

[78.05] Prosecution

As to meaning, see [15.25] above.

[78.06] Offence

As to meaning, see [20.19] above.

[78.07] Commenced

As to commencement of criminal prosecutions, see [75.02] above.

[78.08] Definitions

For 'Court', see s 2 above.

79. Procedure and practice of the Court in its criminal jurisdiction

(1) Subject to the provisions of this Ordinance and [as may be prescribed], the procedure and practice for the time being in force in the [Court of First Instance] in relation to criminal proceedings therein shall, so far as the same may be applicable, be followed as nearly as may be in criminal proceedings in the [...] Court; and where it is necessary for the purpose of rendering such procedure and practice conveniently applicable, "indictment" and "count" shall be understood to refer to "charge sheet" and "charge" respectively. *(Amended 21 of 1962 s 15; 25 of 1998 s 2)*

(2) Notwithstanding the provisions of subsection (1), none of the provisions of the Criminal Procedure Ordinance (Cap 221) in Part 1 of Schedule 2 particularized shall be applied to proceedings in the Court. *(Amended 21 of 1962 s 15)*

(3) The special provisions contained in Part 2 of Schedule 2 touching the procedure and practice of the Court in the exercise of its criminal jurisdiction shall be applied to criminal proceedings in the Court where the circumstances of such proceedings require their application. *(Amended 21 of 1962 s 15)*

(4) Where any provision of the Criminal Procedure Ordinance (Cap 221) is applicable to criminal proceedings in the [...] Court, such provision shall be read with such verbal alterations and modifications not affecting its substance as are necessary to render it conveniently applicable; and in particular, and without prejudice to the generality of the aforesaid, any such provision relating to a "jury" or a "verdict of a jury" shall be understood to refer to a [judge] and the functions of a [judge] as a judge of fact [...]. *(Amended 21 of 1962 s 15; 63 of 1971 s 13)*

(5) Nothing in this section shall be taken to authorize—

- (a) the institution of any criminal proceedings in the [...] Court save in accordance with the express provisions of this Part; or *(Amended 21 of 1962 s 15)*
- (b) trial by jury in any criminal proceedings instituted under the provisions of this Part.

(1 of 1953 s 29 incorporated. Amended E.R. 1 of 2013)

[79.01] Enactment history

This section was originally enacted as s 29 of the District Court Ordinance 1953 (1 of 1953), commencing on 18 February 1953, and was subsequently incorporated

as s 79 of the District Court Ordinance (Cap 336) in the 1972 Revised Edition of the Laws of Hong Kong.

This section was amended by deleting the word 'District' at the locations indicated by the square brackets before the word 'Court' pursuant to s 15 of the District Court (Amendment) Ordinance 1962 (21 of 1962), commencing on 1 July 1963. Subsection (1) was further amended by the same section of the amending Ordinance by substituting the words 'as may be prescribed'. Subsection (4) was further amended by the same section of the amending Ordinance by substituting the word 'judge' at the locations indicated by the relevant sets of square brackets.

Subsection (1) was further amended pursuant to s 2 of the Adaptation of Laws (Courts and Tribunals) Ordinance (25 of 1998), which was deemed to have come into operation on 1 July 1997, by substituting the words 'Court of First Instance'.

Subsection (4) was further amended pursuant to s 13 of the Criminal Procedure (Amendment) (No 4) Ordinance (63 of 1971), commencing on 1 February 1972, by deleting paragraph (b) therefrom.

[79.02] General note

Subsection (1) of this section does not direct a judge of the District Court to substitute 'charge sheet' for 'indictment' wherever the latter would appear in the Criminal Procedure Ordinance (Cap 221). Subsection (2) of this section does not state that all other sections of the Criminal Procedure Ordinance shall apply to the District Court: *R v Law Chichung* [1975] HKDCLR 65 (DC).

[79.03] As may be prescribed

As to the meaning of 'prescribed', see [2.10] above.

[79.04] Procedure and practice

As to the meaning of these expressions, see [72.05] and [72.07] above respectively.

[79.05] For the time being

As to meaning, see [3.07] above.

[79.06] In force

As to meaning, see [3.08] above.

[79.07] Court of First Instance

As to the Court of First Instance, see [10.04] above.

[79.08] Criminal proceedings

As to the procedure and practice of the Court of First Instance in criminal proceedings, see Bruce, *Criminal Procedure: Trial on Indictment*, Divs V, VI. As to the practice directions applicable to criminal proceedings before the District Court, see *Practice Directions 9.4, Criminal Proceedings in the District Court*.

The District Court has the jurisdiction to stay proceedings on the ground of abuse of process: *R v District Judge of Hong Kong, ex p A-G* [1956] 40 HKLR 260, [1956] HKCU 27; *Tan Soon-gin, George v A-G* [1990] 2 HKLR 176, [1990] HKCU 379.

In matters of amendment, the principles to be applied are those applicable to indictments in the High Court. Accordingly, s 23 of the Criminal Procedure Ordinance (Cap 221) is applicable: *R v Feldborg* [1955] 39 HKLR 83, [1955] HKCU 9 (FC); *A-G v Chan Hung-hoi* [1987] HKLR 969 at 974 (CA); *R v Tse Yu* [1996] 1 HKC 47 (CA); *HKSAR v Tang Hoi On* [2003] 3 HKC 123 (CA); *HKSAR v Chan Chun Yeung & Anor* (unreported, 2 November 2006, CACC 45/2006) (CA); *HKSAR v Gurung Laxman* [2017] HKCU 1210 (unreported, 16 May 2017, CACC 385/2015) (CA).

The practice excluding a right of reply by the prosecution in the case where the defendant is unrepresented and, apart from giving evidence himself, has not called any witness applies by virtue of this section and by the implied effect of s 56 of the Criminal Procedure Ordinance (Cap 221); see *Leung Chun Kit Brandon v HKSAR* [2018] HKCU 2215, [2018] HKCFA 30 (4 July 2018).

The District Court may substitute in its verdict an offence for the offence charged in accordance with s 51(2) of the Criminal Procedure Ordinance; see *HKSAR v Cheng Chi Yung & Anor* (unreported, 21 May 2004, CACC 338/2003) (CA).

The District Court has no power to review its decisions: *HKSAR v Chu Kin Yuen Bartholomen* [2007] 5 HKC 172 (CA). The District Court may issue a warrant for the arrest of an accused person who failed to appear to plead to a charge sheet: see *R v Sousa* [1965] HKDCLR 77 (DC).

As to the meaning of ‘proceedings’, see [2.06] above.

[79.09] Verbal alterations and modifications not affecting its substance

To ‘alter’ is not to replace or substitute one thing for another: see *R v Parkway Chrysler Plymouth Ltd* (1976) 32 CCC (2d) 116 at 117 (Ont CA) (per Wilson JA).

As to the meaning of ‘modification’, see [77.06] above.

[79.10] Necessary

As to meaning, see [11A.06] above.

[79.11] Without prejudice to the generality of the aforesaid

See, in this connection, [72.09] above.

[79.12] Be followed as near as may be

The expression ‘as near as may be’ as a magistrate hearing committal proceedings was held in the context of extradition to be ‘as near as may be consistent with extradition legislation’: see *Re Thongchai Sanguandikul* [1994] 1 HKCLR 1; *Chen Chong Gui v Senior Superintendent of Lai Chi Kok Reception Centre* [1997] 3 HKC 210.

[79.13] Definitions

For ‘Court’ and ‘judge’, see s 2 above.

[79A. Plea by corporation

(1) Where an accused person is a corporation, a plea in writing may be entered by its representative, and if either the corporation does not appear by a representative or, though it does so appear, fails to enter any plea, the Court shall order a plea of not guilty to be entered and the trial shall proceed as though the corporation had duly entered a plea of not guilty.