

**Extract from minutes of meeting of Administration of Justice
and Legal Services Panel held on 24 June 2002**

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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 deputations 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.

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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.