

立法會
Legislative Council

LC Paper No. CB(2)1506 /01-02
(These minutes have been
seen by the Administration)

Ref : CB2/BC/24/00

Legislative Council
Bills Committee on Statute Law (Miscellaneous Provisions) Bill 2001

Minutes of the second meeting
held on Monday, 18 March 2002 at 8:30 am
in the Chamber of the Legislative Council Building

Members Present : Hon Margaret NG (Chairman)
Hon Cyd HO Sau-lan
Hon James TO Kun-sun
Hon Jasper TSANG Yok-sing, JP
Hon Emily LAU Wai-hing, JP
Hon Audrey EU Yuet-mee, SC, JP

Members Absent : Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Hon Mr Ambrose LAU Hon-chuen, GBS, JP

Public Officers Attending : Mr Michael SCOTT
Senior Assistant Solicitor General

Ms Monica LAW
Acting Senior Assistant Law Draftsman

Mr Gavin SHIU
Senior Government Counsel
Prosecutions Division

Miss Doris LO
Acting Senior Government Counsel
Legal Policy Division

By Invitation : The Law Society of Hong Kong

Mr Herbert TSOI
President

Mr Patrick MOSS
Secretary General

Mr Tony HARROD
Director of Compliance

Ms Heidi CHU
Assistant Director
Regulation and Guidance

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

Staff in Attendance : Ms Bernice WONG
Assistant Legal Adviser 1

Mr Paul WOO
Senior Assistant Secretary (2)3

I. Briefing by the Clerk to Bills Committee and Assistant Legal Adviser and work plan of the Bills Committee
(LC Paper Nos. CB(2)1352/01-02(01) and (02); LS69/01-02)

The Clerk to Bills Committee and Assistant Legal Adviser briefed members on the above-referenced papers prepared for members' reference.

II. Meeting with the Administration and the Law Society of Hong Kong
(LC Paper No. CB(2)1352/01-02(04) - letter dated 14 March 2002 from the Law Society of Hong Kong)

2. An article published in Hong Kong Lawyer (March 2001) on "Proposed Alternative Disciplinary Procedure" and a "list of offences which may be dealt with by means of an intermediate sanction" provided by the Law Society were tabled at the meeting (circulated under LC Paper No. CB(2)1395/01-02(01) and (02) after the meeting).

3. The Committee deliberated (index of proceedings attached at **Annex**).

Part XIV of the Bill (Amendments to Legal Practitioners Ordinance)

4. Members suggested that the Law Society should inform its members and solicit their views on the proposed alternative disciplinary procedure which provided for the summary disposal of complaints by the Tribunal Convenor of the Solicitors Disciplinary Tribunal (SDT) by way of a fixed penalty system.

5. Ms Audrey EU and Ms Emily LAU opined that the implementation of the proposed fixed penalty system should not lose sight of the need to preserve transparency and protect the public's right to know relating to breaches committed by legal practitioners.

6. The Law Society explained that the proposed disciplinary procedure was only intended to deal with minor technical breaches not involving dishonesty, without having to proceed to a full hearing of the SDT. Offence cases of a more serious nature and persistent offenders would be referred to the SDT. Also, under the Legal Practitioners Ordinance, on application by the solicitor and on an order made by the SDT or the Court of Appeal, the Law Society might not publish a summary of the findings of a SDT and the name of the solicitor who was the subject of the findings in any publication produced by the Society.

7. The Law Society also informed members that a total of 168 letters of disapproval had been issued by the Society to practitioners in the year 2000, as compared to 118 in the year 1999. Of the 168 letters of disapproval, 37 came within the scope of the proposed disciplinary procedure. The remaining 131 letters of disapproval involved trivial and minor complaints against solicitors. The Law Society would review and finalize the list of the offences which might be dealt with by the proposed disciplinary procedure.

8. The Bills Committee requested the Law Society to provide a written reply -

- (a) to explain the scope and categories of breaches suitable for summary disposal by the Tribunal Convenor of the SDT under the proposed alternative disciplinary procedure (clauses 108 and 109);
- (b) to explain how the proposed alternative disciplinary procedure would operate (e.g. the mechanism for fixing the level of penalty and the details intended to be laid down in the rules to be made by the Council of the Law Society etc);
- (c) having regard to the views expressed by some members of the Bills Committee, to explain whether the operation of the alternative disciplinary procedure would address the need to enhance transparency and protect the public's right to know, e.g. in the case

of a complaint lodged by a member of the public against a solicitor;

- (d) in view of the wide scope of proposed sections 9A(1A) and (1B), to review whether the drafting reflected the purpose of the proposed alternative disciplinary procedure (clause 108);
- (e) to comment on whether the reference to “shall be remunerated by the Society” in the proposed section 9(6) should be amended to “may be remunerated by the Society” (clause 107);
- (f) to explain the conditions to be prescribed by the Council of the Law Society for issuing a practising certificate (clause 105).

9. The Bills Committee also requested the Administration -

- (a) having regard to the last paragraph of page 2 of the Law Society's submission dated 14 March 2002, to explain the policy intent of transferring to the Council of the Law Society the powers of the Chief Justice to prescribe grounds for refusal to issue a practising certificate and conditions that may be attached to a practising certificate (clause 105 of the Bill);
- (b) to consider whether the reference to “shall be remunerated by the Society” in proposed section 9(6) should be amended to “may be remunerated by the Society” (clause 107); and
- (c) in view of the wide scope of proposed sections 9A(1A) and (1B), to review whether the drafting reflects the purpose of the proposed alternative disciplinary procedure (clause 108).

III. Date of next meeting

- 10. The next meeting would be held on 28 March 2002 at 10:45 am.
- 11. There being no other business, the meeting ended at 10:35 am.

Council Business Division 2
Legislative Council Secretariat
3 April 2002

**Proceedings of the second meeting of the
Bills Committee on Statute Law (Miscellaneous Provisions) Bill 2001 on
Monday, 18 March 2002 at 8:30 am
in the Chamber of the Legislative Council Building**

Time	Speaker	Subject(s)	Action required
000001-000041	Chairman	Papers prepared by Clerk and Assistant Legal Adviser (LC Paper Nos. CB(2)1352/01-02(01) and (02); LS69/01-02)	
000042-000223	Clerk	-ditto-	
000224-000237	Chairman	-ditto-	
000238-000255	Clerk	-ditto-	
000256-000323	Chairman	-ditto-	
000324-000335	ALA	-ditto-	
000336-000339	Chairman	-ditto-	
000340-000358	ALA	-ditto-	
000359-000406	Chairman	-ditto-	
000407-000620	ALA	-ditto-	
000621-000625	Chairman	-ditto-	
000626-000919	ALA	-ditto-	
000920-001139	Chairman	Work plan of the Bills Committee / scrutiny of different Parts of the Bill	
001140-001146	Ms Audrey EU	-ditto-	
001147-001159	Chairman	-ditto-	
001200-001210	Ms Emily LAU/ Chairman/ Ms Audrey EU	-ditto-	
001211-001747	Chairman	-ditto-	
001748-001827	Ms Audrey EU	-ditto-	
001828-001958	Chairman	-ditto-	
001959-002019	Ms Emily LAU	-ditto-	
002020-002446	Chairman	-ditto-	
002447-002716	Law Society	Letter dated 14 March 2002 from the Law Society on Part XIV of the Bill (LC Paper No. CB(2)1352/01-02(04))	

002717/002723	Chairman	Consultation of members of the Law Society on the proposed alternative disciplinary procedure under Part XIV	
002724-002922	Law Society	-ditto-	
002923-002941	Chairman	-ditto-	
002942-003102	Law Society	-ditto-	
003103-003106	Chairman	-ditto-	
003107-003234	Ms Emily LAU	-ditto-	
003235-003314	Chairman	-ditto-	
003315-003338	Law Society	-ditto-	
003339-003406	Chairman	-ditto-	
003407-003528	Ms Audrey EU	Matters relating to the proposed alternative disciplinary procedure	
003529-003641	Law Society	Article published in <u>The Hong Kong Lawyer</u> (March 2001) (LC Paper No. CB(2)1395/01-02(01))	
003642-003750	Ms Audrey EU	Solicitors to be informed of the details of the operation of the proposed disciplinary procedure under the Bill	
003751-003808	Chairman	-ditto-	
003809-003917	Law Society	-ditto-	
003918-003939	Chairman	-ditto-	
003940-003943	Law Society	-ditto-	
003944-004031	Chairman	-ditto-	
004032-004340	Law Society	-ditto-	
004341-004439	Ms Audrey EU	-ditto-	
004440-004522	Law Society	-ditto-	
004523-004653	Chairman	-ditto-	
004654-004807	Law Society	-ditto-	
004808-004814	Chairman	-ditto-	
004815-004923	Ms Emily LAU	Consultation conducted by the Adm / letters of disapproval issued by the Law Society to solicitors	
004924-004939	Chairman	-ditto-	

004940-005036	Adm	Consultation on the Bill	
005037-005042	Chairman	-ditto-	
005043-005119	Law Society	Letters of disapproval issued by the Law Society	
005120-005204	Ms Emily LAU	Consultation on the Bill	
005205-005249	Adm	-ditto-	
005250-005344	Ms Emily LAU	-ditto-	
005345-005509	Chairman	-ditto-	
005510-005525	Law Society	-ditto-	
005526-005752	Ms Audrey EU	Offences that came under the category of the fixed penalty breaches envisaged	
005753-010041	Law Society	-ditto-	
010042-010036	Ms Audrey EU	Publicizing of the breaches committed by solicitors to safeguard the public's right to know	
010037-010441	Law Society	-ditto-	
010442-010629	Ms Audrey EU	-ditto-	
010630-010636	Chairman	-ditto-	
010637-010641	Law Society	-ditto-	
010642-010803	Chairman	Rules to be made by the Law Society	
010804-010846	Law Society	-ditto-	
010847-010920	Chairman	-ditto-	
010921-011026	Ms Emily LAU	Transparency of the proposed disciplinary mechanism to protect public interest	
011027-011043	Chairman	-ditto-	
011044-011201	Law Society	-ditto-	
011202-011243	Ms Emily LAU	-ditto-	
011244-011246	Law Society	-ditto-	
011247-011358	Chairman	-ditto-	
011359-011503	Law Society	-ditto-	
011504-011536	Ms Emily LAU	-ditto-	
011537-011622	Law Society	Statistics on letters of disapproval issued by the Law Society	

011623-011640	Ms Emily LAU	Nature of the breaches involved in letters of disapproval	
011641-011741	Law Society	-ditto-	
011742-011746	Chairman	-ditto-	
011747-011758	Law Society	-ditto-	
011759-011807	Ms Emily LAU	-ditto-	
011808-011810	Chairman	-ditto-	
011811-011839	Ms Emily LAU	-ditto-	
011840-012002	Law Society	-ditto-	
012003-012010	Ms Emily LAU	-ditto-	
012011-012030	Law Society	-ditto-	
012031-012041	Ms Emily LAU	-ditto-	
012042-012049	Chairman	-ditto-	
012050-012107	Law Society	-ditto-	
012108-012211	Chairman	-ditto-	
012212-012249	Ms Emily LAU	-ditto-	
012250-012324	Law Society	-ditto-	
012325-012335	Ms Emily LAU	How the Law Society would deal with persistent offenders	
012336-012342	Law Society	-ditto-	
012343-012352	Ms Emily LAU	-ditto-	
012353-012409	Law Society	-ditto-	
012410-012443	Chairman	-ditto-	
012444-012500	Law Society	-ditto-	
012501-012520	Chairman	-ditto-	
012521-012544	Law Society	-ditto-	
012545-012555	Ms Emily LAU	-ditto-	
012556-012626	Law Society	-ditto-	

012627-012749	Chairman	Transfer to the Council of the Law Society the powers of the Chief Justice to prescribe grounds for refusal to issue a practising certificate and conditions that might be attached thereto (clause 105 of the Bill) (Law Society's letter at LC Paper No. CB(2)1352/01-02(04))	
012750-013300	Law Society	-ditto-	
013301-013429	Chairman	-ditto-	
013430-013517	Law Society	-ditto-	
013518-013536	Chairman	-ditto-	
013537-013616	Law Society	-ditto-	
013617-013638	Chairman	-ditto-	
013639-013852	Law Society	-ditto-	
013853-013904	Chairman	-ditto-	
013905-013946	Ms Emily LAU	Adm's response to the last paragraph of page 2 of the Law Society's letter concerning clause 105 of the Bill	
013947-014010	Chairman	-ditto-	
014011-014030	Adm	-ditto-	Adm (para. 9(a))
014031-014045	Ms Emily LAU	-ditto-	
014046-014054	Chairman	Purpose of clause 105	
014055-014121	Law Society	-ditto-	
014122-014315	Chairman	-ditto-	
014316-014326	Chairman/ Ms Emily LAU	-ditto-	
014327-014355	Law Society	-ditto-	
014356-014828	Chairman	Examination of clauses under Part XIV of the Bill	
014829-014835	Ms Emily LAU	Drafting of the proposed new section 9(6) in clause 107	
014836-014907	Law Society	-ditto-	
014908-014927	Chairman	-ditto-	
014928-014946	Law Society	-ditto-	

014947-015013	Ms Audrey EU	-ditto-	
015014-015058	Law Society	-ditto-	
015059-015216	Chairman	-ditto-	Adm / Law Society (paras. 8(e) and 9(b))
015217-015227	Ms Audrey EU	-ditto-	
015228-015235	Chairman	-ditto-	
015236-015253	Ms Audrey EU	-ditto-	
015254-015315	Chairman	-ditto-	
015316-015319	Adm	-ditto-	
015320-015458	Chairman	-ditto-	
015459-015630	Ms Audrey EU	Clauses 108 and 109	
015631-015637	Chairman	-ditto-	
015638-015646	Adm	-ditto-	
015647-015833	Chairman	Drafting and scope of proposed sections 9A(1A) and (1B) in clause 108	
015834-015856	Law Society	-ditto-	
015857-015932	Chairman	-ditto-	
015933-020005	Law Society	-ditto-	
020006-020111	Chairman	Whether the drafting of proposed sections 9A(1A) and (1B) reflects the purpose of the proposed disciplinary procedure	Adm / Law Society (paras. 8(d) and 9(c))
020112-020225	Law Society	How Law Society dealt with complaints	
020226-020256	Ms Audrey EU	Operation of the proposed disciplinary procedure / fixing of level of penalty	
020257-020309	Chairman/ Ms Audrey EU	-ditto-	
020310-020351	Ms Audrey EU	-ditto-	
020352-020402	Chairman	Rules to be made by the Law Society	
020403-020423	Law Society	-ditto-	
020424-020437	Chairman	-ditto-	

020438-020520	Law Society	-ditto-	
020521-020647	Chairman	Law Society to respond to issues raised	Law Society (para. 8)
020648-020651	Law Society	-ditto-	
020652-020703	Chairman	Next meeting of the Bills Committee	
020704-020724	Law Society	-ditto-	
020725-020748	Chairman	-ditto-	

Note : The audio records of the above proceedings are kept at the LegCo Library

Legislative Council Secretariat

3 April 2002