

香港高等法院
司法常務官內庭用箋



REGISTRAR'S CHAMBERS
HIGH COURT
HONG KONG

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Our Ref.: SC 101/16/28 VI

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21 January 2002

THE LAW SOCIETY OF H.K. Mr. Patrick Moss
Secretary General
25 JAN 02 11: 12 The Law Society of Hong Kong
3/F Wing On House
71 Des Voeux Road Central
Hong Kong

Dear Sir,

Approval of Surety in Criminal Cases

I wish to inform you that there will be a change of practice in relation to approval of surety in criminal cases.

You are surely aware that in a recent case in High Court a defendant jumped bail on the first day of trial and the surety disappeared. It was later discovered that the surety prior to the committal of the defendant to the Court of First Instance, had disposed of his assets without notifying the Court.

According to paragraph 3-44 of the *Archbold* that it is the duty of the Court to check the financial position of the surety when a defendant is committed for trial before releasing him:

“3-44 As to the duty of the Crown Court to review the position of a surety, where a defendant committed for trial on conditional bail surrenders to the Crown Court, before releasing the defendant on bail subject to the same conditions, see *R.v. Kent Crown Court, ex p. Jodka*, 161 J.P. 638, DC, *ante*, § 3-13.”

And paragraph 3-13 states whenever bail is extended the Court is duty bound to reconsider the suitability of the surety:

“3-13 if the Crown Court releases him on bail thereafter, it is duty bound to consider the suitability of any conditions afresh, including the position of a surety, where, therefore, a judge granted bail “as heretofore” without considering the position of a surety required by the magistrates, this was ineffective for the purpose of renewing the suretyship as a condition of bail.”

With effect from 18 February 2002, whenever the bail in a criminal case is extended by Court with surety on his own recognizance, it is to be understood that the surety is subject to be approved again by:

- (a) in respect of a case in the Magistracy, the magistrate granting the order for extension of bail;
- (b) in respect of a case in the District Court, the Registrar/Master of the District Court; and
- (c) in respect of a case in the Court of First Instance or an appeal case in the Court of Appeal, the Practice Master of the High Court.

All Clerks to Judges (High Court and District Court) have been reminded to send the surety to be approved again by the above approving authority before allowing bail to be extended. For Magistracy, First Clerks are required to ensure the surety has been approved by the magistrate before allowing the defendant to be released on bail extended.

Please note that **this direction will come into effect on 18 February 2002**. It only applies to cases where surety on his recognizance is involved but not to cash surety.

Please also note that if bail is granted or renewed on the first day of the trial and it is expressly stated that the bail is allowed until the end of the trial or otherwise ordered, except on the first day the surety is not required to be approved at the end of each hearing day. If it is not so stated I am afraid approval is required every day.

Please inform members of your Society about this change.

Yours faithfully,



(Christopher C. Chan)
Registrar