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Your Ref:

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Gloria Lim
Director, Legal Industry Division
Ministry of Law
100 High Street, #08-02
The Treasury
Singapore 179434

BY EMAIL (Gloria LIM@mlaw.gov.sg)
& POST

Dear *Gloria,*

**PUBLIC CONSULTATION ON THE LEGAL PROFESSION (AMENDMENT)
BILL 2014**

We refer to the Ministry of Law's ("MinLaw") email of 24 March 2014 inviting the Law Society to provide feedback on the above consultation.

2 The consultation was referred to our practice committees and has been considered by Council.

3 Please find the views of the Law Society below with regard to some of the amendments. We would be grateful if these views can be taken into consideration and if we could have clarification as requested on certain aspects of the proposed amendments.

I) Mandatory reporting of pro bono hours

Clauses 6 and 23/ Sections 25 and 59

The Bill contains amendments to empower the Law Society to introduce a requirement for lawyers to disclose the number of hours they have spent each year on pro bono work, details of which would be spelt out in subsidiary legislation. This is pursuant to a recommendation by the Committee to Study Community Legal Services Initiatives and pays formal recognition to the notion that the legal community has wider responsibilities to contribute to society as well as assist those who may not have the means to gain access to legal services. The data collected will also allow a better understanding of the pro bono landscape and guide the shaping of policies in this area and address practical, procedural and interpretational issues arising from the current provisions of the Legal Profession Act.

Council Members 2014

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Pro Bono Services
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Publications
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Michelle Woodworth

4 We seek clarification on the details to be set out in the subsidiary legislation, as referred above and the implications arising from failure by a member to report the number of hours of pro bono work undertaken. For parity, we would also like to know if there will be a similar obligation placed on foreign lawyers.

II) Professional Conduct Council

Clause 25/ Section 71

A new Professional Conduct Council ("PCC") will be established to oversee all relevant rules relating to professional conduct matters for all SLs and FLs practising law in Singapore. It will include senior representation from the Judiciary, the Law Society, the Attorney-General's Chambers, SL and FL community, and MinLaw. Non-practitioners may also be invited to sit on the PCC.

5 At the Town Hall session on 21 November 2012, MinLaw reported that regulation management will be supported by the Professional Conduct Council, the Working Group and the Advisory Committee (similar to the present Ethics Committee of the Law Society). The Ethics Committee provides guidance to members on ethical queries as well as advises Council on matters relating to professional ethics. The Society in its letter dated 16 August 2013, recommended that the Ethics Committee under the Society undertake the role of the Advisory Committee. Reliance on advice given by the Advisory Committee could then be a mitigating factor in disciplinary proceedings. We believe that incorporating the Ethics Committee as the Advisory Committee will enable a seamless transitional process to the new s71 and note that this recommendation was accepted by MinLaw in the letter of 6 November 2013. We would be grateful for further information on the role of the Advisory Committee after the changes are to take effect.

6 Council notes that the Final Report of the Committee to Review the Regulatory Framework of the Singapore Legal Services Sector (Recommendation B2) states that the new Working Group (nominated by the agencies represented in the PCC will periodically review the revisions made to the new Legal Professional (Professional Conduct) Rules ("PCR"). Council would like to raise for consideration the composition of the Working Group to comprise:

- Chairperson of the Ethics Committee;
- 4 Advocates & Solicitors (of whom 1 should hold a Senior Counsel appointment); and
- 3 Supreme Court representatives.

7 At the meeting with the Chief Justice on 9 September 2013, Council raised that the Working Group can be constituted on an ad hoc basis as and when required, instead of existing as a permanent appointment.

8 The proposed new s71(8) empowers the PCC to appoint one or more committees – *S71(8) The Professional Conduct Council may appoint one or more committees for such purposes of this section as, in the opinion of the Professional Conduct Council, may be better regulated or managed by means of a committee.*

9 We would like MinLaw to clarify if the above is with specific reference to the Advisory Committee and Working Group or if other committees are contemplated. We would think it is appropriate that mention of the Advisory Committee and Working Group is made in the Bill together with their respective functions.

10 With regards to the composition of the PCC, members have expressed concerns that the PCC should be kept within the profession and policy-makers such as MinLaw, as well as Legal Service Officers who have no practice experience, should be detached from the structure. Essentially, members are concerned of MinLaw's involvement in areas where the Bar has always had independence and control without the policy-maker. Council previously raised these concerns by way of letter dated 16 August 2013. We would add that should the Minister appoint a representative on the PCC (proposed new s71j), the appointee be an Advocate and Solicitor.

11 On 9 September 2013, Council recommended that the composition of the PCC reflect the current population ratio of 3SLs to 1 FL. Council notes that MinLaw, in its letter dated 6 November 2013, has no objection in principle in this regard.

12 Under s71(2)(a) of the Bill, Council notes that the PCC may make rules for regulating the professional practice, etiquette, conduct and discipline of every regulated legal practitioner and practitioners admitted on an ad hoc basis under s15 LPA. As the Law Society is to retain oversight of conduct and disciplinary matters, Council is of the view that it should also retain the right to issue relevant Practice Directions and Guidance Notes. In relation to professional practice and etiquette, Council is similarly of the view that it is best-placed to continue issuing Practice Directions, Rulings and Guidance Notes. The legal profession has functioned as a self-regulating body and provision should be made in the Bill for Council to retain this mandate.

13 Professional practice and etiquette are not limited to ethical issues but to other practice areas such as conveyancing and administrative matters. Members do, for example, require specific guidance on matters affecting conveyancing practice from time to time. In addition, there are a host of administrative practice directions which members rely on, such as guidelines on the storage of files.

14 Members are concerned about the role and effect of non-practitioners on the PCC, whose function would entail making practice-related professional conduct rules. The Council of the Law Society is supported by various practice committees, which constitute a core group of experienced practitioners. These practitioners are a source of expert advice and assistance and are well-suited to give appropriate direction and guidance to their peers.

15 With respect to existing Practice Directions, Rulings and Guidance Notes, we request that provision be made in the Bill to port them over so that they continue to remain in force until withdrawn/superseded.

III) Entity regulation

Alternative Business Structures ("ABS")/ Legal Disciplinary Practice ("LDPs")

Clause 17/ Section 36G

The regime will also be updated to accommodate law practices wishing to adopt limited form of Alternative Business Structures ("ABS") in Singapore, to permit greater participation of non-lawyers with deep management, finance or other relevant experience within the law practice, subject to appropriate safeguards. For a start, Legal Disciplinary Practices ("LDPs") will be permitted, where non-lawyer managers / employees will be allowed to own shares / equity / share in the profits of the LDP (to be referred to as "non-lawyer owners"). Such non-lawyer owners will need to apply for approval from the Director of Legal Services, subject to any objections raised by the AG or the Law Society.

16 Members have grave concerns that there may be abuse should non-lawyers be permitted to participate in law practices as described above. Members anticipate that LDPs would inevitably be profit-driven which may result in higher legal costs for the public. Non-lawyer owners who are keen in yielding higher dividends may compromise the vision of the LDP and by extension the integrity of the profession. This may involve urging lawyers to maximise billing hours, resulting in unnecessary and protracted proceedings. Non-lawyer owners may also have ties with large corporations such as banks and real estate corporations which are similarly profit-driven; this gives rise to other issues such as conflict of interest.

17 The Law Society has always sought to avoid the involvement of persons of certain professions such as estate agents and money lenders which may dilute the independence of the legal profession. This view was previously communicated by Council its letter dated 16 August 2013. In the said letter, Council recommended that an inclusionary list of the categories of persons eligible to the Director of Legal Services for approval as "Authorised Persons" be put in force. Council further suggests that this inclusionary list allows persons from selected professional backgrounds such as accountants, and architects, and as a start 10 to 15 of such professions can be considered for the inclusionary list. Persons who do not fall under the professions set out in the inclusionary list may make an application to the court for permission to participate.

18 In the same letter, Council had also requested that Law Society and the AGC be given the right to raise objections before any non-lawyer is granted approval by the Director of Legal Services. We note that this recommendation has been accepted by MinLaw and reflected in the Bill. However, clarification is needed on how the Law Society will be consulted in the approval process. We hope that MinLaw will work closely with the Law Society in this regard as previously assured.

Director of Legal Services

Clause 3/ Part 1A

With law firm structures becoming increasingly complex, the Regulatory Committee recommended the establishment of a dedicated regulator to oversee entity level regulation. To implement this recommendation, a statutory office helmed by Director of Legal Services will be established as the entity regulator with prescribed powers for regulation.

19 Under s2C of the Bill, the Director of Legal Services or an investigator may, by notice in writing to any person, require that person to produce any specified document or to provide any specified information which the Director of Legal Services or the investigator (as the case may be) considers to be relevant to the investigation. Council wishes to clarify if the section should provide that disclosure of documents and communication protected by solicitor-client privilege should be subject to legal professional privilege.

20 Under 2D of the Bill, the Director of Legal Services or an investigator is vested with the power to enter premises under a warrant, if the court is satisfied that there are reasonable grounds for suspecting that documents, equipment and articles are not produced as prescribed under s2C. Council's view is that the power to enter premises and carry out inspection should only be triggered by (a) Ministerial direction, (b) Complaint by the Attorney-General or a Supreme Court Judge, or (c) Order of Court.

Clauses 30, 31, 33 to 36, 39, 40, 42 to 44, 46, 72 to 78, 80, 81, 83, 84, 86 and 88/ Sections 81B, 81C, 81H, 81IA, 81J, 81K, 81Q, 81R, 81WA, 81X, 81Y, 130B, 130C, 130D, 130E, 130F, 130G, 130H, 130L, 130M, 130P, 130Q, 130S, 130U and Part VIC

Existing functions relating to entity regulation performed by the Law Society (for SL practices) and the AG (for FL practices) will be transferred over to the Director of Legal Services.

21 Members raised concerns about the regulation and licensing of Singapore Law Practices by MinLaw. Council notes and welcomes the assurances of the Chief Justice (as set out in Law Society's letter dated 26 December 2012) that the proposed rules are not intended to affect the present regulatory framework of traditional SLPs by the Law Society.

22 The meeting on 9 September 2013 discussed that if some of the Law Society's current functions are ported over to LSRA, such as the naming of law firms and professional stationery, members will have a lesser sense of familiarity with the approval process. After having assessed an application, for example the naming of a law practice, we suggest that the Law Society can make recommendations to the Director of Legal Services on whether approval should be granted. In the event the Director of Legal Services does not agree with the Law Society, there should be a further avenue for consideration and input from the Law Society before a final course of action is decided upon. This would reassure members that there would be minimal changes and/or disruption under the new regime.

23 Council seeks clarification on whether there will be any charges envisaged for the registration of business and if Law Society will be consulted in the approval process. Council notes MinLaw's assurances at the Town Hall Session on 21 November 2012 to consult closely with the Law Society in the management of business structure regulation.

24 In relation to appeals against the decision of the Director of Legal Services, members expressed that appeals should be made to the Supreme Court, as per the current system. Council previously raised this at the Town Hall Session. It is noted that MinLaw, by way of letter dated 6 November 2013, responded that LSRA is an administrative function under the purview of MinLaw with the Director of LSRA being a public officer performing an administrative role; and hence appeals will be made to the Minister.

Disciplinary process - Extending complaint letter to respondent

Clause 51/ S85

25 The Law Society thanks MinLaw for accepting its recommendation to release complaint letters to Respondents where any complaint or information touching upon a Respondent's conduct is referred to the Chairman of the Inquiry Panel.

Disciplinary proceedings involving an FL

Clauses 49 to 66/ Sections 83A to 91, 92 to 98A

All SLs and FLs practising law in Singapore will be subject to the existing professional disciplinary processes under the Law Society, under the ultimate regulatory oversight of the Supreme Court. Where an FL is involved, an FL member will replace one of the prescribed members at every stage of the disciplinary process.

26 Members have asked if it is necessary for an FL to substitute a prescribed member at every stage of the disciplinary process when an FL falls under investigation, particularly if the new PCR is to apply uniformly to both SLs and FLs in the practise of Singapore law.

Legal Practice Management Course (“LPMC”)

27 Council recommends that FLs who wish to become partners/directors of Singapore Law Practices be required to attend the LPMC so as to maintain parity of process with SLs.

Closing remarks

28 The Law Society thanks MinLaw once again for engaging members in the consultation.

29 The general feedback received from members of the bar is that they were given insufficient time to meaningfully consider all the issues raised in the Bill.

30 Based on that feedback and our members various concerns, we propose that MinLaw considers hosting a town hall/dialogue session for our members so as to brief them on the impact of the proposed amendments to the LPA before the Bill is tabled in Parliament.

Yours faithfully



Lok Vi Ming, SC

President, The Law Society of Singapore