

立法會

Legislative Council

LC Paper No. CB(2)118/02-03

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**Legislative Council
Panel on Administration of Justice and Legal Services**

**Minutes of meeting
held on Monday, 24 June 2002 at 4:30 pm
in Conference Room A of the Legislative Council Building**

Members Present : Hon Margaret NG (Chairman)
Hon Jasper TSANG Yok-sing, JP (Deputy Chairman)
Hon Albert HO Chun-yan
Hon Martin LEE Chu-ming, SC, JP
Hon Miriam LAU Kin-yee, JP
Hon Mr Ambrose LAU Hon-chuen, GBS, JP
Hon Audrey EU Yuet-mee, SC, JP

Members Absent : Hon James TO Kun-sun
Hon Emily LAU Wai-hing, JP

Public Officers Attending : Item III
Mr Robert C ALLCOCK, BBS, JP
Solicitor General

Mr Paul TSANG
Senior Government Counsel

Item IV

Mr Stephen WONG Kai-yi
Deputy Solicitor General

Ms Kitty FUNG

Senior Assistant Solicitor General (Ag)

Ms Lorraine CHAN
Government Counsel

Item V

Mr Stephen WONG Kai-yi
Deputy Solicitor General

Ms Kitty FUNG
Senior Assistant Solicitor General (Ag)

Ms Lorraine CHAN
Government Counsel

By Invitation : Items III to V

Mr Edward CHAN, SC
Hong Kong Bar Association

Item III

Ms Margaret HILL
Law Society of Hong Kong

University of Hong Kong

Professor Albert CHEN
Dean of Faculty of Law

Professor Christopher SHERRIN
Acting Head of Department
of Professional Legal Education

Ms Bronwyn DAVIES
Senior Programme Director

City University of Hong Kong

Dr John HO
Associate Professor

Dr Carol JONES
Associate Professor

Mrs Elsa KELLY
Visiting Associate Professor

Dr Michael LITTLEWOOD
Associate Professor

Mr Ian DOBINSON
Associate Professor

Item IV

Hong Kong Bar Association

Mr Horace WONG

Law Society of Hong Kong

Ms Wendy CHOW
Chairman of the Property Committee

Mr Vincent LIANG
Member of the Property Committee

Ms Angela LEE
Member of the Property Committee

Ms Christine CHU
Assistant Director, Practitioners Affairs

Hong Kong Conveyancing & Property Law Association Ltd

Mr S H LEUNG

Mr Paul CHAN Kam-ching

Item V

Hong Kong Bar Association

Mr Ambrose HO, SC

Mr Anselmo Reyes, SC

Clerk in Attendance : Mrs Percy MA
Chief Assistant Secretary (2)3

Staff in Attendance : Ms Bernice WONG
Assistant Legal Adviser 1
(for items IV and V)

Miss Mary SO
Senior Assistant Secretary (2)8

I. Information papers issued since last meeting
(*LC Paper Nos. CB(2)2100/01-02(01) - (02), and 2350/01-02(01)*)

Members noted that the above papers had been issued.

II. Items for discussion at the next meeting
(*LC Paper Nos. CB(2)2359/01-02(01), 2177/01-02(01) and (02)*)

2. Members agreed to discuss the following items at the next regular meeting scheduled for 12 July 2002 -

- (a) Research report on "Mechanism for Handling Complaints Against Judges in Overseas Places";
- (b) Review of provision of legal aid services; and
- (c) Review of the process of appointment of judges.

3. Members also agreed that the following items should be included in the list of issues to be considered by the Panel -

- (a) Granting tax relief for divorced persons paying maintenance to ex-spouses
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Ms Audrey EU said that in making ruling in a recent case, the Court of Appeal had commented that the existing legislation seemed unfair and inequitable as an ex-husband paying monthly maintenance to his ex-wife was not entitled to the Married Person's Allowance (MPA) because "ex-wife/husband" did not fall within the definition of a "spouse" under the Inland Revenue Ordinance (IRO). The Chairman said that she would ask an oral question at the Council meeting on 10 July 2002. The Administration would be requested to consider amending the IRO to allow a divorced taxpayer paying his or her ex-

spouse maintenance pursuant to a court order to claim MPA, or to providing other tax relief such as the introduction of a tax allowance for maintenance payments. Members agreed to follow up on this item at a future meeting, taking into account the Administration's reply to the Chairman's oral question.

(b) Government's policy on subsidiary legislation

Members noted that the Bills Committee on the Boilers and Pressure Vessels (Amendment) Bill 2001 had agreed that the issue regarding Government's policy for determining whether a statutory instrument was subsidiary legislation should be referred to this Panel for consideration.

- (c) Power of court to order repayment of deposit to purchaser of property
(d) Review of sexual offences in Part XII of the Crimes Ordinance

These two items were referred to the Panel for follow-up by the Bills Committee on the Statute Law (Miscellaneous Provisions) Bill 2001.

4. To facilitate members' discussion on item (b) above, the Chairman requested the Clerk, in conjunction with the Legal Service Division, to prepare a paper on past Government practices in determining what kind of statutory instrument should be subsidiary legislation.

III. Review of legal education and training in Hong Kong
(*LC Paper Nos. CB(2)2351/01-02(01) and 2351/01-02(02)*)

5. At the invitation of the Chairman, Solicitor General (SG) took members through the second progress report on the review of legal education and training in Hong Kong (LC Paper No. CB(2) 2351/01-02(02)).

6. The Chairman invited representatives from interested parties to give their views on the matter.

7. Mr Edward CHAN of the Hong Kong Bar Association and Ms Margaret HILL of the Law Society of Hong Kong said that they had no additional comments other than what had been set out in the second progress report.

8. Professor Albert CHEN introduced the University of Hong Kong (HKU)'s progress report on the new Postgraduate Certificate in Laws (PCLL) and the 4-year Bachelor of Laws (LLB) (Annexure A to LC Paper No. CB(2)2351/01-02(02)). He said that the PCLL Academic Board was established to oversee and monitor the development of the new PCLL curriculum which would be introduced in 2002-03. A Working Group was

also established to produce a draft full proposal for the 4-year LLB curriculum to be introduced in 2004-05.

9. Referring to the submission from the City University of Hong Kong (City U) (Annexure A to LC Paper No. CB(2) 2351/01-02(02)), Dr Carol JONES said that one outstanding issue of the reform of the PCLL was whether the curriculum should have two parallel streams, i.e. one for pupil barristers and another for trainee solicitors. Dr JONES further said that the School of Law remained of the view that whilst the imposition of a language proficiency test for entry into the legal profession was desirable, it did not consider it appropriate to have the same requirement for entry into the LLB programme as only about 50% of LLB graduates eventually entered into the legal profession. Moreover, given that language was an improvable skill, language proficiency test should be conducted as late as possible so that the University could provide as much support as it could to help law students to improve their language skill throughout their time at the University.

Issues raised by the Panel

Admission to the PCLL

10. As the School of Professional and Continuing Education (SPACE) of HKU had ceased to run the PCLL programme since the 2001-02 academic year, Ms Audrey EU enquired whether the Faculty of Law would honour the guarantee given by SPACE that students who had passed the Common Professional Examination (CPE) would be guaranteed places to the PCLL.

11. Professor Albert CHEN explained that a new "mixed mode funded" PCLL was introduced to replace the original "dual mode of PCLLs" i.e. PCLL run by the Faculty of Law which was funded by the University Grants Committee (UGC) and PCLL run by SPACE which received no Government funding. According to the legal advice obtained, the guarantee given to SPACE CPE students for entry to the PCLL was not applicable to the Faculty PCLL. Nevertheless, the PCLL admission committee would take into account the reasonable expectation of these SPACE students, together with other relevant factors, such as the admission policy, before reaching a decision. Professor CHEN further said that the PCLL admission committee was formed by the PCLL Academic Board established in January 2002. Similar to the composition of the PCLL Academic Board, over half of the membership of the PCLL admission committee was from outside the University. The PCLL admission committee was currently chaired by Professor Christopher SHERRIN, and its members included the Dean of the Faculty of Law, a faculty representative from SPACE and representatives from the Law Society, the Bar Association and the Judiciary.

12. Ms Audrey EU remained of the view that HKU had the legal and moral obligations to honour the guarantee given by SPACE which was part of HKU. Moreover, the problem was only transitional as students admitted to SPACE since the 2001-02 academic year were no longer given any guarantee for entry to the PCLL.

13. Members asked whether students who had been guaranteed places on the SPACE PCLL would be admitted to the new PCLL in the coming academic year. Professor Christopher SHERRIN said that the application deadline for the new PCLL was 30 June 2002. The PCLL admission committee would meet to consider the applications in mid-July 2002. Professor SHERRIN pointed out that as admission to the PCLL was based on academic merit, not all SPACE students would be accepted by the Faculty PCLL.

14. Ms Bronwyn DAVIES supplemented that less than 10% of the students who graduated from SPACE, i.e. between 150 to 170 graduates, had pursued PCLL studies in the past. Of these 150 to 170 students, about 70 attended the SPACE PCLL while the remaining attended the PCLL offered elsewhere. Ms DAVIES pointed out that as a result of HKU abandoning its policy of giving preferential treatment to SPACE graduates some years ago, no more than 20 SPACE graduates had since been admitted to the Faculty PCLL in any given year. To better accommodate SPACE students who wished to pursue PCLL, Ms DAVIES was of the view that the best way was to introduce a part-time PCLL, as many SPACE students could only pursue their studies part-time.

15. Professor Albert CHEN estimated that about 35 to 50 graduates from SPACE would be admitted to the Faculty PCLL in the coming academic year. The estimate had taken into account the past record that about 100 of the 600 PCLL applications were from SPACE graduates, and about 50% of these graduates would be qualified for entry to the Faculty PCLL.

16. Ms Miriam LAU said that transitional arrangements should be put in place to accommodate SPACE students who would be admitted to the PCLL should SPACE continue to run the PCLL. One possibility might be for SPACE to run an one-off PCLL for this group of students. Noting that the PCLL Academic Board of HKU intended to impose more vigilant control over the entry standards for the PCLL in the next academic year, Ms LAU enquired whether this would further reduce the chance of SPACE students getting admitted to the PCLL.

17. Professor Albert CHEN responded that transitional arrangements had been put in place for SPACE students affected by the abolition of the SPACE PCLL. Part of the arrangements was the increase in the intake of the Faculty PCLL from 170 to 340 in 2001-02. As a result, the Faculty PCLL was able to accept about 95% of SPACE students who had been guaranteed places on the

PCLL. For the coming PCLL admission exercise, the PCLL admission committee would take into account the "guarantee" factor and the views of this Panel in considering the applications from SPACE students, amongst other relevant factors.

18. On the imposition of more vigilant control over the entry standards for the PCLL, Professor CHEN explained that this was to ensure that only the best students would be admitted. In future, all applicants, including those holding foreign law degrees, would be considered on an equal footing, i.e. there would be no guarantee that LLB graduates of HKU holding second class honours would automatically be admitted to the PCLL on application or that graduates of SPACE with a certain level of academic attainment would be accorded priority for admission.

19. The Chairman enquired about the student intake of the PCLL offered by HKU and City U in the coming academic year. In response, Professor Albert CHEN said that 300 full-time University Grants Committee (UGC)-funded PCLL places would be offered by the Faculty of Law. Dr Michael LITTLEWOOD said that the School of Law would offer 60 full-time UGC-funded PCLL places, up to 20 full-time self-financing places and up to 20 part-time self-financing places in the 2002-03 academic year.

20. Ms Miriam LAU expressed concern that the Faculty of Law of HKU might have difficulty in meeting its targeted student intake of 300 for the PCLL, if applicants holding a second class honours was no longer considered eligible for admission to the PCLL. Ms LAU further asked whether this new requirement had been made known to LLB students.

21. Professor Albert CHEN responded that the Faculty of Law would not have difficulty in meeting its targeted PCLL student intake, as holders of second class honours division two, who were expected to comprise the majority of applicants, would continue to be considered for entry to the PCLL. Professor CHEN further said that in determining which applicants holding second class honours division two should be admitted to the PCLL, the admission committee would examine whether they also had attributes and/or achievements in other areas.

22. In reply to Ms Miriam LAU's enquiry about introducing a part-time PCLL course to cater for students who intended to take on the SPACE PCLL, Professor Albert CHEN said that the Faculty of Law would only consider the matter after the new PCLL curriculum had been introduced.

Resources for the 4-year LLB

23. Ms Audrey EU asked the following questions -

- (a) what was the amount of additional money required to extend the LLB from a 3-year to a 4-year programme commencing from the 2004-05 academic year;
- (b) whether the additional money mentioned in (a) above would come from reduced funding to the PCLL; and
- (c) if the answer to (b) was in the negative, whether the Administration still considered it worthwhile to change the LLB from a 3-year to a 4-year programme.

24. SG responded that the merits for changing the LLB to a 4-year programme had been clearly set out in the Consultants' Report and accepted by all interested parties. As to the additional money required to extend the LLB to a 4-year programme, SG said that the sum should be relatively small in terms of the overall budget for education. The sum was estimated to be less than \$50 million a year, as the total number of LLB students was less than 200. SG further said that it was the stance of the Steering Committee and the Department of Justice that the additional money required to fund a 4-year LLB should not be made at the expense of cutting back the number of PCLL students or curtailing Government subsidy to the PCLL. These viewpoints had been emphasised both in writing and in meetings with the UGC.

Course curriculum of the 4-year LLB

25. Mr Albert HO asked whether the curriculum of the 4-year LLB would include more liberal arts subjects.

26. Professor Albert CHEN responded that the curriculum of the 4-year LLB at HKU was still at the early drafting stage. In considering the curriculum, reference would be made to the best undergraduate law degree programmes in the common law world. Professor CHEN further said that a proposal for the 4-year LLB would be submitted to the Board of Faculty of Law for consideration in September/October 2002, for approval of the University Senate in October/November 2002, and for consideration of UGC in December 2002. Dr Carol JONES responded that the curriculum for the 4-year LLB of City U was still being worked out.

Way forward

27. In reply to the Chairman, SG said that the Steering Committee would continue its work until the proposed new statutory Advisory Committee was established.

28. On behalf of members, the Chairman congratulated the Steering Committee for completing its task of reviewing the legal education and

training in Hong Kong and wished the Steering Committee continued success in its remaining work.

IV. Consultation paper on conveyancing documents executed by corporations
(*LC Paper Nos. CB(2)1749/01-02(01), 2139/01-02(01)-(02), and 2352/01-02(01)*)

29. The Chairman briefed members on the background to this item. She said that the Administration had issued a consultation paper in January 2002 to consult the relevant parties on an amendment proposed by the Law Society of Hong Kong to rectify a problem under the current law concerning the execution of conveyancing documents by corporations. Section 20(1) of the Conveyancing and Property Ordinance (CPO) deemed a document to be duly executed if a seal was authenticated by two signatories whose respective character or office was stated and who each had the requisite character or office according to section 20(1). Section 23 of CPO provided that an instrument appearing to be duly executed should be presumed, until the contrary was proved, to have been duly executed. Owing to an apparent misunderstanding of the effect of section 23, many conveyancing documents executed in the past on behalf of corporations were attested by a single director in such a manner that it might now be impossible to prove or presume due execution. The companies might now be defunct and the responsible person could not be found, or the requisite board resolutions might have been lost. As a result, many vendors would be unable to prove good title to their property.

30. The Law Society's proposed amendment to CPO was to introduce a presumption under a new section (proposed section 23A) of the Ordinance. It was suggested that under the presumption, a conveyancing document purporting to be executed by or on behalf of a corporation would, until the contrary was proved, be presumed to be duly executed. The proposed section 23A(1) and (2) was in **Appendix I**.

31. The Chairman added that the Panel held a meeting on 20 March 2002 to receive views from the relevant parties on the matter. While the parties concerned agreed that legislative changes were necessary to address the situation, the major concern was that the amendment proposed by the Law Society was too wide. The Administration was requested to consider the views expressed at the meeting and to report the outcome of the consultation exercise to the Panel. The consultation period ended on 31 March 2002.

32. The Chairman informed members that subsequent to the meeting, the Law Society submitted a revised section 23A, jointly worked out with the Hong Kong Bar Association and the Hong Kong Conveyancing and Property Law Association Ltd. (HKCPLA), to the Administration on 26 April 2002.

The revised section 23A is in **Appendix II**.

33. The Chairman said that the present position was that the Administration considered that the presumption under the revised section 23A(1) should only be triggered when certain specific circumstances existed. To minimise the risk of the presumption being rebutted, the circumstances specified should be so compelling that there was no real risk of the purchaser's title being successfully challenged. The Administration therefore suggested adding two subsections after the revised section 23A(1) (**Appendix III**). The revised section 23A(2) suggested by the Law Society would then be re-numbered as section 23A(4).

34. The Chairman then invited depositions to give their views on the amendments proposed by the Administration in Appendix III.

35. Mr Edward CHAN said that representatives of the Bar Association, the Law Society and HKCPLA had on 22 June 2002 discussed the Administration's proposed amendments, and all came to the view that the amendments would only complicate matters. They considered that the Administration's concern as mentioned in paragraph 14 of its paper (LC Paper No. CB(2) 2352/01-02(01)) could be better addressed by deleting "(whenever executed)" after "deed" where it first appeared in the revised section 23A(1) and adding "prior to the commencement of this section" after "purporting to be executed" in the same section.

36. Ms Wendy CHOW of the Law Society supplemented that one of the reasons why the Administration's suggested amendments would complicate matters was because many companies in Hong Kong were set up to hold a single property. After the property was sold, the company concerned was left abandoned, i.e. nothing was done by the company directors to wind up or dissolve the company, until the Companies Registry struck it off. Ms CHOW further said that the statutory presumptions under the amendments proposed in Appendix II would deal with the identified mischief and only apply to "deeds" but not "or other instrument" as originally drafted. The unintended "side-effects" of the original section 23A on documents other than deeds had been removed. In addition, the statutory presumptions would only facilitate proof of title, but would not apply to deeds effecting the immediate transaction. The standard of care and diligence currently required of practitioners when dealing with current transactions would not be undermined as a result.

37. Responding to Ms Audrey EU's enquiry about the relationship between subsection (1) and (2) of the revised section 23A proposed by the Law Society in Appendix II, Mr Edward CHAN said that section 23A(1) was intended to salvage those cases whereby vendors were unable to sell their property because they could not produce a board resolution to prove that the person(s) who signed his or their name(s) on the deed was or were authorised by the

corporation to do so on behalf of that corporation or that the capacity of the signatory or signatories in the corporation were not stated in the deed. The revised section 23A(1) was not intended for future transactions, as solicitors acting for corporate vendors in the future should have no difficulty in ensuring that the instrument was properly executed and that a good title could be conferred on the purchaser now that the effect of section 23 of CPO had been clarified by the courts.

38. Mr CHAN further said that, unlike the revised section 23A(1), the revised section 23A(2) was not designed to only remedy previous problems but could apply to both past and future transactions. Mr CHAN pointed out that the Administration did not raise objection to the revised section 23A(2) as it was consistent with the current requirements for proving title where a document purported to have been executed under a power of attorney not less than 15 years before the contract of sale of land.

39. The Chairman asked whether the Administration was agreeable to the further amendments proposed by the Bar Association, the Law Society and HKCPLA (paragraph 35 above refers). Deputy Solicitor General responded that the Administration still had reservation about whether the amendments proposed could adequately safeguard purchaser's interests as the presumption of the deed to be duly executed could be rebutted by evidence. Mr Edward CHAN said that even with the amendments proposed by the Administration in Appendix III, the risk of the presumption being rebutted could not be entirely avoided as the presumption was a rebuttable one.

40. Ms Miriam LAU raised objection to the amendments proposed by the Administration in Appendix III, as they were not workable and would instead create more arguments and confusion. On the revised section 23A(1) in Appendix II, Ms LAU pointed out that a deed purporting to be duly executed had to be attested by a signatory or signatories by or on behalf of the vendor corporation. She queried whether this would mean that the court would consider a deed as duly executed only if the words "by or on behalf of the corporation" appeared under the name(s) of the signatory or signatories in the deed. Mr Edward CHAN responded that the situation depicted by Ms LAU should not arise so long as the deed, on the face of it, was a corporate deed.

41. In summing up, the Chairman said that, given the urgent need to rectify the problem in question, the Administration should proceed with its plan to bid for a legislative slot to introduce a bill in the first quarter of the 2002-03 legislative session, pending further discussion by the relevant parties on the wording of the proposed amendments. Members expressed support.

V. Draft Rules made by the Bar Council under the Legal Practitioners Ordinance (Cap. 159)

(LC Paper Nos. CB(2)2353/01-02(01) - (06), and 2397/01-02(01))

42. The Chairman said that pursuant to the enactment of the Legal Practitioners (Amendment) Bill at the end of June 2000, all foreign lawyers seeking to practise as barristers in Hong Kong would have to sit and pass examinations to be set by the Bar Association. Such rules should be made by the Bar Association and were subject to the prior approval of the Chief Justice before introduction into the Legislative Council (LegCo). The following five sets of rules were required to be made to give effect to the new arrangement -

- (a) Barristers (Qualification for Admission and Pupillage) Rules;
- (b) Barristers (Admission) Rules;
- (c) Legal Practitioners (Fees) (Amendment) Rules;
- (d) Practising Certificate (Barristers) (Amendment) Rules; and
- (e) Barristers (Advanced Legal Education Requirement) Rules.

The Department of Justice (DOJ)'s comments on the draft Rules were set out in LC Paper No. CB(2) 2353/01-02(06).

43. At the invitation of the Chairman, Mr Ambrose HO introduced the LegCo Brief on the Barristers (Qualification for Admission and Pupillage) Rules, the Legal Practitioners (Fees) (Amendment) Rules and the Practising Certificate (Barristers) (Amendment) Rules and the relevant draft Rules (LC Paper Nos. CB(2) 2353/01-02(01) - (05)). In particular, Mr HO briefed members on the salient points of the Barristers (Qualification for Admission and Pupillage) Rules which were detailed in paragraphs 4 to 17 of the LegCo Brief.

44. Mr Edward CHAN also took members through the LegCo Brief on the Barristers (Advanced Legal Education Requirement) Rules and the relevant draft Rules (LC Paper Nos. CB(2) 2397/01-02(01)-(02)).

Discussion

45. Ms Miriam LAU asked the Bar Association why it considered a one-year pupillage period was adequate for a person to be admitted as a barrister whereas a two-year training period was required for a person to be admitted as a solicitor.

46. Mr Edward CHAN responded that the Bar Association considered the one-year pupillage period, which had been in place for a long time, an adequate time for training a person to get qualified as a barrister. As the scope of work of solicitors was more diversified in nature than that of barristers, Mr CHAN surmised that this might be one of the reasons why the training period for a trainee solicitor was longer than that for a pupil barrister.

47. As the advanced legal education (ALE) programme was presently a voluntary programme, Mr Jasper TSANG enquired about the participation rate of pupil barristers in the programme. Mr Edward CHAN responded that about half of the pupil barristers had participated in the ALE programme. However, not all of them had attended all of the lectures and workshops under the ALE programme. To increase the participation rate of the ALE programme, changes had been made to the Code of Conduct of the Bar requiring pupil masters to encourage their pupil students to attend the programme.

48. Mr Jasper TSANG further enquired whether the Bar Association could cope with a compulsory ALE programme. Mr Edward CHAN replied in the positive and explained that the number of pupil barristers was only around 30 each year. Mr CHAN added that pupils attending the ALE programme would only be charged a nominal fee, as the workshops and lectures would be provided by practising barristers on a pro bono basis.

49. Ms Audrey EU asked whether the Bar Association had accepted the comments made by DOJ in respect of the Barristers (Qualifications for Admission and Pupillage) Rules and the Barristers (Advanced Legal Education Requirement) Rules as set out in LC Paper No. CB(2)2353/01-02(06). Mr Edward CHAN replied in the positive. On DOJ's comment that the number of ALE points which a pupil must obtain before he was allowed to obtain a full practising certificate should be specified in the Barristers (Advanced Legal Education Requirement) Rules, Mr CHAN said that the Rules would be amended to specify that a pupil had to obtain 14 ALE points.

50. Regarding the comment of DOJ that the Bar Council should notify the pupil of the reasons for disqualification for pupillage, Mr Ambrose HO explained that it was the practice of the Bar Council to inform pupils of the reasons for decisions made by the Bar Council on disqualification, termination or suspension of pupillage. In addition, section 16 of the Barristers (Qualification for Administration and Pupillage) Rules stipulated that the Bar Council may exercise the power of variation and revocation of a certificate issued under section 5, 7 or 11 for good cause, which implied that reasons must be given. As regards the comment that each panel taking charge of the various parts of the Papers in the Examinations should include at least one person who was not a member of the Bar Association, Mr HO said that this was the current practice which would continue.

Action
Column

51. In reply to the Chairman's enquiry as to when the Rules would be introduced into LegCo, Mr Edward CHAN said that the Bar Association would do so once the approval from CJ had been obtained.

52. There being no other business, the meeting ended at 6:50 pm.

Council Business Division 2
Legislative Council Secretariat
18 October 2002

Appendix I

Amendments proposed by the Law Society - Proposed section 23(A)(1) and (2) (paragraph 30 refers)

- 23A (1) A deed or other instrument (whenever executed) relating to conveyancing purporting to be executed by or on behalf of a corporation aggregate shall be presumed, until the contrary is proved, to have been duly executed.
- (2) A party to a transaction relating to conveyancing shall neither be bound nor entitled to inquire as to the authority of the signatory or signatories to any such deed or instrument in any case where such signatory or signatories is or are (as the case may be) a person or persons who could according to the Articles of Association or other constitutional documents of the corporation in question have been authorised by that corporation and whether or not the source of the authority in question or the means by which it was purportedly conferred is described or alluded to in the deed or instrument in question.

Appendix II

Amendments proposed by the Law Society - Revised section 23(A)(1) and (2) (paragraph 32 refers)

- 23A (1) For the purpose of proof of title, a deed (whenever executed) purporting to be executed by or on behalf of a corporation aggregate and attested by a signatory or signatories where such signatory or signatories is or are (as the case may be) a person or persons who could according to the Articles of Association or other constitutional documents of the corporation in question have been authorised by that corporation, shall be presumed, until the contrary is proved, to have been duly executed by the purported signatory or signatories with the authority conferred in accordance with the Articles of Association or other constitutional documents of the corporation in question, whether or not the source of the authority in question or the means by which it was purportedly conferred is apparent from the deed in question.
- (2) Where any deed is or has been produced by a vendor as proof of title to any land and that deed purports to have been executed by a corporation aggregate not less than 15 years before the contract of sale of that land, it shall for the purposes of any question as to the title to that land be conclusively presumed -
- (a) as between the parties to that contract; and
 - (b) in favour of the purchaser under that contract as against any other person, that the deed was validly executed.

Appendix III

Amendments proposed by the Administration - Section 23(A) (paragraph 33 refers)

- 23A (1) For the purpose of proof of title, a deed (whenever executed) purporting to be executed by or on behalf of a corporation aggregate and attested by a signatory or signatories where such signatory or signatories is or are (as the case may be) a person or persons who could according to the Articles of Association or other constitutional documents of the corporation in question have been authorised by that corporation, shall be presumed, until the contrary is proved, to have been duly executed by the purported signatory or signatories with the authority conferred in accordance with the Articles of Association or other constitutional documents of the corporation in question, whether or not the source of the authority in question or the means by which it was purportedly conferred is apparent from the deed in question.
- (2) The presumption in subsection (1) shall only operate where -
- (a) the deed was executed more than ten years prior to the contract of sale of that land; or
 - (b) the deed was executed more than five years prior to the contract of sale of that land and the corporation was dissolved more than three years prior to the contract of sale of that land; or
 - (c) the deed was executed more than five years prior to the contract of sale of that land and the corporation was placed in liquidation more than four years prior to the contract of sale of that land.
- (3) For the purposes of subsection(2), the expressions "dissolved" and "liquidation" refer to the appropriate procedures specified from time to time in the Companies Ordinance (Cap. 32) or any equivalent procedures under the law of the place of incorporation of a corporation.
- (4) Where any deed is or has been produced by a vendor as proof of title to any land and that deed purports to have been executed by a corporation aggregate not less than 15 years before the contract of sale of that land, it shall for the

purposes of any question as to the title to that land be conclusively presumed -

- (a) as between the parties to that contract; and
- (b) in favour of the purchaser under that contract as against any other person, that the deed was validly executed.