

THE

**LAW SOCIETY OF HONG KONG**

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25 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**

Thank you for your letter dated 19 March 2002.

**(a) The scope of categories of breaches suitable for summary disposal**

The types of offences that are suitable for summary disposal by the Tribunal Convenor under the fixed penalty procedures are intended to be those of a regulatory nature not involving dishonesty or monetary issues, for instance,

- (i) failure to submit an accountant's report within the time limits prescribed in sections 8(1) and (2) of the Ordinance;
- (ii) failure to provide the Society with particulars relating to firms required under rules 5(1), (1A), (2) and (3) of the Solicitors' Practice Rules;
- (iii) failure to render an itemised bill of costs to a client upon request under Practice Direction B 1.

A list of the offences proposed to be covered by the new rules is attached.

(b) **The operation of the proposed alternative disciplinary procedure**

Under the proposed new procedure, the Council may submit a matter to the Tribunal Convenor for disposal by way of a fixed penalty if the following conditions are met:

- (i) if the conduct involves an alleged breach of an offence which is listed as a scheduled item in the relevant new rules;
- (ii) if there is admission of liability by the person complained of; and
- (iii) if the person complained of agrees to the matter being disposed of by the Tribunal Convenor under the fixed penalty system.

However, breach of a fixed penalty offence will not automatically mean that the offence will be disposed of under the proposed fixed penalty procedures. The Council, in considering whether a matter is suitable for disposal under the fixed penalty system, will take into account all relevant circumstances including whether the alleged breach is deliberate and the gravity of the breach.

If the Council decides to submit a matter to The Tribunal Convenor under the fixed penalty procedures, the person complained of will be provided by the prosecutor with a complaint sheet and a summary of facts. In addition, he will be notified of the available alternatives as to how the complaint can be dealt with, either

- (i) by the Tribunal Convenor under the fixed penalty system if he so agrees and admits liability, the applicable fixed penalty (which is currently proposed to be HK\$10,000 for each offence) and fixed investigation costs (which is currently proposed to be HK\$15,000 for each offence); or
- (ii) by the Solicitors Disciplinary Tribunal if he does not admit liability or does not agree to have the complaint dealt with by the fixed penalty system.

The person complained of will then be able to make an informed choice as to which procedure he wishes the matter to be resolved.

If the person admits liability for the alleged breach and agrees to proceed under the fixed penalty system, he will be asked to sign a statement of agreed facts. The Council will then submit the matter to the Tribunal Convenor who shall fix a date for the disposal of the matter in accordance with the fixed penalty and fixed investigation costs applicable to the particular offence as set out in the relevant rules.

(c) **Transparency**

There are different levels of transparency.

In terms of the operation of the proposed alternative disciplinary proceedings, the procedures, the types of offences that may be dealt with under such procedures, the fixed penalty and the fixed investigation costs in respect of each type of offence will be set out in the new rules. The steps to take, the penalty and the costs in respect of each offence are totally transparent. Once a matter is submitted for disposal under these procedures, the outcome is fixed under the rules.

Further, in terms of the transparency of the exact terms of the order, the proposed new sections 9AB(4) and (6) of the Ordinance provide that an order signed by the Tribunal Convenor shall be filed with the Secretary General of the Society and shall be available for inspection by any person affected. A complainant, who may be a member of the public, is a person affected in the proceedings and will be entitled to inspect the relevant order filed with the Society. In any event it is customary for the Law Society to inform all lay complainants of the results of investigation into their complaints.

However, as regards members of the general public who are not persons affected in the proceedings, making the proceedings transparent purely for the sake of transparency does not serve any meaningful purpose for them because offences that may be submitted to the Tribunal Convenor under the proposed fixed penalty system are intended to be those offences of a regulatory nature which should not have a bearing on the ability of a practitioner to practise law or of his integrity.

(d) **Scope of sections 9A(1A) and (1B)**

The purpose of the fixed penalty procedures is to put in place a system to deal with certain breaches of the rules which are not considered appropriate for referral to a full hearing by the Solicitors' Disciplinary Tribunal but nonetheless deserving of sanction.

In defining the scope of the offences that may be dealt with by way of fixed penalty, the seriousness of the breach is certainly a starting point. However, other circumstances may also be relevant in determining whether the matter is suitable for disposal by the Tribunal Convenor under the fixed penalty procedures, for instance, whether the breach is merely an oversight or deliberate, as provided in section 9A(1B).

Accordingly, sections 9A(1A) and 9A(1B), which have to be looked at together, serve to define the scope of the matters that may be submitted to the Tribunal Convenor under the fixed penalty procedures.

(e) **Amendment of section 9(6)**

To allow for more flexibility, the Society supports the amendment to the proposed new section 9(6) as follows:

*“(6) The Tribunal Convenor and a Deputy Tribunal Convenor who acts in the place of the Tribunal Convenor in circumstances mentioned in subsection (5) ~~shall~~ **may** be remunerated by the Society.”*

(f) **Conditions for issuing a practising certificate**

The proposed circumstances where the Society may issue a practising certificate subject to conditions include cases where a solicitor:

- (i) is applying for the issue of a practising certificate for the first time;
- (ii) since he was last granted a practising certificate,
  - (1) has been censured or ordered to pay a penalty or costs by the Solicitors Disciplinary Tribunal;
  - (2) has been invited by the Society to give an explanation in respect of any matter relating to his conduct and has failed or refused to give a satisfactory explanation;
  - (3) has been suspended from practice and the period of his suspension has expired;
  - (4) has had his name removed from or struck off the roll and his name has been restored to the roll;
  - (5) has become bankrupt and has been discharged;
  - (6) subject to certain exceptions, has had a judgement in Hong Kong or elsewhere against him that involves the payment of money;
- (iii) has not been in full-time practice of law for 2 continuous years immediately prior to the giving of notice of intention to apply for a practising certificate to the Society;
- (iv) was a principal in or a consultant to a firm at the time of an intervention of the firm by the Society under section 26A and Schedule 2 of the Ordinance during the preceding 18 months.

The proposed circumstances where the Society may add conditions to an already issued practising certificate include the following, in addition to the circumstances listed in items (ii)(1), (2), (3) (4) and (iv) above:

- (i) the solicitor has entered into a voluntary arrangement with his creditors within the meaning of the Bankruptcy Ordinance (Cap. 6);
- (ii) the solicitor has been charged with or convicted of an offence involving dishonesty or deception or an offence compromising or impairing the reputation of the profession.

The proposed conditions that may be imposed on a practising certificate include requiring the solicitor:

- (i) to complete a period of supervised practice;
- (ii) only to practice on his own account with the approval of the Council or in an employment or partnership that has been approved by the Council;
- (iii) not to sign cheques on a client account;
- (iv) to accumulate such continuing professional development accreditation points or undertake such courses as specified by the Council.

The rules will specify which of the conditions may be imposed in each circumstance.

I hope that this assists but should you require further information please do not hesitate to contact me.

Yours sincerely,

PATRICK MOSS  
Secretary General

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**OFFENCES WHICH MAY BE DEALT WITH  
BY MEANS OF AN INTERMEDIATE SANCTION**

**NOTE: For any of the offences listed below, the Council has complete discretion as to the action to be taken for breach. It may resolve to take no action, or to issue a letter of regret or disapproval, or to agree to deal with the matter by way of intermediate sanction, or to refer the matter to a Solicitors Disciplinary Tribunal for a full hearing.**

**LEGAL PRACTITIONERS ORDINANCE**

Section 8 “Accountant’s reports”

- Failure to submit an accountant’s report within the time limits prescribed in subsections (1) and (2)

**SOLICITORS’ PRACTICE RULES**

Rule 2B “Letterhead”

(After the firm has been given the opportunity to rectify the breach and has not done so):

- Failure to comply with mandatory requirements set out in subrule (2)
- Where a firm opts to state on its letterhead any of the matters set out in subrule (3), failure to satisfy the pre-conditions to do so

Rule 4A “Supervision of office”

- Breach of subrule (a) requiring a solicitor with a practising certificate to be in attendance at an office during the hours it is open to the public
- Breach of subrule (b) requiring the office to be attended each day by a solicitor holding an unconditional practising certificate

Rule 4B “Control of employment of unqualified persons”

- Temporary breach of the ratio of unqualified person to solicitors in subrule (1) without having sought a waiver from the Council
- Breach of subrule (2) by employing an unqualified person who is also employed by another firm without Council approval
- Breach of subrule (4) by allowing an unqualified person to carry a name card in the name of the firm without a clear description of his job capacity

Rule 5 “Particulars relating to firms”

- Failure to provide the Society with the particulars required in subrules (1), (1A), (2) or (3)

Rule 5D “Steps to be taken in criminal matters”

- Breach of subrule (a) – failure to issue a confirmation letter to the client
- Breach of subrule (b) – failure to notify the client in writing of change in the information and obtain written consent
- Breach of subrule (c) – failure to deliver to deliver account to the client at the end of the case

- Breach of subrule (d) – failure to deliver receipt to client for fees or costs and disbursements
- Breach of subrule (e) – failure to deliver backsheet to counsel
- Breach of subrule (f) – payment to counsel without receipt of a fee note
- Breach of subrule (g) – failure to retain copies of documents for at least two years after completion

### **SOLICITORS (PROFESSIONAL INDEMNITY) RULES**

- Failure to submit an accountant’s certificate under rule 8(1)(a)

### **CONTINUING PROFESSIONAL DEVELOPMENT RULES**

- Failure to comply with rule 5 (provided that the breach has already been rectified within a very short period after the date for compliance with the Rules)

### **PRACTICE DIRECTIONS**

#### **PD B.1 “Solicitors’ Bill of Costs**

- Failure to render an itemized bill to a client upon request

#### **PD C.3 “Steps to be taken in criminal matters**

- Breach of subparagraph (2) – failure to carry the confirmatory letter from the client when at court

#### **PD D.2 “Signature of post”**

- Breach of subparagraph (1) – failure to ensure letters in the course of professional practice are signed by an approved signatory

#### **PD D.5 “Sharing an office and staff”**

- Breach of subparagraph (4) – failure to have adequate signs in common areas

#### **PD D.7 “Cessation of practice**

- Breach of subparagraph (1) – failure to notify the Society 6 weeks prior to cessation date
- Breach of subparagraph (2) – failure to appoint an agent

#### **PD D.8 “Format of electronic communications**

- Failure to comply with mandatory requirements set out in subparagraph (1)
- Breach of subparagraph (2) – issue of an e-mail by unapproved person

#### **PD F.1 “Instructions to counsel”**

- Breach of subparagraph (1) – failure to supply backsheets (see Solicitors’ Practice Rule 5D)

#### **PD G. “Professional stationery”**

- Breach of PD G.1(1) – failure to state the names of principals
- Breach of PD G.1(2) – failure to specify non-resident partners
- Breach of PD G.1A(1) – failure to state foreign lawyer’s jurisdiction

- Breach of PD G.2(1) – stating “PCLL” or similar on namecard

PD H.1 “Election addresses”

- Breach of subparagraph (2) – stating name or address of firm or advertising work as solicitor

**FOREIGN LAWYERS PRACTICE RULES**

Rule 5 “Business letters”

- Failure to comply with the mandatory requirements set out in subrules (1) or (2)

Rule 6” Supervision of office”

- Breach of subrule (a) or requiring a foreign lawyer to be in attendance at the office during the hours it is open to the public
- Breach of subrule (b) requiring the office to be attended each day by a foreign lawyer holding an unconditional certificate of registration

Rule 7 “Sharing an office and staff”

- Breach of subrule (4) – failure to have adequate signs in common areas

Rule 8 “Control of employment of unqualified persons

- Temporary breach of subrule (1) without having sought a waiver from the Council
- Breach of subrule (3) by allowing an unqualified person to carry a name card in the name of the firm without a clear description of his job capacity

Rule 9 “Reporting of particulars

- Failure to provide the Society with the particulars required in subrules (1), (1A), (2) or (3)

**VOLUME 1 OF “THE HONG KONG SOLICITORS’ GUIDE TO PROFESSIONAL CONDUCT”**

Principle 13.09 “When an oath must not be administered”

- Administering an oath or affirmation or taking a declaration in proceeding or matter in which the solicitor or his firm is acting for any of the parties, or is otherwise interested

Principle 14.02 “Performance of undertakings”

- Breach of undertaking in conveyancing matters (provided that the breach has been rectified and is not continuing)