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LC Paper No. CB(2)548/03-04(03)

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來函檔號 Your Ref.: CB2/SS/3/03
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5 December 2003

Mrs Percy Ma,
Clerk to Subcommittee,
Legislative Council,
Legislative Council Building,
8 Jackson Road,
Central,
Hong Kong.
(Fax No.: 2509 9055)

Dear Mrs Ma,

**Subcommittee on Summary Disposal
of Complaints (Solicitors) Rules**

Meeting on 8 December 2003 at 10:45 a.m.

Thank you for your letter dated 1 December 2003 regarding the above proposed Rules.

The Legal Policy Division of the Department of Justice was given the opportunity to comment on the proposed Rules throughout the drafting process and no major issues of principle emerged. Accordingly, we do not propose to issue a paper making submissions on the draft.

Nevertheless, for purposes of informing the Panel of the intended operation of the Rules, it is worth mentioning briefly the following points on which we made comments –

- (1) Section 5: we asked the Law Society for information on the circumstances in which the Council would revoke a decision to

submit a matter to the Tribunal Convenor under section 9A(1A) of the Legal Practitioners Ordinance (Cap. 159).

- The Law Society noted that section 9A(1B) of the Ordinance enables the Council to consider any other relevant factor in deciding whether a matter is suitable for disposal by the Tribunal Convenor. Section 5 enables the Council to consider relevant factors which may emerge during the 21-day period prior to any discussion between the relevant person and the Tribunal Convenor. Circumstances which may lead the Council to revoke its decision include, for example, a discovery during the 21-day period of repeated breaches of a similar nature supporting the view that the subject breach involves more serious professional issues than a simple mistake on one occasion.
- (2) Fixed penalties: we asked the Law Society to explain the rationale of fixing penalties uniformly at \$10,000 considering that, for example, a breach of a professional undertaking (Principle 14.02 of the Solicitor's Guide to Professional Conduct) may be viewed as a serious matter. Adjustments to the penalty amount may need to be made to reflect the differing severity of various breaches.
- The Law Society explained that not every scheduled item would automatically be dealt with under the summary disposal procedures. The Council would consider the seriousness of each breach, which would differ according to the circumstances of the case. For example, a professional undertaking to return a document by a certain date which was exceeded by one day because of an innocent oversight would breach Principle 14.02 but would be much less serious than a return which was two months' late because of negligence. The former breach would be suitable for disposal by the Tribunal Convenor but the latter would not.
 - The Law Society had considered past decisions of the Tribunal and concluded that \$10,000 was an appropriate average penalty for offences of a minor nature.
- (3) Fixed investigation costs: we requested information on the rationale of standardising the investigation costs at \$15,000.

- The Law Society explained that the fixed investigation costs reflect the expected costs of investigating and prosecuting breaches of the scheduled items. The amount of costs would not vary significantly with different kinds of breach since the processes of investigation and prosecution are essentially similar and the breaches will only be of a minor nature.

Yours sincerely,

(Michael Scott)
Senior Assistant Solicitor General
(General Legal Policy)

c.c. The Law Society of Hong Kong
(Attn: Ms Heidi Chu)

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D of J (Attn: Miss Peggy Au Yeung)