

**For discussion
on 13 December 2002**

LegCo Panel on Administration of Justice and Legal Services

**Information Paper on
Law Amendment and Reform (Miscellaneous Provisions) Bill**

INTRODUCTION

A number of amendments to various Ordinances are proposed in the above Bill and have been identified as necessary and important for improving existing legislation. The object of this paper is to seek the preliminary views of members of the Panel on the proposed amendments. The Bill is scheduled for introduction into the Legislative Council on 19 March 2003.

BACKGROUND AND ARGUMENT

General Background

2. The Administration has adopted the use of omnibus bills in recent years as an efficient way of effecting improvements to existing legislation. This would avoid the requirement to make bids for separate slots relating to each Ordinance, the amendments to which will involve only a few clauses. Such Bills have been entitled Administration of Justice (Miscellaneous Provisions) Bills or Statute Law (Miscellaneous Provisions) Bills) which, as a general rule, are confined to technical, minor and uncontroversial amendments to any subject.

3. The present Bill deals principally with law-related matters. For this reason, it is considered that the present title would be appropriate. The proposed amendments are described below.

DETAILED PROPOSALS

Provisions related to the Legal Practitioners Ordinance, Cap. 159

4. The purposes of the proposed amendments are –
- (i) to provide for a new requirement for solicitors to complete a mandatory practice management course in order to apply for an unconditional practising certificate for the first time;
 - (ii) to provide for the power of the Chief Judge to designate a judge of the Court to exercise certain powers relating to notaries public;
 - (iii) to transfer certain rule making powers of the Chief Justice relating to the issue of practising certificates of notaries public to the Council of the Society of Notaries;
 - (iv) to include “officer” in the list of persons or entities in which the Law Society Council may investigate, inquire into or deal with to ensure that a non-solicitor director of a solicitor corporation falls within the disciplinary authority of the Law Society;
 - (v) to extend the time limit for prosecution of certain offences committed under the Ordinance to allow adequate time for investigation of the alleged offences;
 - (vi) to make a technical amendment to rectify a discrepancy between the English and Chinese text of a provision in the Ordinance.

More details of the respective proposals are at **Annex A**.

Provisions to establish the Standing Committee on Legal Education and Training

5. This proposal was last before the Panel on 24 June 2002. It is proposed that a Standing Committee on Legal Education and Training be set up for the ongoing review, and monitoring of the future direction, of Hong Kong's system of legal education.

6. It is proposed that section 74A of the Legal Practitioners Ordinance be amended to provide for the establishment of the Standing Committee in replace of the current Advisory Committee on Legal Education. The proposed amendments will also deal with the functions of the committee, and its constitution and chairmanship. Details of the evolution of the proposal are at **Annex B**.

Provisions related to proof of title and presumptions of due execution of deeds by corporations in the Conveyancing and Property Ordinance, Cap. 219

7. The Law Society has identified a problem concerning the proof of due execution of conveyancing documents by corporation as a result of which vendors have sometimes been unable to prove good title to their property. To deal with this it is proposed that a new section 23A be inserted in the Ordinance. Under the proposed section, deeds purporting to have been executed by a corporation less than 15 years before the contract of sale will, in certain situations, be presumed, until the contrary is proved, to be duly executed even if the source of the authority in question or the means by which it was purportedly conferred is not apparent from the deed. Further, deeds purporting to have been executed by a corporation not less than 15 years before the contract of sale of the land will be conclusively presumed to be duly executed.

8. The proposals for these amendments were last discussed by the Panel on 28 October 2002. The detailed background to the proposal and its associated issues is at **Annex C**.

Proposed amendments to the Cost in Criminal Cases Ordinance, Cap 492

9. Under the present law the courts are not empowered to award costs to defendants who suffer losses as a result of applications made by

the prosecution for a review of a magistrate's decision which are dismissed. It is now proposed that section 3 of the Ordinance be amended so that a magistrate may award costs to the defendant if he, on the application of the prosecutor, reviews his decision, and on that review confirms his decision. Background to the proposal is at **Annex D**.

Adaptation of “Crown Servant” in the Prevention of Bribery Ordinance, Cap. 201 and the Independent Commission Against Corruption Ordinance, Cap. 204

10. The proposed amendments were originally included in the Adaptation of Laws Bill 2001. It is proposed that “Crown servant” in the above two Ordinances replaced by “prescribed officer” in order to preserve the scope that “Crown servant” had prior to reunification.

11. The Bills Committee for the Adaptation of Laws Bill 2001 considered that the replacement of “Crown servant” by “prescribed officer” should be processed as a law reform (rather than an adaptation) exercise. The Administration agreed to take the matter forward in the suggested manner. The agreed arrangements are set out in detail at **Annex E**.

Minor amendments to various Ordinances

12. The Law Drafting Division of the Department of Justice has identified a number of textual errors and inconsistencies, wrong cross-references, missed consequential and other minor irregularities in legislation. The present Bill is considered as a suitable vehicle to make appropriate minor amendments. A schedule of some proposed amendments to give the Panel examples of the type of amendments involved in the proposed exercise is at **Annex F**.

PUBLIC CONSULTATION

13. The Law Society, the Bar Association and stakeholders in the real property industry are all in favour of the proposed amendments to the Conveyancing and Property Ordinance. The proposed amendments to the Legal Practitioners Ordinance to set up the Standing Committee on

Legal Education and Training are pursuant to a preliminary review on legal education and training in Hong Kong conducted in 2001, and are supported by the Steering Committee relating to that review. The majority of the other proposed amendments which are mainly minor and technical in nature.

Legal Policy Division
Department of Justice
December 2002

**Proposed amendments to the Legal Practitioners Ordinance
to help improve the standard of management skills of the profession**

Amendments to the Legal Practitioners Ordinance

The proposals relating to the amendments to the Legal Practitioners Ordinance ("LPO") are as follows -

Mandatory Practice Management Course

2. It is proposed that amendment be made to the LPO to provide for a new requirement for solicitors to complete a mandatory practice management course in order to apply for an unconditional practising certificate for the first time.

3. Under section 6(6) of the LPO, a solicitor cannot practise on his own account or in partnership unless he satisfies the Law Society Council that he has been bona fide employed in the practice of a solicitor in Hong Kong for at least 2 years.

4. The Law Society proposed that the LPO be amended to provide that, besides this two year requirement, a solicitor seeking an unconditional practising certificate for the first time should be required to successfully complete a mandatory practice management course conducted or approved by the Law Society, unless otherwise exempted by the Council.

5. The Law Society suggested that the proposed mandatory practice management course, which is expected to be a 30-hour course, will be designed and conducted by an external provider with the relevant experience and expertise appointed by the Law Society.

6. The purpose of the proposed requirement is intended to help improve the standard of management skills of the profession. The rationale for the proposal put forward by the Law Society is that collected data around the world identifies the lack of managerial systems and poor communication between lawyers, between lawyers and their staff, and

between lawyers and their clients, as the origin of the majority of claims against professional indemnity insurance policies and complaints against practitioners to their supervisory body. The Law Society also mentioned that solicitors are given no formal management training prior to qualification and it is rare for them to receive any formal management or even financial training during practice. As it is considered by the Law Society that actual experience in managing a practice could not be a substitute for the benefits of attending a properly structured and run course, it is essential to impose this requirement on solicitors when they apply for an unconditional practising certificate for the first time. It is envisaged by the Law Society that a practice management course will directly address the problem areas for solicitors who are responsible for running a practice.

Power of the Chief Judge to designate a judge of the Court to exercise certain power relating to the appointment of notaries public - new section 40A(2)

7. Under the new section 40A(2), the Chief Judge has the power to designate a judge of the Court to exercise the powers relating to the appointment of a notary public conferred on him under the new section 40A(1).

8. The Administration proposed that the Chief Judge should also be able to designate a judge of the Court to exercise the powers conferred on him under the new section 40A(4) which relates to the power of the Chief Judge to specify a period other than what is specified in the new section 40A(1)(a)(iii) for the purpose of appointment of a notary public.

9. The relevant new sections have not yet commenced and the commencement date is subject to all the relevant rules relating to notaries public are ready for implementation.

Transfer of certain rule making power of the Chief Justice relating to the issue of practising certificate of notaries public to the Council of the Society of Notaries - new section 40E(6)(a),(b) and (c)

10. The Administration proposed to transfer the power of the Chief Justice under the new section 40E(6)(a), (b) and (c) to the Council of the Hong Kong Society of Notaries. This proposal was put forward for the consideration of the Society of Notaries and was agreed by it. These powers contained in the new section 40E(6)(a), (b) and (c) relate to the prescription of (i) grounds for refusal to issue a practising certificate; (ii) conditions for the issue of a practising certificate; and (iii) conditions to be added to an already issued certificate.

11. A similar transfer of power by the Chief Justice to the Law Society Council has taken place in respect of solicitors which was effected by the amendment to section 6(5)(a), (b) and (e) of the Ordinance pursuant to the Statute Law (Miscellaneous Provisions) Ordinance 2002. The proposed transfer of power from the Chief Justice to the Council of the Society of Notaries was also considered at the Bills Committee Stage of the Statute Law (Miscellaneous Provisions) Ordinance 2002. Though the Society of Notaries agreed to the proposed transfer of power to its Council, it considered that amendment should not be made in that Bill in order to avoid causing any delay in the implementation of the relevant rules relating to the notaries public which were already in their finalized form.

12. The new section 40E(6)(a), (b) and (c) has not yet commenced and the commencement date is subject to all the relevant rules relating to notaries public are ready for implementation.

Misconduct of a non-solicitor director of a solicitor corporation - new section 9AA

13. It is provided in the new section 9AA which was also added to the LPO by the Legal Services Legislation (Miscellaneous Amendments) Ordinance 1997 that –

“ 9AA. **Misconduct of member or employee of solicitor corporation or foreign lawyer corporation**

Conduct of a person who is a member of, or is employed by, a solicitor corporation or a foreign lawyer corporation may

be the subject of a complaint, and may be investigated, inquired into and dealt with under this Part in the same way as the conduct of a solicitor or employee of a solicitor or foreign lawyer may be investigated, inquired into and dealt with, but only in so far as the conduct relates to the practice carried on by the corporation. ”

14. According to the definition of “officer” to be added in the new section 2(1) of the LPO by virtue of the Legal Services Legislation (Miscellaneous Amendments) Ordinance 1997, "officer" means a director, manager, executive, or secretary of the corporation. In the course of considering the draft Solicitor Corporation Rules prepared by the Law Society, the Department of Justice expressed its concern to the Law Society that the conduct of a non-solicitor director of a solicitor corporation may not be under the control of the Law Society.

15. To address our concern, the Law Society proposed to resolve the problem by amending the new section 9AA of the Ordinance 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 the Ordinance. This will result in bringing any non-solicitor director appointed under the draft Solicitor Corporation Rules within the disciplinary authority of the Law Society.

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

16. Section 55 of the LPO reads as follows: -

“ Notwithstanding anything in the Magistrates Ordinance (Cap. 227), proceedings in respect of any offence against section 46, 47, 48, 50B or 54 may be brought at any time within 2 years next after the commission of the offence or within 6 months after the first discovery thereof by the prosecutor, whichever period expires first. ”

17. Due to the short time limit of "6 months after the first discovery" of the offence provided in section 55 of the LPO, the Law Society is faced with a consistent difficulty of not having sufficient time

to conduct proper investigation of an allegation of misconduct before prosecution becomes time-barred under the section.

18. The Law Society proposed to resolve the problem by amending section 55 of the Ordinance so that the time limit for prosecution of offences conducted under the LPO is only subject to the limitation period of 2 years next after the commission of the offence and that the limitation imposed by "6 months after the first discovery" be removed. This would allow reasonably sufficient time for the Law Society to investigate the alleged offences before prosecution of the offences becomes time-barred.

Other amendment

19. A technical amendment is proposed to rectify a discrepancy between the English and Chinese texts of the new section 31C(2)(c) in the LPO in which the phrase "in Hong Kong" is not provided in the Chinese text. The Chinese text of the provision needs to be amended to accurately reflect the English meaning in the provision.

Proposed amendments to the Legal Practitioners Ordinance to establish the Standing Committee on Legal Education and Training

Background

1. In late 1999, the Steering Committee on Legal Education and Training in Hong Kong (Steering Committee) was set up to oversee an independent and comprehensive review of the local legal education and training. In August 2001, two Australian consultants engaged by the Steering Committee produced a report covering undergraduate studies through to post-admission professional training. They recommended, among other things, that a Legal Qualifying Council be established to set, monitor and govern the process of qualification for admission to practise as either a barrister or a solicitor.

2. The Steering Committee agreed that a new statutory body should be established in order to keep up the momentum of reform of the legal education and training system, and to monitor the future direction of that system. It also agreed that this new body should replace the current existing Advisory Committee on Legal Education.

3. At the meeting of the Panel on 24 June 2002, the Steering Committee reported to the Panel, among other things, its above recommendations as well as the proposed functions, constitution, name and chairmanship of the new statutory body as agreed by its members. Relevant extract of the discussion paper prepared by the Steering Committee for that Panel's meeting is at **Annex**.

4. Since the above meeting of the Panel, the Steering Committee has also resolved that the new statutory body shall consist of, in addition to the members set out in the above discussion paper, a person nominated by the Chief Executive from among the institutions providing continuing legal education courses in Hong Kong other than the Law Society of Hong Kong, the Hong Kong Bar Association, the University of Hong Kong and the City University of Hong Kong. These institutions (including, for example, the Open University and the Lingnan Institute of Further Education) are stakeholders in legal

education in Hong Kong, and it would be useful to have their views represented on the new statutory body.

Proposal

5. We propose to amend section 74A of the Legal Practitioners Ordinance (Cap 159) to provide for the establishment of a Standing Committee on Legal Education and Training in replacement of the current Advisory Committee on Legal Education. The details of its functions, constitution and chairmanship shall follow the above proposals of the Steering Committee.

For discussion
on 24 June 2002

Review of Legal Education and Training in Hong Kong Second Progress Report

Following the Steering Committee's first progress report to this Panel it has held four meetings between 1 March 2002 and 10 June 2002.

The Steering Committee reports the following progress in respect of the issues raised by the Review of Legal Education and Training in Hong Kong.

1. The LLB

The Steering Committee has recommended to the UGC and the Education and Manpower Bureau that funding be provided for a 4-year LLB programme commencing in the 2004–2005 academic year. Both the University of Hong Kong (HKU) and the City University of Hong Kong (CityU) have been invited by the UGC to make submissions on the extension of the LLB to 4 years which will be considered at the June meeting of the UGC. Subject to the decision of the UGC on funding the 4-year LLB programme, the universities have started giving consideration to the restructuring that will be required. An outline provided to the Steering Committee of their progress in preparing for such extension is attached at **Annexure A**.

The Steering Committee has resolved that the restructuring of the LLB, which is crucial to the effective reform of the legal education system in Hong Kong, should be overseen by the proposed new umbrella body established to continue the work of the Steering Committee in the ongoing reform process. This is because academic boards will not be created for the LLB programme as they have for the PCLL programme.

2. **PCLL**

The Academic Boards (the Boards) established at both HKU and CityU to implement reforms to the PCLL have been established and have met on a number of occasions during the year. The Board at HKU is chaired by Anna Wu, Chairperson of the Equal Opportunities Commission. The Board at CityU is chaired by Alice Tai, the Ombudsman.

The terms of reference and constitution of the Boards are set out in **Annexure B**.

A report to the Steering Committee from each university on the progress of the Boards in the reform process is set out in Annexure A.

3. **Conversion Course**

At this stage, the Steering Committee has agreed that a conversion course should be implemented, at the latest, by the commencement of the third year of the proposed new 4-year LLB. Further consideration of the proposed course by the Steering Committee will take place in the next few months.

4. **Legal Qualifying Council : Overseeing the Implementation of Reforms**

The consultants recommended that a Legal Qualifying Council be established to set, monitor and govern the process of qualification for admission to practice as either a barrister or a solicitor.

As previously reported, the Steering Committee is anxious to ensure that, when it ceases its work, the momentum for reform of the legal education and training system will not be halted or delayed.

In order to keep the momentum going, and to monitor the future direction of legal education, the Steering Committee agreed, in principle, that there should be a standing umbrella body with sufficient status and powers.

The Steering Committee has been considering the details of such a body

and has reached agreement on its possible functions, constitution, name and chairmanship, which are set out in **Annexure C**.

It is proposed that this body will be established by legislation and will replace the current Advisory Committee on Legal Education.

5. Language

The Steering Committee has agreed that the improvement of English and Chinese language standards is a key issue in the reform of legal education and training in Hong Kong and that measures need to be agreed to ensure that standards are raised.

The Steering Committee has discussed at length many of the issues raised by the Review in connection with both Chinese and English language proficiency for those who intend to practise law in Hong Kong. In March, the Steering Committee established a sub-committee comprised of representatives of the professional legal bodies, the universities and members of the Steering Committee, to investigate and report to the Steering Committee on :

- (1) Existing English language proficiency tests in the workplace.
- (2) What has been done already to develop a tailor-made English language benchmark and test for use in the practice of law.

Annexure C

Proposed Umbrella Body on Legal Education and Training

1. It is recommended that there be established a Standing Committee on Legal Education and Training.
2. The functions of the Standing Committee on Legal Education and Training shall be –
 - (a) to keep under review the system and provision of legal education and training in Hong Kong;
 - (b) to monitor the system and provision of academic training of prospective lawyers in Hong Kong;
 - (c) to keep under review the academic requirements and standards for admission to the Postgraduate Certificate in Laws programme;
 - (d) to monitor the system and provision of institutional vocational training of prospective lawyers in Hong Kong;
 - (e) to collect and disseminate information in regard to the system of legal education and training in Hong Kong; and
 - (f) to make recommendations for improvements in the system and provision of academic and institutional vocational training of prospective lawyers in Hong Kong.
3. Members of the Committee shall be appointed by the Chief Executive. The Committee shall consist of:
 - (a) 2 people drawn from the judiciary and nominated by the Chief Justice;
 - (b) 2 people nominated by the Law Society;
 - (c) 2 people nominated by the Bar Association;

- (d) 2 people nominated by the University of Hong Kong;
 - (e) 2 people nominated by the City University of Hong Kong;
 - (f) one person nominated by the Secretary of Justice
 - (g) one person nominated by the Secretary for Education and Manpower, and
 - (h) 2 other persons from the community nominated by the Chief Executive.
4. The Chief Executive shall appoint a suitably qualified Chairman of the Committee after consultation with the stakeholder groups referred to in 3(a) to (g) above. The Chairman shall be additional to the members referred to in paragraph 3 above.
 5. A member of the Committee who is unable to attend a meeting of the Committee may, on 7 days' notice to the Chairman, send a substitute who shall be deemed to be a member of the Committee. (As per the ACLE provisions.)
 6. A member of the Committee shall hold office for a term not exceeding 2 years.
 7. The Committee shall report annually to the Chief Executive and its annual report shall be tabled in the Legislative Council.

Proposed amendments to the Conveyancing and Property Ordinance to facilitate execution of conveyancing documents by corporations

Introduction

This paper briefs Members on the progress of the drafting of the legislative proposal related to conveyancing documents executed by corporations and the proposed legislative timetable.

Background

2. The proposed amendments originated from the Law Society and seek to amend the Conveyancing and Property Ordinance (“the Ordinance”) to rectify problems concerning execution of conveyancing documents by corporations. The problem was basically caused by the discrepancy between the Law Society’s previous understanding (the Understanding) and the recent case law as to the application of section 23 of the Ordinance.

3. According to the Understanding, a corporation’s execution of a deed of assignment supported by one attesting signature was covered by the presumption in section 23 if the articles of association provide either that –

- (a) only one signatory is needed; or
- (b) that two signatories are required but with an option for the board of directors to authorise signing in some other manner.

4. In the first case, if the articles require specific capacity to sign the document but the relevant capacity was not stated in the document, the production of the articles would establish that only one signatory is needed and the document would “appear” to be duly signed and sealed.

5. In the second case, section 23 makes it unnecessary to

produce an authorising board resolution where the relevant article, being available, is expressly to the effect that the board may authorise the use of the seal attested by one signature only.

6. Production of a board resolution would only be necessary if the articles of association could not be produced to establish that only one signatory is required.

7. The Law Society issued two circulars in 1990 to advise its members that a vendor is not required, in view of the presumption in section 23, to produce evidence of authorisation by the board of directors in order to prove title.

8. The case law after 1991 tended to establish that a document not covered by section 20 cannot be said to appear to be duly executed under section 23 unless either the document states on its face that the director was authorised to sign by the resolution required under the articles or, if there is no such statement, the relevant authorising resolution is produced.

9. In July 2001, the Court of Appeal in the case Grand Trade Development Ltd v Bonance International Ltd [2001] 3 HKC 137 held that section 23 only applies where, on its face, the instrument appears to be duly executed. If the relevant signatory signs with a description such as “the person duly authorised by the board of directors” rather than simply as one of its directors, section 23 will apply. Failing such specific words appearing on the face of the assignment, section 23 cannot apply.

10. For cases where sections 20 and 23 do not apply, the relevant authorising resolutions have to be produced to prove due execution. The Law Society considers that there is likely to be a significant number of cases where board resolutions have not been kept with the title deeds or a corporation has ceased to exist or for some other reason the resolution necessary to prove good title to property is

unavailable.

Joint proposed amendments to Section 23A by the Law Society, the Bar Association and the Hong Kong Conveyancing & Property Law Association Limited

11. The Law Society provided a draft proposed section 23A in November 2001. Based on the Law Society's proposal, the Legal Policy Division of the Department of Justice issued a consultation paper in January 2002, setting out the Law Society's proposed amendments and the Administration's preliminary thoughts for the consultees' consideration.

12. In response to the consultation paper, the Law Society of Hong Kong, Hong Kong Bar Association and Hong Kong Conveyancing & Property Law Association Limited jointly proposed a revised section 23A ("the proposed section 23A") at the LegCo Panel on Administration of Justice and Legal Services ("the AJLS Panel") on 24 June 2002. A copy of the proposed section 23A is at **Annex 1**.

13. Under the proposed section 23A(1), deeds purporting to have been executed by a corporation less than 15 years before the contract of sale (in certain cases) will be presumed, until the contrary is proved, to be duly executed even if the source of the authority in question or the means by which it was purportedly conferred is not apparent from the deed. Under subsection (2), deeds purporting to have been executed by a corporation not less than 15 years before the contract of sale of the land will be conclusively presumed to be duly executed.

14. The Administration queried whether that the proposed section 23A(1) would offer sufficient protection to purchasers. Under this subsection, deeds will be presumed to be duly executed even if there is no appearance of due execution on the face of the documents. Some executions might, in theory, be unauthorised and subject to

challenge. The purchaser's title might become defective, if after having purchased the property, the deed in question was found to be improperly executed and s23A (2) does not apply. The corporation concerned might seek to set aside the transaction and recover the property from the purchaser. The potential consequences on the purchaser could be serious.

The Administration's proposal

15. To protect the purchaser's interest, the Administration suggested inserting a subsection (3) to the effect that a bona fide purchaser for value without notice of any defect in execution, his successors in title and persons deriving title under or through him will not be liable for the claims of the corporation concerned if the presumption in subsection (1) is subsequently rebutted. This would protect the purchaser without making it difficult for the relevant titles to be sold. The corporation concerned might still have a remedy against the persons who executed the deed without authority e.g. if they had defrauded the company.

16. In late July 2002, the Administration issued a consultation letter to various government bureaux and departments (numbering 13 in total) to invite comments on the proposed section 23A and the Administration's proposal.

Meeting with stakeholders on 27 November 2002

17. The representatives of the Law Society, the Bar Association, the Consumer Council and various stakeholders (particulars of which are set out in Annex 2) met on 27 November 2002 to discuss the proposed amendments.

18. Subsequent to the meeting with the stakeholders on 27 November 2002, the Administration decided to leave out the proposed subsection (3) in the present exercise. The reasons for the decision are as follow –

(a) the objective of the present exercise is to amend the procedural

requirements for proof of title, and no changes to substantive law are intended;

- (b) the nemo dat rule (under which a purchaser cannot acquire title if the vendor had none) involves complicated concepts and there is a case for a thorough review if it is to be changed. The proposed subsection (3) arguably impinges on an area of company law, and the strong view of the Standing Committee on Company Law Reform opposing the proposed section 23A should be taken into consideration;
- (c) according to comments from the legal profession, there is no discernible empirical evidence to suggest that corporations have been claiming the return of property based on allegations of the improper or unauthorised execution of documents;
- (d) in certain cases, there are protections under the existing law for purchasers;
- (e) it would be an anomaly if a purchaser who has to rely on the proposed section 23A(1) would get better protection than another purchaser who has no need to rely on proposed section 23A(1);
- (f) although it has been suggested that the proposed subsection (3) could be included if it did not apply to forgery and common law fraud, it would be difficult to craft an appropriate provision as the elements that comprise fraud are myriad, varied and evolving over time;
- (g) the concern of the representative for the Hong Kong Association of Banks concerning the interests of actual or potential borrowers and mortgagees is noted, but the issue can be revisited if it is ultimately found that purchasers have difficulty in obtaining finance;

19. The proposed amendments to insert a new section 23A in the Conveyancing and Property Ordinance (Cap. 219) are included in Part II of the Law Amendment and Reform (Miscellaneous Provisions) Bill.

Department of Justice
December 2002

REVISED SECTION 23A

*(submitted by the Law Society, Bar Association &
Hong Kong Conveyancing & Property Law Association Limited
to the LegCo Panel on Administration of Justice and Legal Services on 24.6.2002)*

- “23A(1) For the purpose of proof of title, a deed purporting to be executed prior to the commencement of this section 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 authorized 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 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.”

**List of attendees at 27 November 2002 at
Meeting re proposed amendments to the Conveyancing and Property Ordinance
on execution of conveyancing documents by corporations**

DoJ

1. Mr. Robert Allcock, SG
2. Mr. Michael Scott, SASG(GLP)
3. Miss Agnes Cheung, SGC
4. Ms Lorraine Chan, GC

Consultees

5. Ms Wendy Chow, Chairman of the Property Committee, The Law Society of Hong Kong
6. Ms Christine W.S. Chu, Assistant Director of Practitioners Affairs, The Law Society of Hong Kong
7. Mr. Peter Aherne, Member of the Property Committee, The Law Society of Hong Kong
8. Ms Angela Lee, Member of the Property Committee, The Law Society of Hong Kong
9. Mr. Terry Yeung, Member of the Property Committee, The Law Society of Hong Kong

10. Mr. Edward Chan, SC, Hong Kong Bar Association
11. Mr. Horace Wong, Hong Kong Bar Association

12. Mr. Leung Siu Hon, President of the Hong Kong Conveyancing & Property Law Association Limited
13. Ms Rosa Wong, Legal Counsel, Consumer Council
14. Mr. Au Fun Kuen, JSM, representing the Real Estate Developers Association of Hong Kong
15. Mr. John W. C. Richardson, Deacons, representing, the Hong Kong Association of Banks
16. Mr. Tommy Cho, Assistant Legal Advisor, Estate Agents Authority
17. Mr. Alex Tang, President, Society of Hong Kong Real Estate Agents Ltd.
18. Mr. Lawrence Yau, Consultant, Society of Hong Kong Real Estate Agents Ltd.
19. Mr. Victor Kwok, Council Member, Society of Hong Kong Real Estate Agents Ltd.
20. Mr. Lawrence Wong, Vice-Chairman, Hong Kong Chamber of Professional Property Consultants Ltd.
21. Mr. Frank Man, Vice Chairman, Hong Kong Real Estate Agencies General Association Ltd.
22. Mr. Simon Chan, Council Member, Hong Kong Real Estate Agencies General

- Association Ltd.
23. Mr. Ricky Liu, President, New Territories Estate Agency Association Ltd.
 24. Mr. Philip Smart, Senior Lecturer, The University of Hong Kong

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**Proposed amendments to Costs in Criminal Cases Ordinance
to allow award of costs by magistrate upon unsuccessful application
of review of sentence by prosecution**

Introduction

The Administration proposes to amend the Costs in Criminal Cases Ordinance (Cap. 492) to widen the magistrates' power to award costs.

Background

2. At the AJLS Panel meeting on 26 November 2001, the Panel requested the Administration to amend the Costs in Criminal Cases Ordinance to empower a magistrate to award costs to a defendant if the magistrate reviewed his decision upon application by the prosecution under section 104 of the Magistrates Ordinance, and confirmed the decision.

Proposal

3. The Administration proposes that section 3 of the Costs in Criminal Cases Ordinance be amended so that a magistrate may award costs to the defendant if he, on the application of the prosecutor, reviews his decision, and on that review confirms his decision.

4. The amendment is included, as Part 4, in the Law Amendment and Reform (Miscellaneous Provisions) Bill. The legislative proposal is in line with the proposal of the AJLS Panel on 26 November 2001.

Department of Justice
Legal Policy Division
December 2002

**Adaptation of “Crown servant” in the
Prevention of Bribery Ordinance and the
Independent Commission Against Corruption Ordinance**

Background

The Adaptation of Laws Bill 2001 (the Bill), introduced into the Legislative Council on 19 December 2001, contains terminological amendments to the Prevention of Bribery Ordinance (POBO) and the Independent Commission Against Corruption Ordinance (ICACO) to bring them into conformity with the Basic Law and Hong Kong’s status as a Special Administrative Region of the People’s Republic of China after reunification.

2. In the Bill, “Crown servant” in the POBO and the ICACO is proposed to be replaced by “prescribed officer” in order to preserve the scope that “Crown servant” had prior to reunification. A Bills Committee was formed to examine the Bill. Following deliberations at the Bills Committee, the Administration agreed to take forward the Bills Committee’s suggestion to transfer the “Crown servant” amendments to a separate miscellaneous amendment bill, with minor refinement to also list out principal officials in the agreed definition of “prescribed officer”.

Proposal

3. The Bills Committee has accepted all other adaptation proposals and amendments in the Bill, save for the clauses to adapt “Crown servant”, as straightforward adaptational changes. On the adaptation of “Crown servant”, noting that there is no simple and straightforward replacement term and definition for “Crown servant”, the Bills Committee agreed to the Administration’s proposal to replace “Crown servant” by “prescribed officer”. However, the Bills Committee considered that the replacement of “Crown servant” by “prescribed officer” should be processed as law reform and hence pursued through a miscellaneous amendment bill. In addition, Members of the Bills Committee suggested that, for the avoidance of doubt, principal officials appointed in accordance with the Basic Law should also be listed out in the proposed definition of “prescribed officer”, as one of the listed offices (see definition in paragraph 4).

4. Having considered the Bills Committee's views, we agreed to pursue the "Crown servant" amendments in the next available miscellaneous amendment bill, and that principal officials should be expressly listed out in the "prescribed officer" definition to put beyond doubt that they will continue to be subject to the most stringent framework of control as applicable to civil servants under the POBO and the ICACO. The proposed definition of "prescribed officer" will accordingly be revised to read as follows -

"prescribed officer" (訂明人員) means –

- (a) any person holding an office of emolument, whether permanent or temporary, under the Government; and
- (b) the following persons (to the extent that they are not persons included in paragraph (a)) –
 - (i) any principal official of the Government appointed in accordance with the Basic Law;
 - (ii) the Monetary Authority appointed under section 5A of the Exchange Fund Ordinance (Cap. 66) and any person appointed under section 5A(3) of that Ordinance;
 - (iii) Chairman of the Public Service Commission;
 - (iv) any member of the staff of the Independent Commission Against Corruption;
 - (v) any judicial officer holding a judicial office specified in Schedule 1 to the Judicial Officers Recommendation Commission Ordinance (Cap. 92) and any judicial officer appointed by the Chief Justice, and any member of the staff of the Judiciary.

Way Forward

5. We will move Committee Stage Amendments to repeal all clauses relating to "Crown servant" in the Adaptation of Laws Bill 2001 and incorporate the same, together with the revised definition of "prescribed officer", into the Law Amendment and Reform

(Miscellaneous Provisions) Bill to enable the early enactment of the relevant amendments. In parallel, we will continue to work on other proposed amendments to the POBO in a separate law reform exercise as a matter of priority.

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Schedule

Item	Enactment	Proposed amendment
1.	Government Leases Ordinance (Cap. 40)	In sections 10(1)(b) and (2)(b) and 11(2), repeal “註冊記錄冊” and substitute “註冊紀錄冊”.
2.	Legal Aid Ordinance (Cap. 91)	In sections 2(1) (definitions of “大律師” and “律師”), 3(2) and (3) and 4(1), repeal “《執業律師條例》” and substitute “《法律執業者條例》”.
3.	Legal Aid Regulations (Cap. 91 sub. leg.)	In regulations 18(2) and 19, repeal “《執業律師條例》” and substitute “《法律執業者條例》”.
4.	Dutiable Commodities Ordinance (Cap. 109)	In section 48A(6), repeal “貨品或東” where it first appears and substitute “貨品或東西”.
5.	Town Planning Ordinance (Cap. 131)	In section 17B(3), repeal “上訴聆訴” and substitute “上訴聆訊”.

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