

24 May 2002

Mr Simon Ip Shing Hing
President
Law Society of Hong Kong
3/F Wing On House
71 Des Voeux Road
Central, Hong Kong

BY POST

Dear Simon,

Re: Clause 105 Statute Law (Miscellaneous Provisions) Bill

The attached comments have been received from a member of the Law Society on the proposed amendments to section 6 of the Legal Practitioners Ordinance. I should be grateful for your response to the concerns expressed, so that both the comments and your response may be put before the Bills Committee for members' consideration.

By copy of this letter, I am also inviting the Administration's response.

With best regards.

Yours sincerely,

MN/eh

Margaret Ng

cc: Mr Michael Scott,
Department of Justice
Clerk, Bills Committee Statute
Law (Misc Provisions) Bill

Comments on Clause 105, Statute Law (Miscellaneous Provisions) Bill

This amendment will give the Law Society power to make rules to regulate/prevent the practitioners (whom the Law Society does not like) from opening a small law firm. The present rule is the Practising Certificate (Solicitors) (Grounds for Refusal) Rules (copy attached), which set out a number of factors to refuse the issue of a practicing certificate. If the amendment is passed, the Law Society Council will have unrestricted wide power to refuse the issue of or impose any conditions on the practicing certificate. This will cause an unfair situation whereby a solicitor can be refused an unconditional practicing certificate for reason that he has done some misconduct (even on a very trivial matters) and for which he has got severe punishment.

I am concerned whether the new amendment will affect me and similar solicitor (who have been censured, fined or suspended). For example, the Law Society Council may make retrospective rules to the effect that any person who has been suspended or whose firm has been intervened in the past is not able to be issued an unconditional practicing certificate. That will affect their livelihood and will cause unfair hardship to them.

If the Law Society wants to cure any loophole (if any), they may just amend the rules with the approval of the Chief Judge. There is no difficulty in this aspect. There is really no need to transfer such wide and far-reaching power to the Law Society Council.



13. Practising Certificate (Solicitors) (Grounds for Refusal) Rules

ARRANGEMENT OF RULES

Rule

1. Citation
2. Grounds for refusal to issue practising certificate
3. Notice to applicant
4. Written refusal

1. Citation

These rules may be cited as the Practising Certificate (Solicitors) (Grounds for Refusal) Rules.

2. Grounds for refusal to issue practising certificate

For the purposes of section 6(5)(a) of the Ordinance, the grounds on which the Society may refuse to issue a practising certificate are -

- (a) the applicant has failed or refused to give to the Society a satisfactory explanation of any conduct which is, in the opinion of the Society, unbecoming of a solicitor;
- (b) the applicant is, by reason of his financial position, mental capacity or otherwise, unfit to practise as a solicitor.

3. Notice to applicant

The Society shall, before refusing to issue a practising certificate, give notice to the applicant that consideration is being given to such refusal and inviting the applicant within 14 days to make such representations in writing to the Society as he thinks fit.

4. Written refusal

The Society shall, if it refuses to issue a practising certificate, state its reasons in writing to the applicant.