



THE

LAW SOCIETY

OF HONG KONG

香港律師會

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Ms. Amy Yu
for Clerk to Bills Committee
Legislative Council Building
8 Jackson Road, Central, Hong Kong

Dear Ms. Yu,

Re: Bills Committee on Legal Practitioners (Amendment) Bill 2009
Draft minutes of the meeting on 6 October 2009

I refer to your letter dated 8 October 2009 to the Secretary-General and I have been asked to send a reply on his behalf.

The Law Society has the following comments on the draft minutes:

1. Proposed section 39L Determination of application by Assessment Board

We agree with the draft minutes. The point about limited ability to exercise oral advocacy under the current system for some practitioners whose work involves High Court practice is reflected in the United Kingdom. The *Guidance notes for solicitors who wish to apply for rights of audience in the higher courts* published by the Solicitors Regulation Authority (SRA) in England and Wales requires the SRA to consider, among other matters:

".....fewer opportunities for advocacy in more specialised practices which concentrate on High Court as opposed to County Court litigation..." (Section 6(1)(b))

2. Proposed Section 39M Further provisions applicable to determination of application

We note the concern raised by the Hon. Ms. Miriam Lau on whether applicants would be notified of the enquiries made by the Assessment Board with the Council of the Law Society. The most common enquiry is likely to be in respect of conduct matters and it is the firm view of the Council that only those cases which resulted in disciplinary action should be disclosed to the Assessment Board. Chapter 16 of the *Hong Kong Solicitors' Guide to Professional Conduct* lists the sanctions which can be imposed by the Law Society: "Letter of Regret", "Letter of Disapproval/Strong Letter of Disapproval and finally a referral to the Convenor of the Solicitors Disciplinary Tribunal.

**3. Proposed Section 390 Loss of higher rights of audience
Act of bankruptcy**

The Law Society confirms that when a solicitor has been adjudicated bankrupt, the practising certificate will "automatically determine" pursuant to Section 6(7) of the Legal Practitioners Ordinance. The name of the bankrupt solicitor *will not be* struck off the Roll of Solicitors; upon discharge a solicitor can make an application for a new practising certificate. The Law Society Council reviews such applications and will often impose conditions on the practising certificate e.g. the solicitor is prohibited from signing cheques on behalf of the firm.

4. The proposed new Section 45A

We note the discussion on whether the sanction for someone purporting to exercise rights of audience when not qualified to do so may give rise to double jeopardy. The current draft appears to allow the court (where the person purported to misuse his right) to be prosecuted for contempt, but if the judge excuses the person, he or she may still be punished for the offence. We consider the risk of contempt/committing an offence is more fanciful than real and do not see this giving rise to any problem in practice. However, to avoid any doubt perhaps this can be removed by a suitably drafted Committee Stage Amendment.

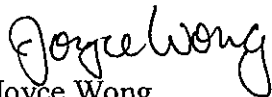
"Purports - 看來是"

The Law Society has no comments on the Chinese draft.

We note the Assessment Board will be tasked with drafting the rules to implement higher rights of audience. The Law Society prepared draft rules in response to the Chief Justice's Final Report on Solicitors' Right of Audience and is willing to provide a copy to the Assessment Board to assist with the drafting of the subsidiary legislation.

The Law Society expresses its hope the Assessment Board will be convened within 6 months of the passage of the new legislation and will be operational within 6 months thereafter.

Yours sincerely,



Joyce Wong
Director of Practitioners Affairs
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