

立法會

## *Legislative Council*

LC Paper No. CB(2)1011/02-03

(These minutes have been  
seen by the Administration)

Ref : CB2/PL/AJLS

### **Panel on Administration of Justice and Legal Services**

#### **Minutes of meeting held on Friday, 13 December 2002 at 8:30 am in the Chamber of the Legislative Council Building**

- Members present** : Hon Margaret NG (Chairman)  
Hon Jasper TSANG Yok-sing, GBS, JP (Deputy Chairman)  
Hon Martin LEE Chu-ming, SC, JP  
Hon CHAN Kam-lam, JP  
Hon Miriam LAU Kin-yee, JP  
Hon Mr Ambrose LAU Hon-chuen, GBS, JP  
Hon TAM Yiu-chung, GBS, JP  
Hon Audrey EU Yuet-mee, SC, JP
- Members absent** : Hon Albert HO Chun-yan  
Hon James TO Kun-sun  
Hon Emily LAU Wai-hing, JP
- Public officers attending** : Item IV  
  
Mr Stephen WONG  
Deputy Solicitor General  
  
Mr Michael SCOTT  
Senior Assistant Solicitor General  
  
Ms Agnes CHEUNG  
Senior Government Council  
Legal Policy Division

Item V

Mr Wilfred TSUI  
Judiciary Administrator

Miss Emma LAU  
Deputy Judiciary Administrator (Development)

**Attendance by invitation** : Item IV

Law Society of Hong Kong

Mr Peter AHERNE

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

**Staff in attendance** : Miss Kitty CHENG  
Assistant Legal Adviser 5

Mr Paul WOO  
Senior Assistant Secretary (2)3

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**I. Confirmation of minutes of meeting**  
(LC Paper No. CB(2)636/02-03)

The minutes of the meeting held on 28 October 2002 were confirmed.

**II. Information papers issued since the last meeting**

Letter dated 25 November 2002 from the Law Society of Hong Kong with copy of the Practising Certificate (Special Conditions) Rules  
(LC Paper No. CB(2)486/02-03(01))

2. The Chairman informed members that the Practising Certificate (Special Conditions) Rules were gazetted on 29 November 2002. She said that the House Committee would decide at its meeting on 13 December 2002 whether a subcommittee should be set up to study the Rules.

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Letter dated 26 November 2002 from the Law Society of Hong Kong with copy of the Legal Practitioners (Risk Management Education) Rules (LC Paper No. CB(2)486/02-03(02))

3. The Chairman said that the Legal Practitioners (Risk Management Education) Rules had yet to be gazetted. It would be for the House Committee to decide whether a subcommittee should be set up to study the Rules after gazettal.

4. The Chairman opined that the Rules did not seem to involve controversial matters.

The Law Society of Hong Kong's response to the Research Report on "Mechanism for Handling Complaints Against Judges in Overseas Places" (LC Paper No. CB(2)598/02-03(01))

5. The Chairman said that as agreed at the last meeting on 25 November 2002, the two legal professional bodies had been invited to give views on the Research Report. The response from the Bar Association was likely to be available after mid December 2002.

**III. Items for discussion at the next meeting**  
(LC Paper Nos. CB(2)638/02-03(01); 575/02-03(01))

6. Member agreed that the following items should be discussed at the next meeting on 27 January 2003 -

- (a) Bailiff grade (item raised by the Chairman at the meeting on 28 October 2002);
- (b) Mechanism for handling complaints against judges and Judiciary staff; and
- (c) Law Amendment and Reform (Miscellaneous Provisions) Bill (paragraph 27 below refers)

On item (a) above, members agreed that representatives from the Judiciary Administration and the Bailiff Grade Union should be invited to attend the meeting.

*(Post-meeting note - On the advice of the Chairman, the item "Pilot Scheme for the Reform of Ancillary Relief Procedures in Matrimonial Proceedings" was included in the agenda for the next meeting to replace item (b) above. The latter would be deferred to a future meeting.)*

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Maximum sentence for offence of perverting the course of justice  
(Item raised by Mr James TO at the meeting on 10 October 2002)

7. The Chairman informed members that in response to the request of the Panel, the Administration had provided a paper on the above subject (LC Paper No. CB(2)575/02-03(01)). Members agreed that as the item was raised by Mr James TO, who was not present at the meeting, the Panel should decide at a later stage as to whether the item should be included in the list of outstanding items for discussion.

**IV. Law Amendment and Reform (Miscellaneous Provisions) Bill**  
(LC Paper Nos. CB(2)638/02-03(02); CB(2)672/02-03(01) and (02))

8. At the invitation of the Chairman, Deputy Solicitor General (DSG) briefed members on the Administration's paper on Law Amendment and Reform (Miscellaneous Provisions) Bill (LC Paper No. CB(2)638/02-03(02)). The Bill was an omnibus bill dealing principally with law-related matters. The provisions of the Bill covered the following -

- (a) provisions related to the Legal Practitioners Ordinance (Cap. 159);
- (b) provisions to establish the Standing Committee on Legal Education and Training;
- (c) provisions related to proof of title and presumption of due execution of deeds by corporations in the Conveyancing and Property Ordinance (Cap. 219);
- (d) proposed amendments to the Costs in Criminal Cases Ordinance (Cap. 492);
- (e) adaptation of "Crown Servant" in the Prevention of Bribery Ordinance (Cap. 201) and the Independent Commission Against Corruption Ordinance (Cap. 204); and
- (f) minor amendments to various Ordinances.

Submission from the Law Society of Hong Kong  
(LC Paper No. CB(2)672/02-03(01) and (02))

9. At the invitation of the Chairman, Mr Peter AHERNE introduced the Law Society's letter dated 12 December 2002 regarding the proposed amendment to the Conveyancing and Property Ordinance (CPO) to facilitate execution of conveyancing documents by corporations. He said that the Law Society was satisfied with the Administration's decision, after consulting the legal professional bodies and various stakeholders including the Consumer

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Council, to leave out its proposal to insert a subsection (3) to the proposed section 23 A of CPO.

10. Mr AHERNE further informed members that subsequent to the meeting of the Panel on 28 October 2002 at which the issue was discussed, the Law Society had conducted a survey amongst its members on the extent of the problem concerning the proof of due execution of conveyancing documents by corporations and the instances of companies seeking to recover properties from subsequent purchasers for reason of invalid executions. About one-third of the Law Society's member firms had responded to the survey and the survey results were appended to the Law Society's letter. He said that the result had indicated a significant problem affecting both the public and practitioners in the legal profession.

Issues raised by members

*Provisions related to proof of title and presumption of due execution of deeds by corporations in the CPO*

11. Referring to the proposed revised section 23A of CPO, Ms Audrey EU asked whether there would be requirements, for the purpose of the proposed presumption of due execution of a deed, to prove that the attesting signatory or signatories was or were (as the case might be) a person or persons who could according to the Articles of Association or other constitutional documents of the corporation in question had been authorised by that corporation to sign the document.

12. Senior Assistant Solicitor General (SASG) advised that under the proposed section, deeds purporting to have been executed by a corporation less than 15 years before the contract of sale would, in certain situations, be presumed, until the contrary was proved, to be duly executed even if the source of the authority in question or the means by which it was purportedly conferred was not apparent from the deed. Deeds purporting to have been executed by a corporation not less than 15 years before the contract of sale would be conclusively presumed to be duly executed. In reply to the question raised by Ms Audrey EU, SASG advised that under the new provisions, if it was not apparent from the deed in question that the person or persons were not authorised to sign, due execution would be presumed. It was not necessary to trace the source conferring the authority to sign. He further said that the proposed amendments would not specify that the presumption would only apply to documents executed prior to their enactment, though the new presumption of due execution would only need to apply to conveyancing documents executed by corporations before the coming into effect of the proposed legislative amendments. Now that in *Grand Trade* the Court of Appeal had clarified the interpretation of section 23, new executions of conveyancing documents by corporations should be expected to comply with

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that clarification of the law .

13. Ms Audrey EU asked whether words such as "for and on behalf of" or "authorised by" etc should appear below the signatures on the deeds. SASG replied that such descriptive wording was not required under the new provisions.

*Proposed amendments to the Legal Practitioners Ordinance (LPO) - new section 9AA on misconduct of a non-solicitor director of a solicitor corporation*

14. The Chairman enquired about the justification for the appointment of a non-solicitor director of a solicitor corporation under the draft Solicitor Corporation Rules prepared by the Law Society.

15. Senior Government Counsel said that the reason was to enable practitioners in sole proprietorships to practise in solicitor corporations, which required more than one director. She added that to address the concern that the conduct of a non-solicitor director of a solicitor corporation might not be under the control of the Law Society, the Law Society proposed to amend the new section 9AA of LPO to include an "officer" in the list of persons or entities which, in relation to misconduct, could be investigated, inquired into and dealt with under LPO. This would result in bringing any non-solicitor director of a solicitor corporation within the disciplinary authority of the Law Society.

16. Mr Martin LEE expressed concern that the provision on non-solicitor director of a solicitor corporation would legitimise a situation where a non-legally qualified person was in control of the corporation.

17. The Chairman requested the Administration, in conjunction with the Law Society, to review and explain the necessity of allowing a non-solicitor to become a director of a solicitor corporation. Ms Audrey EU added that in considering the matter, the Administration should make reference to the deliberation of the Bills Committee on Companies (Amendment) Bill 2002 concerning the introduction of one-director companies.

18. SASG agreed to provide a written response for the Panel's consideration.

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*Time limit for the prosecution of offences under LPO - section 55*

19. In reply to the Chairman, DSG clarified that the prosecutor mentioned in section 55 of LPO referred to the prosecutor appointed by the Law Society, not the Director of Public Prosecutions.

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*Proposed amendments to the Costs in Criminal Cases Ordinance (Cap. 492)*

20. The Chairman referred members to the Law Society's letter dated 12 December 2002 (LC Paper No. CB(2)672/02-03(02)). The Law Society had pointed out that under Rule 6 of the Costs in Criminal Cases Rules, where a costs order was made and ordered to be taxed, the claim for costs had to be filed within three months from the date the order was made. The Law Society considered that the time requirement should be reviewed as experience had shown that there were practical difficulties for practitioners to submit the claim within the time limit.

21. The Chairman also pointed out that Mr Albert HO had previously raised concern about the narrow scope of the provisions on wasted costs in section 18 of the Ordinance. She asked whether the two issues could be dealt with within the scope of the Law Amendment and Reform (Miscellaneous Provisions) Bill.

22. DSG responded that Part 4 of the Bill proposed to amend section 3 of the Costs in Criminal Cases Ordinance so that a magistrate might award costs to the defendant if he, on the application of the prosecutor, reviewed his decision, and on that review confirmed his decision. He said that the issues raised by the Law Society and Mr Albert HO as stated in paragraphs 20 and 21 above would need to be addressed separately from the Bill.

23. Ms Miriam LAU said that taxation of costs was a complicated process. She suggested that the option of awarding fixed costs to the defendant could be considered. The Chairman said that the amount of costs awarded in the Magistrates' Courts was capped at \$30,000. She added that with permission of the court, the parties could agree on the amount of costs.

24. Mr Martin LEE opined that if it was an existing policy that the winning party should be entitled to costs, the Administration should undertake a comprehensive review of the statutory provisions on costs to see if they gave effect to the policy. He said that the same treatment should apply to both the prosecution and the defendants.

25. The Chairman said that the Administration should review the various issues raised to see if any law amendment was necessary. The Administration agreed to consider the matters.

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Way forward

26. Ms Miriam LAU said that the Panel had agreed at previous discussions that the proposed amendments to CPO to facilitate execution of conveyancing documents by corporations should be enacted as early as possible. She expressed concern that the formation of a bills committee to scrutinise the Law

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Amendment and Reform (Miscellaneous Provisions) Bill after the Bill was introduced in March 2003 would cause further delay in implementing the amendments.

27. The Chairman said that most of the proposed amendments in the Bill involved non-controversial issues and the Panel generally supported the amendments. She requested the Administration to provide a copy of the draft Bill for the Panel's consideration at the next meeting. She said that subject to further clarification with the Administration on the proposed amendments, the Panel could make a recommendation to the House Committee on whether a bills committee should be formed after the Bill was introduced into LegCo. In response, DSG said that the Administration would make available the draft Bill to the Panel for further discussion at the next meeting.

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**V. Use of official languages for conducting court proceedings**  
(LC Paper No. CB(2)415/02-03(01))

28. Judiciary Administrator (JA) introduced the paper prepared by the Judiciary Administration which set out the policy and practices regarding the use of Putonghua as an official language in conducting court proceedings (LC Paper No. CB(2)415/02-03(01)).

Issues raised by members

*Guidelines issued to judges on use of official language in court proceedings*

29. Ms Miriam LAU referred to paragraph 8 of the Judiciary Administration's paper on the nine factors included in the guidelines issued by the Chief Judge of the High Court which might be taken into account by judges in the exercise of their discretion as to which official language (i.e. Chinese or English) should be used in conducting particular court proceedings. One of the factors was "the language ability of the judge or judicial officer himself". Ms LAU pointed out there were cases where a party to the proceedings had requested that the proceedings be conducted in Chinese but the request was rejected because the Judiciary could not provide a judge who was able to conduct proceedings in Chinese. She said that in such cases, the language ability of the judge alone became the predominant factor which undesirably outweighed the other factors in the guidelines. Ms LAU opined that the Judiciary should consider ways to deal with the situation as the number of requests for trials to be conducted in Chinese was increasing.

30. Ms Miriam LAU further suggested that to be fair to the parties concerned, the guidelines should accord different weighting to the nine factors to facilitate judges in deciding which official language should be used for the proceedings. On the other hand, the Judiciary should take steps to ensure that



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there would be adequate supply of judges who could conduct proceedings in Chinese.

31. Mr Martin LEE echoed Ms Miriam LAU's views. He said that as the majority of the people in Hong Kong were Chinese speaking, it would be undesirable to have situations where applications to conduct court proceedings in Chinese were turned down. He added that for criminal prosecution cases, the court should give more weight to the factor "the wishes of the accused or litigants" in deciding which official language should be used in conducting the proceedings. Mr TAM Yiu-chung was in support of Mr LEE's view.

32. The Chairman said that availability of more judges who could conduct proceedings in Chinese could help address the problem. However, she had reservations about the proposal of giving weighting to the various factors to be considered by judges. She pointed out that the guidelines issued by the Chief Judge of the High Court were not binding on the judges. The decision on the choice of official language to be used remained ultimately with the judges. She was concerned that introducing additional practice directions or guidelines for judges could give rise to queries about interference with the independence of judges in exercising their judicial discretion. She further pointed out that the decision of the judge could be subject to appeal.

33. Ms Miriam LAU said that many litigants did not have legal aid and they might not afford the time and costs for an appeal.

34. JA said that the guidelines sought to assist judges in the exercise of their discretion on the use of official language in a particular trial. In deciding on the choice of official language to be used, the paramount consideration for the judge was the just and expeditious disposal of the cause or matter before him, having regard to the circumstances of the case. The decision of the judge was final. He said that it might not be appropriate to add further guidelines for judges from the Judiciary's point of view. Nevertheless, he would convey members' views on the guidelines for the Judiciary's consideration. The Chairman requested JA to provide information on the purpose and status of the guidelines and whether the nine factors included in the guidelines were accorded any weighting.

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35. Mr TAM Yiu-chung asked whether a party could make a request for the proceedings to be conducted in Chinese before appointment of the judge hearing the case. Mr TAM Yiu-chung and Ms Miriam LAU requested JA to provide information on the number of requests to conduct criminal proceedings in Chinese which had been acceded to or rejected.

36. JA advised that usually, for cases tried in the District Court, an application for the trial to be conducted in Chinese had to be made to the criminal listing judge sitting in the plea Court before the case was set down for

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trial and the matter was then considered. He undertook to find out if data sought by Mr TAM Yiu-chung and Ms Miriam LAU were available.

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37. JA further advised that whichever official language was chosen by the judge, a party to or a witness in any proceedings could use another official language or address the court or testify in any language. Where necessary, the assistance of a court interpreter would be made available. A legal representative could also use either or both of the official languages in any proceedings or part of any proceedings.

38. Mr TSANG Yok-shing asked if counsel could cross-examine a witness in a language or dialect which was not the official language used in the proceedings. JA replied that in such case the counsel would have to make an application to the court and satisfy the judge of the need for doing so.

39. In response to Mr CHAN Kam-lam, JA informed members that about 80% of the cases tried in the lower courts were conducted in Chinese. The problem of using Chinese as an official language in court proceedings concerned more with the higher courts as there were less judges who were proficient in conducting proceedings in Chinese. Moreover, trials conducted in the higher courts were more complex cases and the parties concerned usually preferred the proceedings to be conducted in English. About 20% of the trials at the High Court were conducted in Chinese. JA agreed to provide more updated figures for members' information.

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40. Mr Martin LEE pointed out that there were grave difficulties in translating case laws into Chinese. He considered that for cases involving complicated legal issues, it was preferable to use English in conducting the trial.

*Transcript of proceedings*

41. Mr TSANG Yok-shing referred to paragraph 6(b) of the Judiciary Administration's paper which stated that when a judge decided that the proceedings were to be conducted in one particular official language, then the transcript of the proceedings would usually be kept in that language. Mr TSANG sought clarification on whether the transcript would be translated into the official language decided by the judge in conducting the proceedings if the parties, witnesses or legal representatives chose not to use that official language in addressing the court.

42. JA remarked that paragraph 6(b) of the paper might not have presented a full picture of the subject matter. He said that transcripts of all court proceedings were produced in accordance with the digital recording of proceedings kept by the Judiciary, and that the original languages used by all concerned parties in addressing the court would be recorded.

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*(Post-meeting note - JA has further advised in writing after the meeting that it should be noted that everything said by all concerned parties in the court proceeding, in both the original languages used by the parties in the proceeding, and the interpretation of such languages into the official language decided by the judge in conducting the proceeding if such interpretation takes place, is recorded and kept by the Judiciary. If there are any doubts or queries about the accuracy of the interpretation, it is usually raised there and then and would be resolved at the hearing. When a transcript is called for, say, for the purpose of appeal, a transcript will usually be produced for the parts of the proceeding which are necessary for the purpose of the appeal. The transcript will usually be produced in the official language used by the court in the proceeding. For example, if English was chosen as the official language of that proceeding and a witness gave a statement in Cantonese with interpretation into English, the witness statement would usually appear in English in the transcript. However, if a request is made for a particular part of the transcript to be produced in both the official language chosen by the judge and in the original language used by the person concerned in that part of the proceeding, this can be done. In the case of the earlier example cited above, if a witness gave a statement in Cantonese with interpretation into English, i.e. the official language used for the proceeding, that part of the transcript can be produced in both Chinese (as direct transcription of oral Cantonese) and English.)*

*Use of Putonghua in court proceedings*

43. Mr Martin LEE said that the implications of using Chinese, especially Putonghua, as an official language in court proceedings should be carefully considered, having regard, for example, to whether there was adequate supply of judges, judiciary staff and legal professionals with proficiency in Putonghua as well as the necessary court facilities which had to be made available.

44. In response, JA advised that Putonghua had been used in a limited number of instances in short proceedings or parts of proceedings by a number of bilingual judges who were proficient in Putonghua at various levels of courts. The Judiciary believed that the present demand for legal proceedings to be conducted in Putonghua was not substantial. The demand, however, might increase, especially from litigants in person. He further informed members that of the 182 judges in the Judiciary, 118 were bilingual judges. 56 had gone through some training in Putonghua. The Judiciary would monitor the demand for the use of Putonghua and if necessary, consider providing additional training for judges. As to the legal profession, it was also foreseen that proficiency of legal practitioners in Putonghua would improve.

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45. The Chairman referred to Appendix III of the Judiciary Administration's paper on the Judiciary's replies to press enquiries on the use of Putonghua in a recent District Court case (*HKSAR V Pan Shenfang and others* (Case No. 823 of 2002)), and made the following comments -

- (a) She shared the Judiciary's view that it would be a better approach to issue the replies to press enquiries until the case was concluded;
- (b) In the case in question, she questioned whether it was appropriate for the counsel, instead of through the use of an expert witness, to test the first prosecution witness' ability in Putonghua by cross-examining him in Putonghua; and
- (c) On the Judiciary's reply to the press enquiries on 25 October 2002 stating that "since both Chinese and English are official languages for conducting court proceedings, and in the Hong Kong context, spoken Chinese usually refers to Cantonese and also includes Putonghua, court proceedings may be conducted in Putonghua", she pointed out that as spoken Chinese included Putonghua and did not exclude other Chinese dialects (according to the Judiciary's reply to the press on 24 October 2002), it could be argued that court proceedings might also be conducted in other Chinese dialects. She requested the Judiciary to consider reviewing the implications of conducting court proceedings in Putonghua.

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46. Mr Martin LEE considered that a review of the use of official languages in Court proceedings should be conducted by the Judiciary. The Chairman advised that the Panel would decide whether the matter should be discussed as an agenda item upon receipt of the supplementary information to be provided by the Judiciary Administration.

47. There being no other business, the meeting ended at 10:40 am.

Council Business Division 2  
Legislative Council Secretariat  
23 January 2003