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26 March, 2002

Mrs Percy Ma
Clerk to Bills Committee
Legislative Council Secretariat
Legislative Council Building
9055
8 Jackson Road
Central
Hong Kong

By Fax: 2509

Dear Mrs Ma,

Bills Committee on Statute Law (Miscellaneous Provisions) Bill 2001

Meeting on 28 March 2002

I refer to your letter dated 19 March 2002 in which the Administration is requested to provide answers to the following -

- (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);*

The Law Society requires flexibility in determining the circumstances relating to the refusal to issue practising certificates, to impose conditions on the issue of practising certificates or to add conditions to an already issued practising certificate.

The power to do so now lies with the Chief Justice as provided in

section 6(5)(a), (b) and (e) of the Legal Practitioners Ordinance (Cap. 159). It would amount to a sub-delegation of power if the Law Society proposes to make rules relating to matters within the power of the Chief Justice. Therefore the Law Society, upon the advice of the Department of Justice, requested the Chief Justice to transfer his power under section 6(5)(a), (b) and (e) to the Law Society. The Chief Justice has given his approval for the proposed transfer of power. As a result of the proposed amendment, the Law Society will be able to exercise its discretion relating to the issue of practising certificates by making the necessary subsidiary legislation. The making of such rules would, however, be subject to the prior approval of the Chief Justice.

- (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*

In the interests of flexibility, the reference to “shall be remunerated by the Society” in the proposed section 9(6) should be replaced by “may be remunerated by the Society”.

- (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).*

The Administration considers that the drafting reflects the purpose of the proposed alternative disciplinary procedure which 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 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 example, whether the breach is merely an oversight or deliberate, as provided in section 9A(1B).

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

Yours sincerely,

(Michael Scott)
Senior Assistant Solicitor General