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15 April 2002

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

By Fax: 2509 9055

Dear Mrs Ma,

Bills Committee on Statute Law (Miscellaneous Provisions) Bill 2001

Thank you for your letter of 28 March 2002. We have received the following answers from the Law Society to the questions in your letter.

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

Clause 105

- (a) *to clarify the difference in role between “the Society” and “the Council” in proposed section 6(5);*

In the proposed section 6(5), the Council’s role will be to make rules prescribing the grounds for refusal of a practising certificate and conditions that may be imposed on a practising certificate.

A practising certificate is issued under the name of The Law Society of Hong Kong. The management of the affairs of the Society vests in the Council. Accordingly, the Council’s role will also involve the consideration and determination of refusal to issue a practising certificate and of the imposition of conditions on a practising certificate under the rules prescribed by it.

Clause 108

- (b) *to consider whether the element of “dishonesty” should be included in proposed section 9A(1B);*

The proposed section 9A(1B)(a) on “whether the alleged breach is deliberate” extends to any element of dishonesty. If an alleged breach includes an element of dishonesty on the part of the respondent, this must include an element of deliberation.

- (c) *to improve the drafting of proposed section 9A(1B)(a) with a view to removing the ambiguity of the word “deliberate”;*

“Deliberate” appearing in the proposed section 9A(1B)(a) is to be interpreted in its natural meaning. The proposed sub-section is to cover cases where an alleged breach is committed despite knowledge that the act or omission amounts to a breach and with an intention to achieve a certain purpose not otherwise attainable as opposed to a mere oversight.

Clause 109

- (d) *to clarify the scope of the term “any person affected” in proposed section 9AB(6);*

“Any person affected” in the proposed section 9AB(6) includes parties to the procedures, that is, the Council and the respondent and the person making the complaint referred to in section 9A(1).

The Administration will provide answers to the questions regarding clause 126 of the Bill when advice from the Society of Notaries is available.

Yours sincerely,

(Michael Scott)
Senior Assistant Solicitor General