

**Extract from the report of the Bills Committee on
Statute Law (Miscellaneous Provisions) Bill 2001**

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Amendments to the Legal Practitioners Ordinance (Part XIV -- clauses 104 to 126)

Disposal of complaints by the Tribunal Convenor of the Solicitors Disciplinary Tribunal (SDT) Panel (Part XIV -- clauses 108 and 109)

42. Clauses 108 and 109 of the Bill seek to amend the Legal Practitioners Ordinance (Cap. 159) to implement a new disciplinary procedure for the summary disposal of complaints by the Tribunal Convenor of SDT by way of a fixed penalty imposed on a solicitor who admits liability for the breach of a prescribed provision, practice direction or principle of professional conduct prescribed in rules made by the Council of the Law Society.

43. The Bills Committee has sought the views of the Law Society on the proposed fixed penalty system. According to the Law Society, the proposed system was intended to deal with minor technical breaches by solicitors not involving dishonesty. Cases of serious offence and persistent offenders would be the subject of full SDT hearings. The Law Society has explained the grounds for the proposed sanction system and the scope and categories of breaches suitable for summary disposal by way of a fixed penalty. It has also advised on how the proposed system would operate, including the mechanism for fixing the level of penalty and the rules to be made by the Council of the Society to implement the proposed system.

44. In further response to the Bills Committee, the Law Society has advised that a total of 168 "letters of regret or disapproval" were issued to solicitors in 2000, as compared with 118 in 1999. Out of the 168 letters of disapproval, 37 came within the scope of the proposed fixed penalty system. The others involved minor complaints against solicitors. The Law Society would finalise the list of offences which might be dealt with under the proposed system.

45. Some members express the view that the Law Society should fully explain to its members the details of how the proposed fixed penalty mechanism would operate. They also stress that in implementing the system, the Law Society should not lose sight of the need to maintain transparency, and

protect the public's right to know concerning breaches of professional conduct committed by legal practitioners.

46. The Bills Committee is of the view that the proposed section 9A(1B) under clause 108 of the Bill does not safely preclude breaches involving dishonesty from being disposed of by way of the proposed fixed penalty system. Some members have pointed out that deliberate breaches might not necessarily involve dishonesty. Whether or not a particular breach would be fit for summary disposal by way of the fixed penalty system should be determined by the facts and circumstances of each specific case. They consider that it is preferable to add an express provision in the new section 9A(1B) to specify that the Council of the Law Society should take into account whether the alleged breach involves a dishonest intent.

47. After consulting the Law Society, the Administration advises that it has no objection to introduce an express provision as proposed by the Bills Committee. The Administration will move a CSA.

48. Members note that the matters which can be dealt with by way of the fixed penalty system would be specified in the rules to be made by the Council of the Law Society for the purpose of the proposed section 9A(1A), and such rules would be subject to the negative vetting by LegCo. Members consider that if a subcommittee is formed by the House Committee to scrutinise the relevant rules, the subcommittee should take note of the views expressed by the Bills Committee on Part XIV of the Bill.

49. The Administration has proposed amendments to clause 2 to provide that sections 108(a), 109, 110 and 116 of the Statute Law (Miscellaneous Provisions) Ordinance 2001 shall come into operation on a day to be appointed by the Secretary for Justice (SJ) by notice published in the Gazette. The Administration explains that the amendments are required because it is necessary for the Council of the Law Society to make the relevant rules before the sections in question commence operation.

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