts; • The Registrar of the Supreme Court; • 1 District Judge to be appointed by the Chief Justice; • The Public Prosecutor and 2 person appointed by the Public Prosecutor, or 3 persons appointed by the Public Prosecutor; • 2 practising advocates and solicitors to be appointed by the Minister for Law; and • 2 representatives from the Government to be appointed by the Minister for Home Affairs. The Minister will retain the powers to make all other regulations under the CPC that do not fall under the CPRC's purview.	
19	<u>Streamlining pre-trial procedures in the High Court – extending the transmission procedure to replace the committal hearing procedure</u> Presently, most cases to be tried in the High Court go through a committal hearing to determine if there is sufficient evidence to commit an accused person for trial. However, cases involving serious sexual offences go through a "transmission" procedure, where the case is automatically transmitted to the High Court for trial by a fiat signed by the Public Prosecutor, without the need to hold a committal hearing.	Part X

	Amendments are proposed to extend the transmission procedure to all cases for trial before the High Court to replace the committal hearing process. The impact of this amendment on the Defence's statutory right to pre-trial disclosure will be minimal.	
20	<u>Extending video link hearings to pleas of guilty and sentencing</u> 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. Amendments are proposed to give the Minister the power to make subsidiary legislation permitting and regulating the use of video links in hearings for plea of guilty and sentencing for remandees, and to introduce necessary safeguards for such hearings. It is proposed that in the first instance, this will only apply to State Courts cases. With this proposal, the security risk arising from transporting remandees between prison and the court multiple times will be minimised.	s 281(3)(c)
21	<u>Requiring judges to give reasons if they do not order an accused person in remand to appear through video link for certain hearings</u> Amendments are proposed to require judges to give reasons if they do not order that an accused person in remand appear in court through video link for certain hearings where the court has power to do so. The intention is to encourage the use of video link hearings as the default, to minimise the security risk posed by transporting remandees between prison and the court multiple times.	s 281(3)

22	<u>Introducing additional safeguards for *in absentia* proceedings</u> The present law allows for *in absentia* criminal proceedings (i.e. proceedings in the absence of the accused person). Amendments are proposed to provide for safeguards for such hearings, including a requirement for sufficient notice to be given to the accused person, and a power for the court to void the *in absentia* proceeding on the basis of lack of such notice.	s 156
23	<u>Allowing directions in the event of inadequate disclosure under the Criminal Case Disclosure ("CCD") regime</u> Although the present law requires the Prosecution and the Defence to disclose certain materials to each other at the pre-trial stage of criminal proceedings, it is not clear what can be done in the event a party makes some disclosure, but the content of the disclosure is inadequate. Amendments are proposed to allow parties to apply to the court for directions for further disclosure on the basis that their opponents have not complied in substance with their disclosure obligations.	Parts IX, X
24	<u>Expanding the CCD procedure to cover more offences</u> Amendments to the Second Schedule of the CPC are proposed to include new statutes, so that more cases can now be subject to the CCD regime. This includes the Moneylenders Act, Remote Gambling Act, Prevention of Human Trafficking Act, and Casino Control Act.	Second Schedule

25	<u>Deeming that the accused person and his counsel undertake not to use any material disclosed for the purpose of a criminal proceeding for any other purpose</u> It is proposed to amend the CPC to state that when the Defence receives disclosure of certain materials from the Prosecution for the purposes of a criminal proceeding, the accused person and his counsel are deemed to undertake to the court not to use such materials for any purpose outside of that criminal proceeding. This obligation will begin at the point of charge and end when that material is used in open court such that it enters the public domain.	Parts IX, X
26	<u>Providing for High Court pre-trial conferences</u> At present, there is no clear statutory provision for pre-trial conferences in criminal proceedings before the High Court. Amendments are proposed to introduce this procedure, which allows for more effective case management of criminal matters.	Part X
Robust rules of evidence for just trial outcomes		
27	<u>Regulating expert evidence</u> Amendments are proposed to allow subsidiary legislation to be made concerning the use of expert evidence, including the obligations of experts and the use of concurrent expert evidence (sometimes called "hot-tubbing") and joint expert reports. The flexibility of subsidiary legislation allows court procedure to be responsive to the latest developments in the field of expert evidence. The subsidiary legislation will include rules stating that the duty of any expert witness to the court overrides any duty to the person instructing or paying them, as well as a	Part XIV

	requirement that the expert, upon completing their report, declare that they understand and have complied with their duty to the court.	
28	<u>Regulating psychiatric expert evidence</u> Psychiatric expert evidence is increasingly common in criminal proceedings. The courts have observed in past cases that the psychiatrists who gave evidence in those specific cases lacked competence or objectivity.[3] Amendments are proposed to require that psychiatrists only give expert evidence in criminal cases if they are on a court-administered panel of psychiatrists. This will ensure that evidence given by psychiatrists in court is competently arrived at and objective, which is in the interests of all parties to a case. The proposed workings of this panel are as follows: (a) There will be a court-administered selection committee; (b) Generally, admission will be for a duration of two years unless otherwise stated; (c) Applicants must be qualified psychiatrists; (d) Applicants must have undertaken work or training in forensic psychiatry; (e) Applicants must produce two character references from members of the Academy of Medicine with at least 7 years of membership; (f) Admitted psychiatrists will be removed from the panel if there are a number of adverse judgments commenting adversely on their independence or competence as expert witnesses; (g) On removal, a minimum of three years must pass before the psychiatrist can apply again; and (h) Panel administrators will have the discretion to refuse re-admission to a psychiatrist.	Part XIV

[3] For example, in *Mehra Radhika v Public Prosecutor* [2015] 1 SLR 96 at [68] the Chief Justice noted that the psychiatrist's report provided by the Defence in that case was "patently lacking in objectivity" and "plainly erroneous".

29	<u>Making statements taken under s 27 of the Prevention of Corruption Act admissible as evidence in non-corruption offences in certain circumstances</u> At present, statements taken by officers of the Corrupt Practices Investigation Bureau ("CPIB") under the Prevention of Corruption Act ("PCA"), in which the interviewee is told that he is bound to tell the truth under s 27 of the PCA, are generally inadmissible as evidence of non-corruption offences outside the PCA. It has been stated in previous court decisions that telling an interviewee that he is bound to tell the truth in respect of non-corruption offences can amount to inducement, which renders a statement inadmissible. This is because s 27 of the PCA only applies to offences under the PCA. Amendments are proposed to allow a statement taken after the interviewee is told he is bound to tell the truth under s 27 of the PCA to be admissible as evidence in the trial of that person for *any criminal offence* in the following circumstances: (a) There is no inducement, threat or promise that would otherwise render the statement inadmissible; and (b) The person telling the interviewee that he was bound to tell the truth under s 27 of the PCA believed in good faith that the interviewee was a person who had been concerned in any offence under the PCA or against whom a reasonable complaint had been made or credible information had been received or a reasonable suspicion existed of his having been so concerned. These amendments will ensure that all criminal offences can be effectively investigated, whilst guarding against any abuse of the special investigative powers under the PCA.	s 258

30	<u>Clarifying admissibility of the Case for the Defence as evidence, and use of the Case for the Prosecution in court</u> At present, it is not clear whether and how the Cases for the Defence and Prosecution that parties disclose to each other at the pre-trial stage under the CCD regime can be used as evidence in court. Amendments are proposed to state that the contents of any Case for the Defence that has been filed in Court and served on the Prosecution may be admitted as evidence at the trial of the accused person, including during the Prosecution's case. Similarly, the amendments will state that contents of the Case for the Prosecution that have been filed in Court and served on the Defence may be referred to during a trial as though they were part of the Prosecution's opening statement.	Part XIV

C. Sentencing and other powers of the court		
Empowering judges to achieve just sentencing outcomes		
31	<u>Expanding the community sentencing regime</u> At present, any offender who has been sentenced to imprisonment or Reformative Training ("RT") for a previous offence is not eligible for a community sentence. To give more offenders the opportunity for rehabilitation through community sentences, amendments are proposed to allow offenders with a previous imprisonment sentence of 3 months or less or	Part XVII

	a previous RT sentence to be eligible for community sentences. Such offenders may not be habitual offenders and may potentially benefit from community sentences. In addition, offenders who were previously admitted to approved rehabilitation centres for drug or inhalant abuse (under the Misuse of Drugs Act, Misuse of Drugs Regulations or Intoxicating Substances Act) will be eligible for community sentences if their present charge is not for drug or inhalant abuse. However, offenders who have more than one previous admission to an approved rehabilitation centre will not be eligible. Under the present law, any person who was previously admitted to such a rehabilitation centre is not eligible for community sentences. There are further amendments proposed for Mandatory Treatment Orders ("MTOs"). At present, an offender may only be sentenced to an MTO if the offence is punishable with up to 3 years' imprisonment. It is proposed to expand the eligibility to include offenders who committed certain prescribed offences carrying up to 7 years' imprisonment. Not all offences with such punishment will be included under the expanded MTO criteria: offences that reflect a danger to public safety or which require greater deterrence will not be prescribed. The maximum duration of MTO sentences will be increased from 24 to 36 months, to make MTOs more effective for offenders who are assessed to need longer periods of treatment. Amendments will also allow the court the power to order the offender to reside at the Institute of Mental Health for a specified duration of in-patient treatment as a condition of an MTO. Finally, amendments are proposed to allow the court to impose a suspended imprisonment sentence together with a community sentence in suitable cases. This will give a greater	

	incentive to the offender to comply with the community sentence. If a breach of the community sentence is proven, the suspended imprisonment sentence will automatically take effect.	
32	<u>Improving the victim compensation order regime</u> At present, criminal courts have the power to order compensation payments to victims when they sentence the offender. The court is also obliged to consider the issue of compensation. Amendments are proposed to enhance this process and help victims of crime secure compensation more easily, including the following: (a) The court will be required to give reasons where compensation is not ordered (e.g. if voluntary restitution was made at an earlier stage); (b) The court will be empowered to order compensation of the dependents of a person whose death was caused by an offence for bereavement (for a fixed sum as specified in s 21(4) of the Civil Law Act, currently $15,000) and for funeral expenses. At present, compensation can only be ordered for injury to the actual victim, and not for his dependents; and (c) Victims will be empowered to participate in the compensation order process by making submissions or giving evidence (through counsel or personally) to help determine if compensation should be paid, and if so, how much.	s 359

33	<u>Clarifying the court's power to take the remand period into account when backdating sentence</u> At present, the court has the power to backdate the commencement date of a sentence of imprisonment. Amendments are proposed to set out this power clearly in legislation. The court will be expressly empowered to give directions about the commencement date of a sentence and the computation of the length of the sentence, and to take into account non-continuous periods of remand. In exercising this power, the court must take into account any time the offender has already spent in remand, and any period of time when he was *not* in remand (e.g. if the offender was remanded, then released on bail, then remanded again). The proposed amendments will also allow the court to take into account periods of time when an offender was confined in a psychiatric institution before sentence (e.g. because he was temporarily incapable of making his defence).	s 318
34	<u>Clarifying the court's power to alter the commencement date of a sentence of imprisonment after passing sentence</u> Amendments are proposed to clearly state that the first instance court or appellate court has the power to alter the commencement date of a sentence at any time after passing the sentence, regardless of whether it had already given an earlier direction on the commencement date. In addition, amendments are proposed to empower the court to grant bail until the deferred commencement date. These changes will allow the court to grant a further deferment of the commencement of a sentence where the circumstances merit it.	Part XVI

35	<u>Clarifying that Corrective Training and Preventive Detention are in lieu of fines</u> At present, where a fine is imposed on an offender in addition to an order of Corrective Training ("CT") or Preventive Detention ("PD"), and the fine is unpaid, the offender will have to serve the default term of imprisonment for the unpaid fine *in addition to* CT or PD. Amendments are proposed to clarify that any order for CT or PD will be made in lieu of sentences of imprisonment *or fine*. This means that it will no longer be possible to impose both a fine and a sentence of CT or PD.	s 304
36	<u>Introducing changes to the reformative training regime</u> At present, when a court sentences an offender to reformative training, the minimum period of detention is 18 months. Amendments are proposed to require the court to order a minimum detention period of 6 or 12 months, depending on the intensity of rehabilitation the offender requires. In order to facilitate this determination, the Commissioner of Prisons or a person authorised by the Commissioner will prepare a report containing an assessment of the intensity of rehabilitation recommended for the offender.	s 305
37	<u>Adjusting the trial judge's report in respect of death sentence</u> At present, when an offender is sentenced to death, the trial judge is to produce a report stating whether, in his opinion, there is any reason "why the death sentence should be carried out".	s 313(c)

	An amendment is proposed to adjust this such that the trial judge who pronounced the sentence of death must produce a report stating whether there is any reason "why the death sentence should *not* be carried out". This report will be provided to the Minister for Law once the appeal or petition for confirmation to the Court of Appeal has been determined.	
Enhancing judicial control over criminal proceedings		
38	<u>Introducing new procedures to prevent abuse of court process in concluded criminal cases</u> Amendments are proposed to codify and clarify the procedure for the re-opening of concluded criminal cases, meaning cases where all avenues of appeal have been exhausted. In recent times, there have been a growing number of applications for the re-opening of such cases. The Court of Appeal has observed in some of these cases that there is a potential for abuse of process in such applications, as well as the need for criminal procedure to give due weight to finality.[4] These amendments strike a balance between preventing miscarriage of justice and the need for finality in criminal proceedings. For applications to a criminal court to re-open a concluded criminal case, a special procedure will apply where the Defence's appeal was already determined on its merits, where the Court of Appeal confirmed the imposition of a sentence of death on a petition for confirmation by the Prosecution, or where the Defence's appeal was dismissed due to the absence of the accused person from the hearing *and* a motion for leave to have the appeal reinstated under s 387(3) of the CPC was not granted.	Part XX

[4] For example, in *Kho Jabing v Public Prosecutor* [2016] 3 SLR 1259 at [3] and [9], 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. It also noted the importance of finality. 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".

	The Public Prosecutor cannot make use of the procedure to re-open concluded cases to overturn acquittals or sentences which he believes to be overly lenient, except where the decision under challenge is tainted by fraud or a breach of natural justice, such that the integrity of the judicial process is compromised. The following procedural requirements will apply to an application to re-open a concluded criminal case: (a) Leave of Court will be required before the substantive hearing; (b) On an application for leave, the court will fix the matter for hearing within a fixed period of time, but the court may extend this timeline if necessary; (c) The application for leave will be heard by (i) a Judge of Appeal where it concerns a case which was commenced in the High Court, and (ii) a High Court Judge (the same Judge who heard the Magistrate's Appeal) where it concerns a case which was commenced in the State Courts; (d) The Court will have the power to summarily refuse or grant leave to re-open the concluded case (*via* a written order) without the need for an oral hearing, after having considered written arguments by the party adversely affected by the summary decision, or if the court decides, after considering written arguments by both parties; (e) If leave is granted, the substantive hearing will be heard by (i) the Court of Appeal where it concerns a case which was commenced in the High Court, and (ii) a High Court Judge where it concerns a case which was commenced in the State Courts; (f) The Court of Appeal will have the power to hear and consolidate the reopening application and any collateral civil application on its own motion, in order to determine all matters in one sitting;	

	(g) If the application for leave is granted, the court hearing the substantive matter will have the power to summarily dismiss it (*via* a written order) without the need for an oral hearing, after having considered written arguments by the party adversely affected by the summary decision, or if the court decides, after considering written arguments by both parties; (h) The court hearing the substantive matter will have all the powers of the appellate court, and may make such orders as the appellate court might have made as the court considers just for the disposal of the case; (i) Only one application to re-open a concluded criminal case is permitted for each party in respect of a concluded criminal case; and (j) No appeal, and no application for a Criminal Reference, is allowed against any decision made by a court under this procedure, whether at the leave stage or the substantive stage, and whether summarily or otherwise. The following substantive requirements will apply to an application to re-open a concluded criminal case: (i) There must be sufficient material to be put forward that was not adduced before any court in the concluded criminal proceeding, and that could not have been so adduced even with reasonable diligence. Where the material to be put forward takes the form of legal arguments not canvassed earlier, these must have arisen from a change in the interpretation of the law since the conclusion of the criminal case; (ii) That material must be compelling in its effect, viz. reliable, substantial, powerfully probative and capable of showing almost conclusively that there has been a miscarriage of justice;	

	(iii) There must have been a miscarriage of justice in the concluded criminal case, *viz.* a decision of the court was demonstrably wrong or was tainted by fraud or a breach of natural justice, such that the integrity of the judicial process is compromised. For a decision to be demonstrably wrong in respect of a conviction, it must be apparent on the basis of the evidence tendered in support of the application alone that there is a powerful probability that the decision is wrong. In relation to sentence, it must be shown that the decision under challenge was based on some fundamental misapprehension of the law or the facts, thereby resulting in a decision that is blatantly wrong on the face of the record; and (iv) To support these requirements, counsel for the applicant must give a solicitor's undertaking, stating that they genuinely believe the application to be of merit, what the material is that could not be brought before the court during the earlier proceeding, and why the re-opening of a concluded criminal case is necessary. The undertaking must specifically include a statement that the counsel is satisfied that the arguments raised are new and were not dismissed previously during the criminal proceeding, that there are good reasons as to why the arguments were not raised previously, and what these reasons are, and that counsel is aware of the consequences of making a false undertaking. Amendments are also proposed to impose similar requirements for any civil application the granting of which would affect the outcome of a concluded criminal case. This is to prevent parties from using civil applications (e.g. for injunctions, judicial review or declarations) to circumvent the requirements set out for the re-opening of concluded criminal cases. The procedures are also designed to prevent an unwarranted delay in the criminal process.	

39	<u>Extending the costs regime to the pre-trial stage</u> At present, cost orders can only be made against an accused person or his counsel relating to the conduct of the defence at trial (or at a substantive hearing, such as a plea of guilt). Amendments are proposed to ensure that costs can also be ordered against the accused person or his counsel for conduct at the pre-trial stage. Such conduct may include non-compliance with the court's directions or causing unnecessary adjournments. Although the pre-trial stage is largely procedural, such behaviour can have the effect of delaying the main proceedings, which can have a negative effect on the criminal justice process (e.g. prolonging the uncertainty faced by the accused person who has a criminal charge hanging over him, or the fading of witnesses' memories over time). In addition, amendments are proposed to make clear that where a defence counsel's failure to conduct proceedings with reasonable competence and expedition causes costs to be unnecessarily incurred or wasted by parties other than his client (such as the Prosecution or a co-accused person), he can face a costs order in the form of an order disallowing costs between him and his client.	Part XVIII
40	<u>Requiring all law enforcement officers to report seizure of property to a Magistrate's Court</u> At present, the law imposes a duty on police officers who have seized property under the CPC to report the seizure to the Magistrate's Court. However, other law enforcement officers who also possess the power of seizure under the CPC are not under the same obligation. Amendments are proposed to require all law enforcement officers who seize property under the power of seizure in the CPC to report such a seizure to the Magistrate's Court.	s 370

41	<u>Clarifying when an obligation to report a seizure of property arises</u> Amendments are proposed to make clear that a law enforcement officer can and must report a seizure of property to the Magistrate's Court if the property is not or is no longer relevant to any investigation, inquiry, trial or other proceeding. In addition, amendments are proposed to clarify that the reporting of a seizure need not be before a Magistrate's Court: it can also be before a court hearing any criminal proceeding to which the seizure was connected. For example, if an accused person has been charged with an offence and is scheduled to attend a pre-trial conference or a mention in the District Court or the High Court, the police may report a seizure connected to that offence at such hearings and the court concerned may make orders in relation to the seized property. The court may also direct that the report be made to a Magistrate's Court to be dealt with separately.	s 370(1)
42	<u>Introducing the power of disposal in s 370(2) of the CPC</u> At present, where property is seized in the course of investigations but there are no criminal charges, investigators must report the seizure to the court. In these circumstances, the court can generally only order the return of the property to the person entitled to possession of it (often the same person it was seized from), if that person can be identified. The court is not empowered to order the disposal of the property even if it was the subject of, or used in, a criminal offence, such as a weapon. Amendments are proposed to give the court a power to dispose of property where it is satisfied that this was property in respect of which an offence was committed or which was used or intended to have been used for the commission of any offence. The court will also	s 370(2)

	be empowered to order that certain data in any computer or mobile phone etc. be deleted from it before it is returned to the owner where it is satisfied that this is data in respect of which an offence was committed or which was used or intended to have been used for the commission of any offence.	
43	<u>Clarifying that an appellate court exercises its appellate jurisdiction when taking outstanding charges into consideration for the purposes of sentencing at the conclusion of an appeal</u> Amendments are proposed to clarify that when an appellate court takes into consideration any outstanding offences which the accused person admits to have committed and consents to being taken into consideration for the purpose of sentencing at the conclusion of an appeal, it does so in the exercise of its appellate jurisdiction. This will make clear that there can be no further appeal of the sentence ordered by the appellate court.	s 390(9)
44	<u>Deeming questions of law referred to the Court of Appeal by the Public Prosecutor to be questions of public interest</u> Amendments are proposed to state that any question of law referred to the Court of Appeal by the Public Prosecutor shall be deemed to be a question of public interest.	s 397
45	<u>Introducing a procedure for summary refusal of leave for Criminal Reference</u> Under the present law, a court hearing an appeal can summarily dismiss the appeal without a hearing if it is satisfied that the appeal has been brought without any sufficient ground of	s 397

	complaint. However, there is no similar procedure for Criminal References of questions of law to the Court of Appeal. To prevent abuse of process, and to ensure that judicial resources are not wasted by applications that are clearly unmeritorious, amendments are proposed to provide for a similar procedure under which the Court of Appeal can summarily dismiss an application for leave to file a Criminal Reference without a hearing. This will only be done where the Court of Appeal is satisfied on the face of the application that it does not raise a question of law of public interest which had arisen in the matter determined by the High Court, the determination of which affected the case. Any such summary dismissal will only be made by a unanimous decision of the Judges or Judges of Appeal sitting on the Court of Appeal. After such a summary dismissal, notice will be given to the applicant, who may apply to amend the question of law referred within 14 days of the summary dismissal. This must be accompanied by a certificate signed by an advocate specifying the question to be raised and an undertaking to argue it. In such a case, the Chief Justice may grant leave to amend the question and restore the leave application for hearing. This procedure will ensure that the court is able to strike an appropriate balance between safeguarding the rights of the accused person, and ensuring that cases continue to be effectively dealt with without unnecessarily taxing valuable public resources and scarce judicial time.	
46	<u>Allowing Criminal Motions to be dealt with by a summary procedure where parties consent</u> Amendments are proposed to allow Criminal Motions to be dealt with by a summary procedure (i.e. a decision based on parties' written submissions, without a need to appear in	Part XX, Division 5

	court to make oral arguments) for non-contentious applications, such as an application for extension of time to file a Petition of Appeal where the Public Prosecutor consents to the extension. Parties must indicate in writing that they do not object to such a procedure. This procedure will only apply to parties represented by counsel. This option will help to expedite court proceedings and save both the courts' and parties' resources.	
47	Clarifying the Court of Appeal's power to hear Criminal Motions At present, the CPC provides for Criminal Motions to be made to and heard by the High Court, but does not state whether Criminal Motions can be made to and heard by the Court of Appeal. Amendments are proposed to expressly empower the Court of Appeal to hear Criminal Motions, where the High Court is the court of first instance. This reflects the existing practice of the courts.	Part XX, Division 5
48	Requiring the Supreme Court to certify results of Criminal Motions The CPC requires a higher court to certify the result of appeals and Criminal Revisions, but not Criminal Motions. Amendments are proposed to require the High Court and Court of Appeal to certify their decisions or orders in Criminal Motions for the reference of the lower courts, requiring them to give effect to the decision made in the Criminal Motion. This will save parties time and effort in extracting the results of Criminal Motions for the reference of the lower courts.	Part XX, Division 5

49	<u>Clarifying the procedure for filing a petition for confirmation</u> At present, the CPC provides that where the High Court passes a sentence of death and the Defence does not file an appeal within the time allowed, the Public Prosecutor shall file a petition for confirmation of the conviction and sentence to the Court of Appeal. The CPC does not address the situation where the Defence files an appeal but then withdraws it. Amendments are proposed to state that where the Defence files an appeal but withdraws it before the end of the time allowed for an appeal, the Public Prosecutor shall file a petition for confirmation 90 days after the expiry of the time allowed for an appeal. Where the Defence files an appeal but withdraws it *after* the end of the time allowed for an appeal, the Public Prosecutor shall file a petition for confirmation within 90 days after that withdrawal.	s 394A(1)
50	<u>Allowing the Registrar to administer applications for copies of proceedings</u> The CPC presently requires applications for copies of record of proceedings, as well as for the waiver of payment of any fees for such copies, to be made to a judge of the State Courts or Supreme Court. Amendments are proposed to allow such application for copies and for waiver of fees to be made to the Registrar of the State Courts or Supreme Court, given that these applications are administrative in nature.	s 426