

THE

LAW SOCIETY
OF HONG KONG
香 港 律 師 會

3/F WING ON HOUSE • 71 DES VOEUX ROAD
CENTRAL • HONG KONG DX-009100 Central
香港中環德輔道中 71 號
永安集團大廈 3 字樓

TELEPHONE (電 話) : (852) 2846 0500
FACSIMILE (傳 真) : (852) 2845 0387
E-MAIL (電子郵件) : sg@hklawsoc.org.hk
HOME PAGE (網 頁) : <http://www.hklawsoc.org.hk>

Our Ref : PM/HC/sp/CWP160
Your Ref : CB2/BC/24/00
Direct Line : 2846 0503

14 March 2002

Mrs Percy Ma
Clerk to Bills Committee
Legislative Council
Legislative Council Building
8 Jackson Road
Central, Hong Kong.

Dear Mrs. Ma,

**Re: Bills Committee on Statute Law (Miscellaneous Provisions) Bill 2001
Meeting on 18 March 2002**

With reference to your letter dated 8 March 2002, please be informed that the following persons will attend the meeting of the Bills Committee on 18 March 2002:

<u>Name</u>	<u>Title</u>
Mr Herbert Tsoi (蔡克剛)	President (會長)
Mr Patrick Moss (穆士賢)	Secretary General (秘書長)
Mr Tony Harrod (夏里諾)	Director of Compliance (審查及紀律部總監)
Ms Heidi Chu (朱潔冰)	Assistant Director Regulation and Guidance (條例及指導部副總監)

Disposal of Complaints by Tribunal Convenor

The proposed amendments to the Legal Practitioner Ordinance (“Ordinance”) empower the Tribunal Convenor of the Solicitors’ Disciplinary Tribunal to deal with certain complaints by way of a fixed penalty without having to refer them to a full Solicitors’ Disciplinary Tribunal provided that certain conditions are met.

Under the Ordinance, the role of the Council is merely that of the prosecuting authority before the Solicitors Disciplinary Tribunal and it has no power to admonish or censure solicitors. In practice, in cases which are not referred to the Tribunal convenor under section 9A of the Ordinance, the Standing Committee on Compliance issues letters of regret or disapproval in which it is made clear to the solicitor that “this does not amount to a censure”. These letters do not form part of the solicitor’s disciplinary record and inevitably are frequently ignored by the recipients as they do not operate as an effective disciplinary sanction. However, the appointment of a Tribunal is an expensive and time-consuming process, which may not be appropriate in certain situations.

As a consequence, the supplementary disciplinary process of dealing with certain complaints summarily by way of a fixed penalty is proposed to fill the gap between the issue of letters of regret or disapproval and the referral of matters to the Solicitors Disciplinary Tribunal.

Under the proposed amendments, only those complaints where the person complained of admits liability and consents to the matter being dealt with by way of fixed penalty will be so disposed of. There is no question of any person being deprived of their right to be heard before a Tribunal if he wishes. The proposed amendments merely expand the choices available for dealing with those complaints that fulfil the prescribed conditions.

The proposed alternative disciplinary procedure allowing the Tribunal Convenor to deal with certain complaints by way of a fixed penalty system addresses the following difficulties encountered in the existing disciplinary proceedings:-

- the high costs involved in disciplinary proceedings
- unnecessary delays in cases of relatively minor and uncontested complaints
- the perceived need for a deterrent for breaches of rules which are not considered appropriate for referral to a Solicitors’ Disciplinary Tribunal but which are nonetheless deserving of sanction.

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 may be attached thereto

Section 6(5)(a), (b) and (e) of the Ordinance empowers respectively the Law Society:

- (a) to refuse to issue a practising certificate to an applicant on such grounds as may be prescribed by the Chief Justice;
- (b) to issue a practising certificate to an applicant subject to such conditions as may be prescribed by the Chief Justice; and
- (c) amend an already issued certificate by adding such conditions as may be prescribed by the Chief Justice.

The Council considers it essential that the flexibility to refuse the issue of or to impose particular conditions upon the practising certificates of solicitors in particular circumstances be retained. The Legal Policy Division of the Department of Justice however advised that it would amount to a sub-delegation of the Chief Justice’s powers should the subsidiary rules confer on the Council the degree of flexibility it desired.

The Council is very concerned that there is a lacuna in the regulatory process. The Society has no power to regulate the conduct of solicitors and thereby protect the public interest in the period between the issuing of a practising certificate and the application (in certain circumstances) for renewal, or the findings of a solicitors Disciplinary Tribunal. Administratively, it is not feasible to vest the discretion in the Chief Justice.

The proposed transfer of the power from the Chief Justice to the Council in the above circumstances will enable the society to retain the flexibility necessary to regulate effectively the conduct of solicitors through the control over the issue of practising certificates.

Yours sincerely,

Patrick Moss
Secretary General