



THE

LAW SOCIETY
OF HONG KONG

香港律師會

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BY FAX (25099055) AND BY POST

20 May 2005

Mrs. Percy Ma
Clerk to Bills Committee on Statute Law
(Miscellaneous Provisions) Bill 2005
Legislative Council
Legislative Council Building,
8 Jackson Road,
Central, Hong Kong.

Dear Mrs. Ma,

STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL 2005

Further to my letter to you dated 17 May 2005, I am pleased to confirm that the Law Society's Criminal Law & Procedure Committee has considered the legislative proposals put forward in the above Bill relating to criminal law practice, which include legislative proposals to amend the following Ordinances:-

- Theft Ordinance (Cap.210)
- Firearms and Ammunition Ordinance (Cap.238)
- Prevention of Bribery Ordinance (Cap.201) & Independent Commission Against Corruption Ordinance (Cap.204)
- Criminal Procedure Ordinance (Cap.221)
- Crimes Ordinance (Cap.200)
- Costs in Criminal Cases Ordinance (Cap.492)

Save for the following legislative proposals, the Committee has no objections to the proposed amendments of the above Ordinances:-

(a) Proposal to amend section 13 of the Costs in Criminal Cases Ordinance ("CCC Ordinance")

The Committee shares the Bar's concerns on the legislative proposal to amend section 13 of the CCC Ordinance, i.e. to enable the court to award costs to the prosecutor in the event of an unsuccessful application for a certificate under section 32 of the Court of Final Appeal Ordinance. It is a fundamental right of a person to appeal and the proposal could exert undue pressure on an intending appellant to give up his right to appeal.

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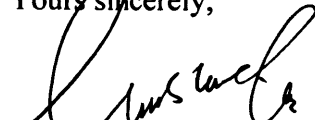
(b) Proposal to amend Section 10 of the Independent Commission Against Corruption Ordinance (“ICAC Ordinance”)

The Committee does not support the legislative proposal to extend the power of arrest of the ICAC officers under Section 10 of the ICAC Ordinance. Section 17A of the Prevention of Bribery Ordinance empowers the ICAC Commissioner to apply to the Magistrate for a notice requiring a suspect to surrender his travel documents during the investigation stage. This power is a draconian one given to the ICAC at the “*investigation*” stage when the investigation may not result in prosecution and when the Police do not have similar powers in the investigation of serious offences like murder, money laundering, etc.

The Committee notes there are sufficient safeguards under the current law to guard against breaches of a Section 17A notice. The current proposal to amend section 17A(1) to prohibit the suspect subject to a section 17A notice from leaving Hong Kong will provide additional safeguard and the Committee fails to see any eminent need to extend the power of arrest of the ICAC as proposed.

We would confirm that the Society will not be sending any representative to the Bills Committee meeting on 24 May 2005.

Yours sincerely,



Christine W. S. Chu
Assistant Director of Practitioners Affairs