

THE

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BY FAX (21809928) AND BY POST

14 March 2002

Mr. Michael Scott
Senior Assistant Solicitor General
Department of Justice
Legal Policy Division
1/F., High Block,
Queensway Government Offices,
66 Queensway, Hong Kong.

Dear Mr. Scott,

Executive of Conveyancing Document by Corporations

I refer to the meeting of the LegCo Panel on Administration of Justice and Legal Services ("AJLS Panel") on 20 March 2002 on the legislative proposals regarding the above problem. The meeting has unanimously agreed on the need for the legislative reform. However, given that those present could not agree on the form that the legislative amendments should take, the AJLS Panel has urged the Law Society to work jointly with the Administration to come up with appropriate legislative amendments.

Since the AJLS Panel meeting, representatives of the Bar, the Hong Kong Conveyancing & Property Law Association Ltd. and this Society have met to discuss and agree on new section 23A, a copy of which is attached to this letter.

The new Section 23A comprises of 2 new subsections. Section 23A(1) presents a combination of the first two subsections of the original Section 23A. This mirrors the suggestion of the Consumer Council and is more restrictive in scope than the originally proposed Section 23A(1). The new Section 23A(2) is drafted along the line of Section 13(4A) of the Conveyancing & Property Ordinance. Section 13(4A) provides for a presumption that would apply to a title document more than 15 years old which has been executed by an attorney. The presumption under the proposed Section 23A(2) is similar to that of Section 13(4A). The proposed Section 23A(2) was drafted to address the concern of the Consumer Council and that of Legislative Councillor Ms. Miriam Lau in relation to title deeds executed by corporation prior to 1984 which are not

covered by the CPO.

Two major limitations are also introduced in both subsections:-

- (a) the statutory presumptions under the two new subsections will only apply to “*deeds*” but not “*or other instrument*” as originally drafted.
- (b) the statutory presumptions would only facilitate proof of title but will not apply to deeds effecting the immediate transaction. This is reflected by the insertion of “*For the purpose of proof of title*” in Section 23A(1) and “*produced by a vendor as proof of title to any land*” in Section 23A(2).

Given the importance to solve the present problem on conveyancing practice, which is indeed shared by the AJLS panel, I would urge the Administration to accord priority to enactment of the revised Section 23A.

Yours sincerely,

Christine W.S. Chu
Assistant Director of Practitioners Affairs

Encl.

c.c.: Mrs. Percy Ma, clerk to AJLS Panel

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**REVISED SECTION 23A OF THE CONVEYANCING AND PROPERTY
ORDINANCE (Cap. 219)**

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 document 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 deeds purports to have been executed by a corporation aggregate not less than 15 years before the contract of sales 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 the contract as against any other persons,
- that the deed was validly executed.