

Draft Report of the Working Group to Conduct a 30 Year “Health Check” of POLA’s Objectives, Founding Documents and Operations

**Report tabled at the 30th Presidents of Law
Associations in Asia, Presidents’ Summit**

Hosted by the All China Lawyers Association

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Kunming, People’s Republic of China

Working Group Members

- Japan Federation of Bar Associations
- Korean Bar Association
- Law Society of Singapore
- Law Society of Hong Kong
- Law Council of Australia
- Bar Association of India

**This Draft Report is based upon discussions amongst Working Group
Members following the 2018 POLA Conference.**

**It is presented as an aid to further discussion and may not represent the final
views of the Working Group or its individual members.**

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Establishment of Working Group

On 2-3 August 2018, the Law Council of Australia hosted the 29th POLA Conference in Canberra, Australia. This annual event was attended by representatives from 18 law societies and bar associations from around the region, as well as representatives from the International Bar Association (IBA), LAWASIA and the Inter-Pacific Bar Association.

The Presidents’ Meeting at the Conference provided an opportunity to initiate a discussion about the objectives, founding documents and operations of the organisation. The Law Council submitted that, after nearly thirty years of POLA gatherings, it was timely to review POLA’s Charter, including correcting the name from the Charter to the one in current usage.

A copy of the paper prepared by the Law Council in support of this agenda item is provided at **Attachment A**.

The following organisations expressed interest in participating in the review:

- Japan Federation of Bar Associations
- Korean Bar Association
- Law Society of Singapore
- Law Society of Hong Kong
- Law Council of Australia
- Bar Association of India

The Presidents’ meeting unanimously agreed to form a Working Group comprised of the above listed POLA members for the purpose of conducting a 30 year ‘health check’ of POLA’s objectives, founding documents and operations, with outcomes to be delivered for consideration to the 2019 POLA meeting.

Meetings of Working Group

It was agreed that the President of the Law Council should chair the Working Group meetings, and that the Law Council Secretariat take responsibility for co-ordinating those meetings, making notes, and ultimately preparing a report for review by the Working Group for presentation to the 30th POLA Conference.

The Working Group met face-to-face on two occasions: 9 October 2018 at the IBA Conference in Rome and 3 November 2018 at the LAWASIA Conference in Siem Reap. Individual working group members have also provided written feedback to the Law Council which has been compiled into this report.

In conducting a line-by-line review of the POLA Charter, the Working Group took the opportunity to discuss POLA generally as well as specific issues identified by Working Group members.

Conclusions of the Working Group

Overall, it was agreed that a large part of the success of POLA Conferences lay in their informality and flexibility. The Working Group was committed in its review to maintaining the spirit of POLA and avoiding prescriptive rules and regulations which might have the effect of detracting from the unique nature of POLA. However, the Working Group agreed that there was merit in amending the POLA Charter to reflect the updated situation and to improve administrative arrangements. The outcomes of the line-by-line review of the POLA Charter are reflected in the *Suggested Amendments and Commentary to the POLA Charter* (below). The current, unamended Charter is provided at **Attachment B**.

In addition to these suggested amendments, the other major recommendation of the Working Group was that a *“blueprint” for hosting POLA Conferences be prepared in time to assist the Korean Bar Association in its preparation for the POLA Conference in 2020*.

This would include a set of documents to help future hosts prepare a POLA Conference, including Members and Observers to be invited and key contact people, a list which could be updated annually.

The Working Group also considered the POLA website. It noted that the website could benefit from being refreshed with an updated design. The Working Group was also mindful that maintenance of this service is generously provided to POLA by the Korean Bar Association. Any changes recommended would therefore need to be carefully considered and would require close consultation with the Korean Bar. While there is no expectation that these web-hosting arrangements will continue in perpetuity, it would be prudent to further clarify what support the Korean Bar may require to continue these arrangements.

The Working Group noted the importance of the website as a repository for POLA’s records, annual country reports and contact information. Frequent rotation of web-hosting (eg: every three years) was discussed but not supported by the Working Group due to its impracticality.

Suggested amendments to the POLA Charter

The Conference of the Presidents of Bar Law Associations in Asia Charter

Article 1. (Name)

The name of this Organization shall be “~~the Conference of the Presidents of Bar Law~~ Associations in Asia” (hereafter, ~~the~~ “CPBALOLA”).

Discussion

The Working Group recommended that the name of the Organization should be changed to reflect the name in common usage by its members – ‘the Presidents of Law Associations in Asia’ or ‘POLA’.

Drafting note: Consequential amendments to implement this recommendation have been included throughout the Charter.

Article 2. (Nature)

~~The CPBALOLA~~ shall be a non-political conference for international exchange and cooperation amongst the presidents of bar organizations in Asia.

Discussion

The Working Group recommended that this Article remain unchanged.

Article 3. (Objects)

The objects ~~of the CPBALOLA~~ shall be:

1. To exchange information and mutually cooperate regarding the operation and organization of the bar associations.
2. To provide regional cooperation for the promotion of peace and human rights activities.
3. To make joint efforts for the enhancement of the rule of law.
4. To cooperate in advancing the status of lawyers, in developing the legal profession and the scope of its activities and in strengthening the activities of the bar associations in the region and

5. To cooperate with related international or global organizations such as the UN, and other regional or international legal professional organizations.

Discussion

The Working Group considered that this provision and its ramifications were of central importance and had the potential to be powerful. It did not suggest amendments to this Article.

It was recognised that an important feature of POLA is its 'informal' nature which allows senior leaders from bar associations of the Asian region to get together in one place and exchange information and opinions on various matters, by which the members can establish mutual understanding.

The current formulation of Article 3 provides a broad remit within which members of POLA can work to achieve this. It also allows cooperation, through POLA, on issues affecting human rights, the rule of law, the status of lawyers, the activities of bar associations in the region and international cooperation with related organizations. It was noted that although POLA has not established a relationship with the UN, the Charter should also allow POLA to develop a cooperative relationship with other international legal professional organizations.

Article 4 (Membership)

1. Any ~~president of~~ bar organization representing a majority of the ~~practicing~~ practising lawyers in a country or area in Asia shall be eligible to ~~be a member of the CPBA~~ apply to become a POLA Member. The term "bar organization" shall include a bar association, a lawyers' council, a law society, or any other organization of lawyers with a similar name.
2. Applications for POLA membership shall be affirmed by a vote at the next Annual Conference. If an organization is not accepted as a POLA Member, this shall not prevent the same organization applying again in the future.

[JFBA: Please confirm whether in the suggested language above, the vote which affirms the application for membership requires a majority vote of not less than two-thirds of all POLA Members in attendance (Art.6(3)). We would like to discuss the appropriate conditions for membership approval in the conference.]

[Additional drafting comment:

Approval of membership, according to the current draft, would require a vote of not less than two thirds of all POLA Members in attendance. This is due to the general rule given by amended Art 6(3).

This standard replicates the standard in the current POLA Charter, which states “This Charter may be amended by the affirmative vote of not less than two-thirds of the members present at the Conference.”

In the current form of the amended Charter, the conditions for membership can be summarised as follows:

- *Must be a “bar organization”*
- *Must represent “a majority of the practising lawyers in a country or area in Asia”*
- *Must apply to become a POLA member (i.e. no automatic membership)*
- *Application must be accepted by not less than two thirds of POLA members present at the next annual conference.*

Approval of membership is therefore a matter of individual discretion for each member in attendance.

The scope for discretion in accepting members could be reduced in a number of ways, including for example by:

- *requiring approval if certain conditions are met*
- *automatic approval unless a member raises an objection*
- *introducing a range of mandatory and/or discretionary factors for consideration by members in making their decision*

This could lead to issues if members and/or applicants dispute the interpretation of conditions or the way that applications are determined and resolved (for example, claims about denial of procedural fairness, the proper construction of conditions of membership or that a decision is unreasonable). It is not clear how such claims could be pursued. The broader concern is that there is an increased possibility for dispute that comes with more prescriptive membership processes.

As noted in the original drafting notes, there is a need for the Charter to give due sensitivity and consideration to the inclusion of subsidiary Bars and in circumstances where more than one organization acts as a representative of the profession with national or other significance. Creating additional conditions for making an application for membership may not support this objective.]

3. POLA Membership may be revoked during the proceedings of an Annual Conference by a vote of not less than two-thirds of the members present at the Conference. If a bar organization’s POLA membership is revoked, this shall not prevent the same bar organization or another bar organization representing the same majority of the practising lawyers in a country or area in Asia applying for POLA Membership again in the future.
4. In making decisions regarding POLA membership, POLA Members will be guided by the principle that where a bar organization is a national Bar organization representing a

majority of the practising lawyers in a country or area in Asia, that organization should be a member of POLA, with due sensitivity and consideration given to the inclusion of sub-national Bars and in circumstances where more than one organization with national or other significance acts as a representative of the profession in a country or area in Asia.

25. Any president of any international legal association may participate in the Conference in session as an Associate member-observer with the approval of the Host Bar Association upon the recommendation by 3 or more Members. An Associate Member-observer shall not be eligible to vote on any matter ~~or be entitled to participate in other activities of the CPBA~~. Associate member-observers may observe the proceedings of the annual conference and witness the deliberations and resolutions of POLA Members. They may also give presentations to the annual conference if requested on the basis that this does not displace or prevent contributions by POLA Members. It is expected that Associate member-observers will report their observations to their home organizations.
6. Any POLA member may request that a specific portion of the annual conference program takes place in the absence of one or more Associate member-observers. If such a request is made all Associate member-observers to which the request applies will leave the meeting until called to return by the Chairperson. The request may be withdrawn immediately by the POLA Member making the request or by a vote of not less than two-thirds of POLA members in attendance.

Discussion

It was discussed that there is a need to be able to conduct regular reviews of POLA's membership and to clarify provisions dealing with joining and being removed from POLA. A major consideration in this discussion is that the number of POLA member organizations has grown over the years without any explicit means for members to be removed. For example, POLA's membership list includes organizations that do not regularly attend POLA meetings, are not representatives of lawyers in the Asian region (eg: The Israel Bar Association), and organizations which are defunct (eg: the Vietnam Lawyers' Association has been replaced by the Vietnam Bar Federation).

Discussions of the Working Group were consistently focussed on the importance of broad representation and inclusion throughout the region. It is important to preserve the organization's capability to bring together legal profession leaders from throughout the Asia region. It is not intended that POLA should become exclusive in its membership or be reduced over time to a smaller "ideal" number of members. The general principle guiding the Working Group in discussing this article was that where a jurisdiction had an acknowledged national Bar, that organization should be a member of POLA, with due sensitivity and consideration given to the inclusion of subsidiary Bars and in circumstances where more than one organization acts as a representative of the profession with national or other significance.

The Working Group recommended that the concept of permitting Observers to POLA meetings should be retained and the terminology clarified.

Article 5. (Annual Conference)

1. The Conference shall, in principle, be held once a year in the country or area in Asia of a member and be hosted by one or more POLA members located in that country or area in Asia (the Host Bar Association). The agenda of the Conference shall be determined by the Host Committee established for that year's conference, in consultation with other POLA Members.
2. Each Conference will include:
 - i) a Presidents' meeting;
 - ii) one or more substantive plenary sessions; and
 - iii) a Conference dinner.
3. The Host Bar Association may also offer optional social and cultural events that are not part of the Conference.
4. The Chairperson, or their nominee, will Chair the Presidents' meeting with impartiality and respect for the equal standing of all POLA Members. The purpose of the Presidents' meeting is to:
 - i) allow the President or a nominee of each POLA Member to table a written report and provide a brief oral report on the current status and activities of their organization;
 - ii) facilitate discussion of matters relevant to the administration of POLA and the pursuit of its objects;
 - iii) conduct votes on formal resolutions; and
 - iv) determine the subsequent Host Bar Association, the place and date of the subsequent Conference and to provide an opportunity for POLA Members to suggest topics for discussion at the subsequent Conference.
- ~~2. Each conference shall determine the general agenda of the Conference shall be determined by the Executive Committee established for that year's conference.~~
5. The purpose of the substantive plenary session(s) is to grant each POLA Member in attendance the opportunity to give a presentation on a topic related to POLA's objects. As per Article 4(5), Associate member-observers may also give presentations to the Annual

Conference if requested on the basis that this does not displace or prevent contributions by POLA Members.

~~3. At the Conference, each member shall have the right to one vote. A member shall be entitled to appoint one of the other members as his proxy if he is unable to attend a particular annual conference.~~

Discussion

Noting the importance of retaining flexibility and the capacity for each Host Bar Association to host POLA Conferences according to the diverse customs and expectations of the legal profession they represent, the Working Group discussed the desirability of there being more consistency from year to year in terms of the format of each POLA Conference.

Amendments also incorporate comments from the Working Group about the importance of the Chairperson being scrupulous in ensuring neutrality and fairness in the chairing of the Conference and meetings.

The Working Group also discussed the desirability of developing a separate 'blueprint' that would cover more procedural and administrative aspects of hosting a POLA Conference, including timings for notification, processes for developing agenda items and a list of those international Bars and Observers who should be invited each year. This is the subject of a separate recommendation, noted above.

It was also suggested that it would be beneficial to require specifically that the subsequent Host Bar Association should announce at least the dates and city of the subsequent Conference at each Conference. This would assist members in making arrangements for their president and other representatives to attend. To be in this position, these matters should be considered before placing a bid to host the Conference.

Drafting Note: The changes suggested above introduce a framework to provide consistency between Conferences by setting out the basic elements for all POLA Conferences. This has been done in a way that aims to maintain a broad range of discretion and flexibility in terms of how each POLA Member interprets this framework.

Other discussions of the Working Group indicated support for clarifying the status of "POLA Reports" – tabling of these reports has therefore been included as a part of the Presidents' meeting. Further guidance on the format and matters for inclusion of this report may be best dealt with as part of the 'blueprint' for POLA conferences.

Voting procedures have been moved to a new Article 6.

Article 6. (Officers ~~Resolutions~~)

1. Each POLA Member shall have an equal vote.
2. Votes shall be conducted by the Chairperson, who may appoint additional persons to assist the conduct of the vote if required.
3. Unless otherwise specified, the majority required for all votes shall be not less than two-thirds of all POLA Members in attendance.

[JFBA: We would like to discuss the appropriate conditions for resolution in the conference, i.e., if it should be two-thirds or three-fourth or otherwise.]

[LSHK: Clause 3 requires a majority of two thirds of all POLA members in attendance. It presumably means physical attendance, and not attendance via electronic means. It is suggested that for the sake of clarity, "in attendance" be changed to "attending in person. Voting is not accepted via attendance by telephone, video or other electronic means." at the end of clause 3.]

[Additional drafting comment:

This standard replicates the standard in the current POLA Charter, which states "This Charter may be amended by the affirmative vote of not less than two-thirds of the members present at the Conference." There is no other guidance on the majority required for 'regular' votes.

Including a greater variety of majorities for voting adds to the overall complexity of the Charter. In addition to considering the appropriate majority required for significant decisions, such as amending the Charter and other specific categories of decision, POLA Members may wish to consider whether the Charter should include a lesser majority requirement for the conduct of all other proceedings (general business).

Alternatives include a bare majority (50% +1), not less than three quarters, unanimity ("all members present" or "all POLA Members"). Weighted voting systems could also be considered, for example, one vote for each country, regardless of how many organisations represent jurisdictions in that country, or weighted voting depending on, for example, number of practising lawyers or duration of POLA membership.

"POLA Members in attendance" is used throughout as a shorthand to indicate "members physically present". As currently drafted, and as LSHK has identified, this is a possible source of ambiguity and confusion. This can be corrected by the addition of another phrase at the end of amended Article 3, for example " 'In attendance' means attending in person. Voting is not accepted via attendance by telephone, video or other electronic means".

Defining 'in attendance' allows the phrase "POLA members in attendance" to continue to be used as a shorthand throughout the document. Maintaining a single, consistent phrase – whatever that phrase may be – is preferable as it reduces scope for ambiguity and confusion arising from marginal differences in different parts of the Charter (e.g., "POLA Members in Attendance" vs "POLA members physically in attendance" vs "POLA Members who have attended")]

4. The quorum for any vote shall be not less than half of the total number of POLA members, including those not in attendance.
5. Despite Article 6(4), no quorum is required to vote to revoke POLA Membership in accordance with Article 4(3) where the POLA Member whose membership is to be revoked has failed to provide:
 - i) an explanation to the satisfaction of a majority of members in attendance regarding repeated, recurring or habitual failure to attend Annual Conferences; or
 - ii) current contact information and therefore cannot be contacted.
6. Except for amendments to this Charter, any formal resolution is not binding upon any POLA Member unless that POLA Member agrees to be bound. Any binding obligation may be terminated immediately and without penalty upon the POLA Member providing written notice to all other POLA Members. A resolution includes, but is not limited to, a statement, declaration or communique recording the position of POLA Members in relation to any issue relevant to POLA's objects.

[LSHK: Clause 6 indirectly imposes a positive burden to bind members to a POLA resolution and any member who does not agree to be bound will need to give notice to other POLA Members. Clause 9 provides that the result of votes upon those resolutions will be published. It is suggested that clauses 6 and 9 should be deleted as POLA is a platform for exchange and it may not be appropriate to impose these strict binding and disclosure obligations on members.]

[Additional drafting comment:

The situation contemplated is that POLA resolves in favour of Resolution A, and that POLA Member X agrees to communicate this resolution to an external organisation. The principle underpinning the current drafting is that X is not taken to agree with the Resolution or obliged to do anything unless they specifically agree. Other POLA members who do not support the resolution are also not taken to agree or obliged to act in support of the resolution. Further, any POLA Member who does vote in favour of the resolution can immediately withdraw their support, and therefore be released from any obligation to support or act in accordance with the content of the resolution.

The positive requirement to communicate this decision was included to provide more certainty to other POLA members about the level of support for POLA resolutions.

Working Group Members may wish to consider further comments provided below under amended Article 6(9) regarding recording vs publishing the position of individual members.

It is also anticipated, based on current practice, that proceedings will remain relatively informal and that resolutions that are not merely procedural will generally be non-binding or aspirational in nature.

For significant and substantive matters, allowing space for constructive ambiguity regarding the position of individual POLA Members in respect of topics upon which they may have no formal position, or perhaps a position that is being developed or subject to contest, is an important consideration. Working Group Members may wish to consider how this can be accommodated while also ensuring the level of transparency or certainty necessary to give effect to matters agreed between POLA members.

It may be useful to include guidance about the development of draft resolutions in the blueprint. This may also guide POLA members in suggesting amendments and coming to agreement regarding the appropriate form of resolutions put to vote.]

7. Any POLA Member may propose a vote on any issue. There is no need for the proposal to be seconded before conducting the vote.

JFBA: If we are to add provisions on resolutions, it is highly desirable that the proposal by a POLA member be submitted to the Host Bar and each POLA member at least 2 months prior to the voting, so that each member may go through its internal decision making process. In the past, a proposition was made right before the conference so that we did not have enough time to make a decision.]

[Additional drafting comment:

Current practice and recent experience have been favoured in developing the amendments to the Charter. This experience/practice includes limited notice for resolution making. While perhaps less than ideal, the suggested amendments attempt to put a system around what currently takes place.

Many issues will be procedural or minor in nature, and should therefore be capable of being resolved immediately, even if there is no notice. For issues requiring more in-depth consideration, perhaps members (individually or as a whole) should be permitted to take the question on notice with an undertaking to provide a final response within a certain period of time?

In terms of working towards more predictable and early notification of issues for resolution, perhaps this can be included in the blueprint document (a date for POLA Members to submit matters for resolution)?

Mandatory minimum notice periods for resolutions may constrain POLA from responding urgently to urgent or time sensitive issues. Working Group Members may therefore wish to consider whether there are certain circumstances where notice requirements should not be required.]

8. To preserve POLA's capacity to conduct its business without unnecessary delay or complexity, proxy voting is not permitted.
9. A record of all resolutions proposed and the result of any votes upon those resolutions will be published.

[JFBA: Does this mean that who approved and who did not approve a resolution be also published? We expect that, what is and what is not to be published may also become a matter of resolution.]

[LSHK: Clause 6 indirectly imposes a positive burden to bind members to a POLA resolution and any member who does not agree to be bound will need to give notice to other POLA Members. Clause 9 provides that the result of votes upon those resolutions will be published. It is suggested that clauses 6 and 9 should be deleted as POLA is a platform for exchange and it may not be appropriate to impose these strict binding and disclosure obligations on members.]

[Additional drafting comment:

Given that members can propose a vote on any issue, amended art 6(7), the effect of the Charter, as amended, appears to be that what is and is not published can be a matter determined by resolution.

Regarding publication, the amended Charter would only require publication of the result – e.g. whether a resolution is passed, rejected or withdrawn – but not how each POLA member votes. The Working Group may wish to consider whether it is desirable that each member's vote is also recorded, and if so, whether that vote should be published along with the resolution. Comments received from LSHK indicate that publication of voting patterns may not be desirable as a general rule.

Recording which POLA Members voted in the affirmative may be useful. For example, if a resolution is published or results in another kind of public action (e.g., sending a letter or making an inquiry) it may be beneficial to be able to clearly state which POLA Members are in favour of the resolution or action. This would distinguish POLA Resolutions from resolutions of a board of directors, which are binding upon each and every member of a board regardless of whether they voted in favour of the measure or not. By recording which members vote in favour, it is possible to say that a particular resolution has the support of only those POLA Members who voted in favour of the resolution, rather than all POLA members as a unitary block.

This approach may be supplemented by allowing individual members to request that their opposition or abstention is also recorded.

It is also advisable to distinguish between recording and publishing. Working Group members may wish to consider whether it may be desirable in some instances to record each POLA Member's vote on a resolution – as a matter of record keeping on important matters and for internal reference among POLA members – with publication restricted to a subset of information (e.g., the number of votes in favour) or on a by-exception basis.]

- ~~1. The CPBA shall have 3 officers: a Chairman, a Vice-Chairman and an Honorary Chairman. The Chairman shall be the President of the Bar Association sponsoring the subsequent conference, and a Vice-Chairman shall be designated by him.~~

~~The Honorary Chairman shall be the President of the Bar Association that sponsored the immediately prior conference.~~

~~2. The term of office of the Chairman and Vice-Chairman shall be until the closing of the conference in session from the time of appointment and its designation.~~

Discussion

It was agreed by the Working Group that this provision, in its current form, was 'unworkable'. In practice it has fallen out of use. Recent experience has been that the previous Chairperson/Host Bar Association had little capacity to meaningfully contribute towards or direct the organization of the subsequent conference as "Honorary Chairman".

Drafting Note: The current provision may have intended that the "Vice Chairman" be a representative of the next host country, however this is not clear on the face of the Charter in its present, unamended, form. If so, it is noted that it may often be impossible to appoint a Vice Chairman until the conclusion of the Presidents' meeting, when hosting arrangements for the next Conference are agreed. By this time, there is little practical contribution for the Vice Chairman to make to the organization and hosting of the Conference. There may be a residual role for implementing outcomes from the Conference, but this is likely to be more easily performed by the host organization. The role of the host organization has been dealt with by the amended Article 7.

The amended Article 6 deals with resolutions. Amended article 6(5) has been included to avoid a situation where POLA's membership list becomes dominated by inactive POLA Members. If this were to occur, Article 6(4), without the suggested Article 6(5), would effectively paralyse POLA due to its inability to achieve a quorum. Rather than introduce special quorums, which may avoid but would not ultimately resolve this problem, a set of special powers is suggested to allow active members to "tidy up" the membership list. Any POLA Member removed by these means would not be prevented, per amended Article 4(3), from applying for its membership to be reinstated.

Article 5(3) currently permits POLA Members to issue proxies. The Working Group discussed the need to clarify how proxies work, however the suggested amendments have taken the course of removing proxy voting entirely. This has the major advantage of accommodating the recent practice of POLA, which generally does not issue proposals sufficiently in advance to allow non-attending Members to arrange proxies.

Proxy voting also creates the possibility of there being two paths to achieving a successful resolution by POLA – one with more formal notification requirements and the inclusion of proxies, and a second where there is little if any prior warning before a vote and where the proxy voting could prove to be impractical. This would have two adverse consequences:

Firstly, the POLA Member proposing a vote on an issue may make a tactical decision on which method to use in order to increase the chance of their proposal succeeding.

Secondly, POLA Members instructing proxies may need to give unfettered discretion to their proxy to cast their vote as they see fit in response to a proposal made without notice. Given the importance of independence, including self-regulation and self-governance, as a guiding principle for bar associations, it is assumed that this would not be considered desirable.

Including proxy voting would imply the creation of a formal process and timeline for lodging matters for formal vote. Rules for this purpose can be developed if required. However, POLA Members may wish to consider how this might impact on POLA's capacity to conduct its meetings with minimum formal requirements and to create an environment that fosters open discussion and free exchanges of information. The desirability of increasing vs decreasing the scope for this flexibility may need to be the subject of further analysis and discussion, however Working Group members were consistently in favour of retaining the flexibility and openness that characterises POLA.

Article 7. (Executive Committee-Host Bar Association)

1. The Host Bar Association for an annual conference is responsible for the organization and management of that Annual Conference. The Host Bar Association will also be responsible for overseeing the work of any ad-hoc committees during the calendar year of the Conference it is responsible for organizing.
2. The Host Bar Association for a Conference shall designate a Chairperson, typically the President of the Host Bar Association at the time of the Conference, and a contact officer working in the Secretariat of the Host Bar Association.
3. Where two or more POLA Members have elected to work together to deliver a Conference, these members are collectively referred to as the Host Bar Association. In these circumstances, each POLA Member hosting the Conference shall designate a Chairperson. The designated Chairpersons shall be co-Chairs, unless otherwise agreed between themselves.
4. The Host Bar Association may change, reassign or designate additional official roles and contact persons as required to deliver a Conference. These will be promptly communicated to all other POLA Members and associate member-observers.
5. The Host Bar Association may request assistance from other POLA Members in fulfilling its responsibilities under the Charter.
- ~~1. five or more persons in order to constitute an Executive Committee. The Executive Committee shall make its decisions by consensus: provided, however, that in the event of disagreement the decision of the Chairman shall be final.~~

~~The Executive Committee may include as its guest – non voting members a limited number~~

of persons among those recommended by the President of the previous hosting Bar Association or other participating Bar Association.

2. The Executive Committee shall be responsible for :-

- i. Organizing the upcoming annual conference seeking input from POLA Members regarding topics for discussion during the President's meeting and substantive plenary sessions and
- ii. Overseeing the activities of the Ad Hoc Committee until the end of the upcoming annual conference. The Executive Committee shall be a policy or planning committee. The work required to carry out its plan shall be performed by the Secretariat.

3.5. The Head of the Executive Committee **Host Bar Association** shall give appropriate notices to, and confer with, **the Chairman all POLA Members** concerning the progress of preparations for the ~~subsequent conference~~ **Conference it is responsible for organizing, including by providing opportunities for other POLA Members to provide input regarding the topics for discussion at that conference.**

Discussion

The Working Group noted that suggestions and guidance on topics and content of particular interest to the Members would be very helpful in preparing for the next Conference and provide some continuity with the Conferences. The earlier suggestion of calling for topics for the following POLA Conference at the Presidents' meeting was reiterated. This has been implemented at revised Articles 5(4) and 7(5).

It was also suggested that it would be beneficial to clearly provide mechanisms for cooperation between POLA members in hosting conferences.

Drafting note: The suggested amendments continue the logic of the Working Group in relation to Article 6, especially its conclusion that the current structure of Officers and Executive Committee does not resemble what actually occurs, or is required, to successfully organise a POLA Conference. In fact, recent practice does not leave any role for Officers or Executive Committee members who are not directly employed by or representatives of the Host Bar Association.

The role of the Executive Committee has therefore been replaced by clear provisions setting out the role of the Host Bar Association. The Host Bar Association is the more natural and appropriate entity given it is (i) financially responsible for the Conference, (ii) has direct control over the staff and other resources required to host the Conference, and (iii) is generally located in the country or area where the Conference will take place.

Article 8. (Ad Hoc Committee)

Ad Hoc Committees may be established for planning, preparing, and implementing activities specifically designated by the Chairman as the main activities to be resolved by ~~the CPBA~~ POLA.

Discussion

The Working Group representatives had no comment on this Article and were satisfied with it.

Article 9. (Finance)

1. ~~As a general rule, the~~ The Host Bar Association shall bear the costs arising from hosting the ~~conference~~ Conference.
2. The President of each country's Bar Association and any other official participant in the ~~conference~~ Conference shall bear their own travel and attendance expenses.
3. The Host Bar Association may request payment to cover the cost of optional social and cultural events that are not part of the ~~conference~~ Conference.

Discussion

The Working Group did not make any particular recommendations regarding this Article.

Drafting note: It is suggested that the words "as a general rule" should be removed from Article 9(1) as there are no stated exceptions to the 'general rule'. Article 9(3) has been included to avoid doubt about financial liability for social and cultural events that are often arranged to coincide with POLA but are not part of the essential proceedings of POLA (see amended Article 5(2)). Article 9(3) is not an exception to the rule in Article 9(1) because the optional side-events are specifically "not part of the Conference".

Article 10. (Duration)

1. This Charter shall take effect upon the approval by the affirmative vote of not less than two-thirds of the Members present at the 1991 Conference.
2. POLA shall continue in perpetuity.

~~The duration of the CPBA shall be perpetual.~~

Discussion

The Working Group had no specific comment on this article, other than that the name 'CPBA' be deleted and replaced with the correct acronym 'POLA'.

Drafting note: Addenda Article 1 (Effective Date) has been incorporated into this Article. The wording of the current Article 10 has also been revised slightly. The current Article 10 seems to have been inspired by company laws that require the person setting up a corporation to nominate a company's lifespan as either 'perpetual' or 'indefinite' at the time of its incorporation. It is suggested that this is not necessary for POLA.

Article 11. (Secretariat)

- ~~1. The President of the Bar Association hosting the subsequent conference shall appoint as the Secretariat as many persons with as many functions as he deems necessary.~~
- ~~2. The Secretariat shall perform its various duties as directed by the Executive Committee.~~
- ~~3. The hosting Bar Association shall be responsible for the cost of the Secretariat.~~

Discussion

The Working Group noted that there is no permanent secretariat for POLA and that the Host Bar Association is responsible for providing necessary support to organise each Annual Conference. These Secretariat functions should remain under the control of the Host Bar Association, rather than an external 'Executive Committee'.

Drafting note: The suggested amendments, taken together, remove the concept of the Executive Committee entirely, with any functions previously reserved to the Executive Committee returned to the Host Bar Association.

It is suggested that, if the suggested amendments are accepted in their current form, this entire Article can be deleted.

The current Article 11(1) is now covered by amended Article 7(4).

Unless otherwise specified, as in the case with the current Article 11(2), secretariat functions will be under the control of the Host Bar Association. Article 11(2) can therefore be deleted.

Current Article 11(3) is not necessary as amended Article 9(1) states that the Host Bar Association is responsible for the costs arising from hosting the Conference.

Costs may become an issue where two or more organizations elect to jointly host a POLA Conference. The current and amended versions of the Charter are both silent on this issue. Provisions to deal with this issue have not been included in the amended version of the Charter on the basis that it is better to allow joint hosts to come to their own agreements regarding the

cost of hosting a POLA Conference, rather than impose additional requirements through the Charter that may impede or prevent cooperation.

Article 12. (Amendment of Charter)

Subject to quorum, this ~~This~~ Charter may be amended by the affirmative vote of not less than two-thirds of the members present at the Conference.

Discussion

No amendments were suggested to this article.

Drafting note: Discussions by the Working Group indicated support for using the two-thirds majority rule for votes on other matters. This standard has therefore been used throughout the suggested amendments including in respect of membership (Article 4) and resolutions (Article 6).

The words "subject to quorum" have been used to avoid confusion.

ADDENDA

Article 1. (Effective Date)

~~This Charter shall take effect upon the approval by the affirmative vote of not less than two-thirds of the Members present at the 1991 Conference.~~

Discussion

Drafting note: This article can be deleted as it has been incorporated in full into Article 10.

Article 2. (Chairman)

~~The President of the Bar Association sponsoring the Conference at the time of the adoption of this Charter shall act as the Chairman of the particular Conference in session.~~

Discussion

Drafting note: This provision is no longer required as it has been incorporated into amended Article 7(2) (designation of a Chairperson). The role of the Chairperson has been expanded on by amended articles 4(6), 5(4), 6(2) and 7(3).

29th Presidents of Law Associations in Asia Conference Presidents' Meeting – Agenda Item #2

Review of POLA Objectives, Founding Documents and Operations

Sponsor

Law Council of Australia

Proposal

To establish a working group for the purpose of conducting a 30 year 'health check' of POLA's objectives, founding documents and operations, with outcomes to be delivered to the 2019 POLA meeting.

Discussion Points

Composition of the Working Group: A working group could be composed of up to five POLA Member Organisations, each represented by one senior office holder and one officer level member of staff. One organisation would provide 'leadership among equals' to drive the work of this group forward. Working group members should be broadly representative of the diverse membership of POLA.

Terms of Reference: It is not proposed that there should be detailed terms of reference for the Working Group, beyond a broad instruction to conduct a review of POLA's objectives, founding documents and operations, and to report to the 2019 POLA Presidents' meeting.

Nature of Review: The Review would aim to produce a set of options for consideration at the 2019 Presidents' Meeting. These would be for consideration only and will not have any binding effect until endorsed by POLA members.

Background

POLA is an important regional organisation that regularly brings together leaders of the legal profession from throughout Asia. It therefore has the potential to be an important and influential organisation that can support individual member organisations and provide influential views on important developments affecting the rule of law throughout the region.

Current strengths

- The only exclusive grouping of the leaders of law societies and bar associations in Asia.
- Wide list of member organisations
- Regular opportunities to discuss legal developments throughout the region
- High value given to mutual exchange, collaboration and promotion of friendships between member organisations

Possible areas for improvement

- The POLA Charter does not reflect current practice, e.g. Art 6 (Officers) and Art 7 (Executive Committee)
- Connection from one conference to the next could be improved
- Communication about the content of discussions could be improved, including communication of outcomes beyond POLA's membership.
- Mechanisms to ensure POLA's objects (Art 3) result in practical outputs.

The Conference of the Presidents of Bar Associations in Asia Charter

Article 1. (Name)

The name of this Organization shall be “the Conference of the Presidents of Bar Associations in Asia” (hereafter, the “CPBA”).

Article 2. (Nature)

The CPBA shall be a non-political conference for international exchange and cooperation amongst the presidents of bar organizations in Asia.

Article 3. (Objects)

The object of the CPBA shall be:

6. To exchange information and mutually cooperate regarding the operation and organization of the bar associations.
7. To provide regional cooperation for the promotion of peace and human rights activities.
8. To make joint efforts for the enhancement of the rule of law.
9. To cooperate in advancing the status of lawyers, in developing the legal profession and the scope of its activities and in strengthening the activities of the bar associations in the region and
10. To cooperate with related international or global organizations such as the UN.

Article 4 (Membership)

1. Any president of bar organization representing a majority of the practicing lawyers in a country or area in Asia shall be eligible to be a member of the CPBA. The term “bar organization” shall include a bar association, a lawyers council, a law society, or any other organization of lawyers with a similar name.
2. Any president of any international legal association may participate in the Conference in session as an Associate member-observer with the approval of the Host Bar Association upon the recommendation by 3 or more Members. An Associate Member-observer shall not be eligible to vote on any matter or be entitled to participate in other activities of the CPBA.

Article 5. (Conference)

1. The Conference shall, in principle, be held once a year in the country of a member.

Attachment B

2. Each conference shall determine the subsequent Host Bar Association and the place and time of the subsequent conference. The general agenda of the Conference shall be determined by the Executive Committee established for that year's conference.
3. At the Conference, each member shall have the right to one vote. A member shall be entitled to appoint one of the other members as his proxy if he is unable to attend a particular annual conference.

Article 6. (Officers)

1. The CPBA shall have 3 officers: a Chairman, a Vice-Chairman and an Honorary Chairman. The Chairman shall be the President of the Bar Association sponsoring the subsequent conference, and a Vice-Chairman shall be designated by him.

The Honorary Chairman shall be the President of the Bar Association that sponsored the immediately prior conference.

2. The term of office of the Chairman and Vice-Chairman shall be until the closing of the conference in session from the time of appointment and its designation.

Article 7. (Executive Committee)

1. The President of the Bar Association hosting the subsequent conference shall designate five or more persons in order to constitute an Executive Committee. The Executive Committee shall make its decisions by consensus: provided, however, that in the event of disagreement the decision of the Chairman shall be final.

The Executive Committee may include as its guest - non voting members a limited number of persons among those recommended by the President of the previous hosting Bar Association or other participating Bar Association.

2. The Executive Committee shall be responsible for :
 - i. Organizing the upcoming annual conference and
 - ii. Overseeing the activities of the Ad Hoc Committee until the end of the upcoming annual conference. The Executive Committee shall be a policy or planning committee. The work required to carry out its plan shall be performed by the Secretariat.
3. The Head of the Executive Committee shall give appropriate notices to, and confer with, the Chairman of the Conference concerning the progress of preparations for the subsequent conference.

Attachment B

Article 8. (Ad Hoc Committee)

Ad Hoc Committees may be established for planning, preparing, and implementing activities specifically designated by the Chairman as the main activities to be resolved by the CPBA.

Article 9. (Finance)

4. As a general rule, the Host Bar Association shall bear the costs arising from hosting the conference.
5. The President of each country's Bar Association and any other official participant in the conference shall bear their own travel and attendance expenses.

Article 10. (Duration)

The duration of the CPBA shall be perpetual.

Article 11. (Secretariat)

4. The President of the Bar Association hosting the subsequent conference shall appoint as the Secretariat as may person with as many functions as he deems necessary.
5. The Secretariat shall perform its various duties as directed by the Executive Committee.
6. The hosting Bar Association shall be responsible for the cost of the Secretariat.

Article 12. (Amendment of Charter)

This Charter may be amended by the affirmative vote of not less than two-thirds of the members present at the Conference.

ADDENDA

Article 1. (Effective Date)

This Charter shall take effect upon the approval by the affirmative vote of not less than two-thirds of the Members present at the 1991 Conference.

Article 2. (Chairman)

The President of the Bar Association sponsoring the Conference at the time of the adoption of this Charter shall act as the Chairman of the particular Conference in session.