

**LEGISLATIVE COUNCIL BRIEF**

**Legal Practitioners Ordinance  
(Chapter 159)**

**LEGAL PRACTITIONERS (AMENDMENT) BILL 1999**

**INTRODUCTION**

At the meeting of the Executive Council on 8 June 1999, the Council ADVISED and the Chief Executive ORDERED that the Legal Practitioners (Amendment) Bill 1999, at Annex A, should be introduced into the Legislative Council.

**BACKGROUND AND ARGUMENT**

**Solicitors**

2. A policy underlying the Ordinance is that all those who act as solicitors or foreign lawyers should take out professional indemnity insurance to ensure that aggrieved clients will be adequately compensated. At present, a solicitor holding a conditional practising certificate (but who need not be registered as a foreign lawyer) is allowed to practise foreign law without taking out professional indemnity insurance.

3. It is proposed that the Ordinance be amended so that solicitors who provide services to the public as practitioners of foreign law must comply with section 7 of the Ordinance which sets out the qualifications required to “act as a solicitor”. These qualifications include having current practising certificates and compliance with the Solicitors (Professional Indemnity) Rules, or being exempted from compliance with those Rules by the Law Society Council.

4. At present, the Solicitors Disciplinary Tribunal (“SDT”) is empowered to enforce the attendance of witnesses and examine them upon oath

or otherwise. However, this power is only exercisable when a prima facie case is established against a person and a date is fixed for hearing of the disciplinary proceedings. It is in the public interest that investigation of the conduct of legal practitioners be facilitated by the introduction of a power to summons at the investigative stage.

5. It is proposed to amend the Ordinance to give prosecutors of the Law Society a right to summon persons who are or were members or employees of law firms or who may be able to assist in a suspected disciplinary offence to give evidence to the Law Society at the pre-disciplinary proceedings stage. No sanction is proposed for failure to comply with the summons. Although the persons summoned will not be compelled to attend or answer questions, it is nonetheless believed that, under the formality of a summons, they would be more willing to assist and provide information to the Law Society than if a prosecutor simply requests to see them.

6. Currently, the Law Society has no right to appeal against a finding of the SDT as to guilt and sentence, although the other party to an SDT proceedings is entitled to appeal to the Court of Appeal under the Ordinance. It is proposed to amend the Ordinance to give the Law Society a right of appeal against a finding of the SDT. The Law Society would then be in a better position to protect the public and maintain public confidence in disciplinary proceedings where these may be undermined by erroneous decisions of the SDT.

7. It is the current practice of the Law Society to publish resumes or findings and orders of the SDT in its official magazine. It is desirable that this practice be expressly provided for in the Ordinance.

8. It is proposed to amend the Ordinance to enable the Law Society to publish resumes of findings and orders of the SDT. Concise versions of all findings and orders of proceedings before an SDT will be published and the name of the solicitor will be published if he is convicted of an offence, unless the SDT orders otherwise. In the case of an acquittal, there will be no mention of the name of the respondent or anything that can enable him to be identified. It is proposed that the respondent will be entitled to seek an order from the SDT that the acquittal will not be so published.

9. The definition of “Hong Kong firm” in the Ordinance is open to the interpretation that only those partners of a Hong Kong firm who are resident in Hong Kong are required to be solicitors, with the effect that firms may have non-resident partners who are not solicitors. Therefore it is arguable that non-resident partners do not have to be qualified lawyers and are not subject to the regulatory control of the Law Society. It is proposed that the Ordinance be amended to clarify the definition of “Hong Kong firm” for the better protection of the legal profession and the public.

10. The Ordinance provides that 60 practising solicitors and 30 lay persons be available for the Solicitors Disciplinary Tribunal Panel (“SDT Panel”). Due to the expansion of the Law Society’s membership and the increasing workload of the SDT Panel members, it is desirable that the SDT Panel be able to draw from a larger pool of talent so that the maintenance of the discipline of legal practitioners can be as efficient as possible. It is proposed that the numbers be increased to 120 and 60 respectively.

### **Barristers**

11. Under current legislation, there is no means for foreign lawyers from non-Commonwealth jurisdictions to gain admission as barristers in Hong Kong. This is inconsistent with the general obligations of the General Agreement on Trade in Services (“GATS”) which require such criteria to be objective, reasonable, non-discriminatory and standards-based. In 1996, following a consultation exercise seeking the views of the legal profession and the public in the previous year, the then Attorney General’s Chambers proposed that legislation be introduced to implement the GATS criteria.

12. It is proposed that the Ordinance be amended by removing the present privileges conferred on barristers or advocates from England, Scotland, Northern Ireland and other Commonwealth countries. The Court may admit a person to be a barrister if he is considered to be a fit and proper person and has complied with the general admission requirements, including passing any required examinations and paying any required fee. Further, it is proposed that a residency requirement of three months before the date of application for admission be imposed to match the same requirement in respect of solicitors.

13. It is also considered that the Court should retain a flexible approach to admit a person as a barrister for the purpose of any particular case

(so-called “ad hoc admissions”). It will be to the benefit of the public and the proper development of the profession if leading counsel from other jurisdictions can appear in the courts, including the Court of Final Appeal. Accordingly, it is proposed that the relevant provisions of the Ordinance be amended to allow the Court to retain the power to admit barristers on an ad hoc basis without the need to satisfy the requirements for general admission, such as examinations and residency.

14. Unlike the Law Society’s power regarding solicitors, the Bar Council does not have the power to make subsidiary legislation governing the admission or conduct of barristers and other general matters relating to barristers. It is proposed that the Bar Council be empowered to make rules governing the admission of barristers, subject to the Chief Justice’s prior approval. It is also proposed that the Bar Council be empowered, subject to the prior approval of the Chief Justice, to make rules in certain prescribed areas concerning barristers, such as professional practice, the conduct and discipline of barristers, the issue of practising certificates, the conduct of inquiries and investigations by the Barristers Disciplinary Tribunal, and the examinations to be taken for admission and serving of pupillage.

15. In 1996, the then Attorney General’s Chambers, noting the support of the Bar Association and the Law Society, recommended that barristers who provide legal services exclusively to an employer under a contract of employment should be entitled to instruct practising barristers directly. It is proposed that a new category of “employed barrister” be created. A barrister in this category will, subject to certain conditions, be issued with an “employed barrister’s certificate” and will be allowed to instruct a practising barrister on behalf of his or her employer for the purpose of obtaining a legal opinion without the intermediary of a solicitor.

16. At present, the names of barristers are removed from or restored to the roll of barristers by way of notice of motion. It is proposed that a formal mechanism for this purpose be provided for in the Ordinance.

17. The Ordinance requires barristers to apply for practising certificates in November each year. It is proposed that the restriction to November be removed since it causes administrative difficulties.

18. The Ordinance does not presently require barristers to pay for indemnity insurance premium before being issued with a practising certificate. Such a requirement for the payment of compulsory insurance premium is only a condition found in the Code of Conduct of barristers. It is proposed that the Ordinance be amended to require the payment of indemnity insurance premium as a prerequisite to the issue of a practising certificate.

### **The Bill**

19. The main provisions are –

- (a) Clause 2 amends the definition of “Hong Kong firm” by repealing “resident in Hong Kong”.
- (b) Clause 3 empowers the Law Society Council to appoint a prosecutor and to give him the right to summon and to require persons who are or were members or employees of law firms or who may be able to assist in a suspected disciplinary offence to give evidence to the Law Society at the pre-disciplinary proceedings stage. A new definition of “prosecutors” is added.
- (c) Clause 4 provides that the number of available practising solicitors be increased from 60 to 120 and the number of lay persons from 30 to 60 for the SDT Panel.
- (d) Clause 5 amends the Ordinance to give the Law Society a right to appeal against a finding of the SDT to the Court of Appeal.
- (e) Clause 6 provides for the Law Society to publish resumes or findings and orders of the SDT and the name of the solicitor convicted of an offence unless the SDT orders otherwise. A respondent may seek an order prohibiting such publication if the SDT finds in favour of the solicitor.
- (f) Clause 7 repeals section 27 of the Ordinance and empowers the Court to admit barristers subject to compliance with certain prescribed requirements.

- (g) Clause 9 provides a mechanism for the removal and restoration of names in the roll of barristers.
- (h) Clause 10 provides that payment of the professional indemnity insurance premium is a prerequisite for the issue of a barrister's practising certificate. It also removes the requirement for application for practising certificates to be made in November.
- (i) Clause 12 provides for a new category of "employed barrister" who will be issued with an employed barrister's certificate and be allowed to instruct a practising barrister on behalf of his employer for the purpose of obtaining a legal opinion without retaining a solicitor.
- (j) Clause 13 imposes an obligation on a person who offers services to the public as a practitioner of foreign law to satisfy the requirements set forth in section 7 of the Ordinance, which requires the taking out of professional indemnity insurance.
- (k) Clause 15 empowers the Bar Council to make rules governing the admission of barristers and other areas concerning barristers, subject to the Chief Justice's prior approval.
- (l) Clause 16 provides a savings provision in respect of barristers who may be affected by the proposed repeal of section 27(1)(a)(i) and (ii).

## **LEGISLATIVE TIMETABLE**

20. The legislative timetable is:-

Publication in the Gazette	17 June 1999
First Reading and commencement of Second Reading debate	30 June 1999
Resumption of Second	To be notified

Reading debate,  
committee stage and  
Third Reading

## **BASIC LAW IMPLICATIONS**

21. The Department of Justice advises that the proposed amendments do not conflict with those provisions of the Basic Law carrying no human rights implications.

## **HUMAN RIGHTS IMPLICATIONS**

22. The Department of Justice advises that the proposed amendments are consistent with the human rights provisions of the Basic Law.

## **BINDING EFFECT**

23. The amendments will not affect the current binding effect of the Ordinance.

## **FINANCIAL AND STAFFING IMPLICATIONS**

24. There are no financial and staffing implications.

## **PUBLIC CONSULTATION**

25. The Law Society and the Bar Association have been consulted on the proposals. The Law Society expressed concern about the creation of a new category of barristers, namely, employed barristers. The Law Society considers that barristers who have never undergone a period of trainee contract as required of trainee solicitors should not be allowed to act in-house in a role identical to solicitors without formal training and supervision.

26. The Administration further considered this issue and, while retaining the proposed category of employed barristers, has amended clause 12 of the Bill to permit those barristers to instruct a practising barrister on behalf of their employers for the purpose of obtaining a legal opinion.

27. The Bar Association objected to the proposed residency

requirement of three months prior to admission, considering this period to be too short. Instead, the Bar Association considered that a residency requirement of six months should be imposed.

28. The Administration considers that the three months' residency requirement is appropriate since the same period of residency is imposed by the Law Society in the case of solicitors and there is no reasonable justification for a difference between the two branches of the profession in this respect.

## **PUBLICITY**

29. The Bill will be published in the Gazette on 17 June 1999 and a press release will be issued on the same day. A spokesman will be available to answer media inquiries.

**Department of Justice**  
**June 1999**

**File Ref: LP 272/00**

#7281

**LEGAL PRACTITIONERS  
(AMENDMENT) BILL 1999: ANNEX A AND B**

**Annex A - Legal Practitioners (Amendment) Bill 1999**

**Annex B - Provisions of the Legal Practitioners Ordinance proposed to be amended**

**LEGAL PRACTITIONERS (AMENDMENT) BILL 1999**

**CONTENTS**

Clause		Page
1.	Short title and commencement	1
2.	Interpretation	1
3.	Section added 8AAA. Appointment and powers of a prosecutor	1
4.	Solicitors Disciplinary Tribunal Panel	2
5.	Appeal and saving	2
6.	Section added 13A. Publication of findings of Solicitors Disciplinary Tribunal	3
7.	Section substituted 27. Power of Court to admit barristers	4
8.	Section substituted 28. Formalities for admission as a barrister	5
9.	Roll of barristers	6
10.	Practising certificates - barristers	6
11.	Qualifications for practising as a barrister	8
12.	Section added 31C. Employed barristers	8
13.	Offences in relation to foreign lawyers, foreign firms and Associations	9
14.	Rules for barristers in Hong Kong	9

Clause		Page
15.	Section added	
	72AA. Power of Bar Council to make rules	10
16.	Savings Provision	12

A BILL

To

Amend the Legal Practitioners Ordinance.

Enacted by the Legislative Council.

**1. Short title and commencement**

(1) This Ordinance may be cited as the Legal Practitioners (Amendment) Ordinance 1999.

(2) This Ordinance other than section 15 shall come into operation on a day to be appointed by the Secretary for Justice by notice in the Gazette.

**2. Interpretation**

Section 2(1) of the Legal Practitioners Ordinance (Cap. 159) is amended in the definition of "Hong Kong firm", in paragraph (a), by repealing "resident in Hong Kong".

**3. Section added**

The following is added -

**"8AAA. Appointment and powers of a prosecutor**

- (1) In this section "prosecutor" ( 檢控員 ) means a person who -
- (a) is employed by the Law Society and has legal qualifications that would enable him to practise as a lawyer in any jurisdiction; or
  - (b) is a solicitor.

(2) The Council may appoint a person as a prosecutor to assist it in gathering evidence in respect of a matter the Council is considering for the purpose of deciding whether or not it should be submitted to the Tribunal Convenor of the Solicitors Disciplinary Tribunal Panel.

(3) For the purposes of this section, a prosecutor may, in accordance with procedural rules prescribed by the Council, summon -

- (a) persons who are, or were at the material time, members or employees of any law firm; or
- (b) any other persons whom the prosecutor considers may be able to assist the Council,

to appear before him for the purpose of answering such questions as he may put to them."

#### **4. Solicitors Disciplinary Tribunal Panel**

Section 9(1) is amended by repealing "60" and "30" and substituting "120" and "60" respectively.

#### **5. Appeal and saving**

Section 13 is amended -

- (a) in subsection (2), by repealing "In" and substituting "Subject to subsection (2A), in";
- (b) by adding -

"(2A) Where the Council is not satisfied with an order made by a Solicitors

Disciplinary Tribunal, it may appeal the order under this section, in which case the Society shall be the appellant and the person whose conduct was the subject of the inquiry by the Solicitors Disciplinary Tribunal shall be the respondent."

**6. Section added**

The following is added -

**"13A. Publication of findings of Solicitors  
Disciplinary Tribunal**

(1) The Society may, after the expiry of the time for filing an appeal under section 13 or after completion of such an appeal, as the case may be, publish a summary of the finding and order of a Solicitors Disciplinary Tribunal and the name of the solicitor who was the subject of the finding and order in any publication produced by, or at the direction of, the Society.

(2) Subject to a contrary order made on an appeal, subsection (1) does not apply to the publication of the name of the solicitor where the Solicitors Disciplinary Tribunal found in favour of the solicitor and, on application by the solicitor, made an order prohibiting such publication."

**7. Section substituted**

Section 27 is repealed and the following substituted -

**"27. Power of Court to admit barristers**

(1) Subject to subsection (2), the Court may, in such manner as may be prescribed by the Chief Justice, admit as a barrister of the High Court in Hong Kong, a person whom it considers a fit and proper person to be a barrister, provided such person has -

- (a) complied with the requirements;
- (b) passed the examinations; and
- (c) paid the fees,

prescribed by the Bar Council.

(2) The Court shall not admit a person under subsection (1) unless it is satisfied that that person -

- (a) is not in practice as a solicitor either on his own account or as a partner or salaried employee in a firm of solicitors practising in Hong Kong; and
- (b) satisfies one of the following requirements -
  - (i) has resided in Hong Kong for at least 3 consecutive months immediately before the date of his application for admission;
  - (ii) has been ordinarily resident in Hong Kong for at least 7 years;
  - (iii) has been physically present in Hong Kong for at least 180 days of each of at least 7 years within the 10 years immediately preceding the date

of his application for admission.

(3) If at the time of his admission under subsection (1) the person is a solicitor, the Registrar shall remove the person's name from the roll of solicitors.

(4) The Court may admit a person as a barrister under this section for the purpose of any particular case or cases if the Court considers that person a fit and proper person to be a barrister and provided that he has the qualification acquired outside Hong Kong to engage in work that would, if undertaken in Hong Kong, be similar to that undertaken by a barrister in the course of ordinary practice as a barrister in the High Court or Court of Final Appeal, notwithstanding that such person does not satisfy all the requirements specified in subsections (1) and (2)(b), and the Court may impose on a person so admitted such restrictions and conditions as the Court may see fit.

(5) The Court may, when admitting a person as a barrister, sit in chambers."

**8. Section substituted**

Section 28 is repealed and the following substituted -

**"28. Formalities for admission as a barrister**

Except as may be prescribed by the Chief Justice, no person shall be admitted as a barrister unless he has deposited with the Registrar documentary evidence together with an affidavit showing the manner in which he satisfies

the requirements specified in section 27(1) and (2).".

**9. Roll of barristers**

Section 29 is amended by adding -

"(2A) A barrister who was admitted pursuant to section 27(1) or section 27A may -

- (a) apply by motion to have his name removed from the roll of barristers; and
- (b) where he has had his name removed under paragraph (a), on giving at least 7 days' notice to the Bar Council, apply by motion to have his name restored to the roll of barristers.

(2B) A barrister who was admitted pursuant to section 27(4) for a particular case or cases shall, on completion of such case or cases including any appeal relating thereto, be deemed to have had his name removed from the roll of barristers.

(2C) Where a barrister has had his name removed from the roll of barristers under subsection (2A) or (2B), he shall forthwith surrender to the Bar Council any current practising certificate."

**10. Practising certificates - barristers**

Section 30 is amended -

- (a) in subsection (1), by repealing "in the month of November in a year";

(b) by repealing subsection (3) and substituting -

"(3) A practising certificate may only be issued to an applicant who has paid to the Hong Kong Bar Association -

(a) except where -

(i) the applicant has been admitted as a barrister under section 27(4); or

(ii) the Bar Council has exempted the applicant therefrom,

the membership subscription; and

(b) except where the applicant has been admitted as a barrister under section 27(4) and the Bar Council has exempted him therefrom, the premium prescribed for insurance of the applicant under the current master policy for professional indemnity insurance effected by the Hong Kong Bar Association,

in respect of the period for which the practising barrister's certificate is to be issued.";

- (c) by repealing subsection (4).

## 11. Qualifications for practising as a barrister

Section 31(1) is amended -

- (a) in paragraph (c), by adding "(as that section existed before its repeal by the Legal Practitioners (Amendment) Ordinance 1999 ( of 1999))" after "section 27 (1) (a) (i) or (ii)";
- (b) in paragraph (e), by repealing everything after "roll of solicitors" and substituting a semi-colon;
- (c) by adding -
  - "(f) if he holds a current employed barrister's certificate."

## 12. Section added

The following is added -

### "31C. Employed barristers

(1) In this section "employed barrister" ( 受僱大律師 ) means a barrister who, under a contract of employment, provides legal services exclusively to his employer.

(2) An employed barrister may apply to the Bar Council for an employed barrister's certificate if -

- (a) at any time, he has been issued a practising certificate under section 30; or
- (b) he has completed the prescribed qualifying period of active practice; or

(c) he has been an employed barrister in Hong Kong for at least 12 months immediately preceding the date of his application.

(3) An employed barrister may be issued an employed barrister's certificate and the provisions of sections 29 (2C) and 30 respecting practising certificates apply to employed barrister's certificates issued under this section and, for the purposes of this section, references in those sections to a barrister or a practising certificate shall be deemed to be references to an employed barrister and an employed barrister's certificate respectively.

(4) An employed barrister who holds a current employed barrister's certificate may, on behalf of his employer but for the purpose of obtaining a legal opinion only, instruct a barrister who holds a current practising certificate, without retaining a solicitor."

**13. Offences in relation to foreign lawyers, foreign firms and Associations**

Section 50B(1) is amended by repealing "solicitor, barrister or foreign lawyer" and substituting "solicitor who satisfies all the requirements set forth in section 7, a barrister or a foreign lawyer".

**14. Rules for barristers in Hong Kong**

Section 72A(bb) is amended by repealing everything after "31" and substituting a semi-colon.

**15. Section added**

The following is added -

**"72AA. Power of Bar Council to make rules**

Subject to the prior approval of the Chief Justice, the Bar Council may make rules -

- (a) in respect of the professional practice, conduct and discipline of barristers and pupils;
- (b) for the purpose of harmonizing the relationship of barristers inter se and, with the prior approval of the Council, governing the relationship of solicitors and barristers;
- (c) regulating the issuing of practising certificates to barristers and employed barrister's certificates to employed barristers including, without limiting the foregoing, the fees payable for, the conditions of issue of, the manner of applying for, the period and form of and the publication of the issue and suspension of, such certificates;
- (d) providing for any consigning legal education or training that must be undertaken by barristers and pupils and the consequences of failing to do so;
- (e) providing for the conduct of an inquiry and investigation by a Barristers Disciplinary

Tribunal;

- (f) requiring a barrister or pupil whose conduct has been established to the satisfaction of the Bar Council to amount to a breach of proper professional standards to pay the Bar Council's costs of investigating the conduct which resulted in the order;
- (g) regulating the serving of pupillage and the manner in which any person shall qualify for admission under section 27, including, without limiting the foregoing, the period of pupillage and the examinations to be passed;
- (h) respecting the admission of persons on the basis of qualifications acquired outside Hong Kong including, without limiting the foregoing, the qualifications for admission, the examinations to be passed and the fees to be paid;
- (i) respecting the exemption by it of any person from compliance with the provisions of any rules made under this section and the conditions upon which such exemption may be granted in any particular case; and
- (j) prescribing anything which, under this ordinance, is to be or may be prescribed by the Bar Council."

**16. Savings Provision**

Notwithstanding the repeal of section 27(1)(a)(i) and (ii) of the Legal Practitioners Ordinance (Cap. 159) by section 7 of this Ordinance, a barrister who was admitted under that provision shall not have his name removed from the roll of barristers as long as he qualifies to practise as a barrister under section 31 of the principal Ordinance.

Explanatory Memorandum

The purpose of this Bill is to make miscellaneous amendments to the Legal Practitioners Ordinance (Cap. 159). The Bill -

- (a) amends the definition of "Hong Kong firm" to clarify that all the partners must be enrolled on the roll of solicitors, not just those resident in Hong Kong (clause 2);
- (b) establishes a position of "prosecutor" to assist the Law Society in its investigations (clause 3);
- (c) doubles the number of solicitors and lay persons who can be appointed to the Solicitors Disciplinary Tribunal Panel (clause 4);
- (d) gives the Council of the Law Society power to appeal against a decision of a Solicitors Disciplinary Tribunal (clause 5);
- (e) gives a Solicitors Disciplinary Tribunal power to publish a summary of its findings and order in any publication produced by the Law Society (clause 6);
- (f) removes the right of UK barristers to be admitted

in Hong Kong on the basis of their UK status, gives the Bar Council the power to prescribe the requirements for admission of all barristers and establishes a residence requirement (clause 7);

- (g) makes a consequential amendment resulting from amendments to section 27 (clause 8);
- (h) provides mechanisms for removing a person's name from the roll of barristers (clause 9);
- (i) removes the requirement for barristers to apply in November for a practising certificate and makes it a statutory requirement to take out professional indemnity insurance before receiving a practising certificate (clause 10);
- (j) makes consequential amendments resulting from amendments to section 27 and the new section 31C (clause 11);
- (k) establishes a new category of "employed barrister" (clause 12);
- (l) clarifies that a solicitor must meet the requirements in section 7 (qualifications to act as a solicitor) before he can be a practitioner of foreign law (clause 13);
- (m) makes a consequential amendment resulting from amendments to section 27 (clause 14);
- (n) gives the Bar Council power to make rules with the prior approval of the Chief Justice, including the rules that were formerly made under section 30(4)

- (clause 15);
- (o) makes a savings provision in respect of British barristers admitted before the repeal of section 27(1)(a)(i) and (ii) (clause 16).

Chapter:	159	Title:	<b>LEGAL PRACTITIONERS ORDINANCE</b>	Gazette Number:	23 of 1998 s. 2; 25 of 1998 s. 2; 11 of 1999
Section:	2	Heading:	<b>Interpretation</b>	Version Date:	01/07/1997

## Remarks:

Amendments retroactively made - see 23 of 1998 s. 2; 25 of 1998 s. 2; 11 of 1999 s. 3

- (1) In this Ordinance, unless the context otherwise requires-
- "accountant's report" (會計師報告) means a report delivered in accordance with the provisions of section 8; (Replaced 25 of 1968 s. 2)
- "Association" (聯營組織) means an Association registered under Part IIIA; (Added 60 of 1994 s. 2)
- "Bar Council" (執委會) means the Council of the Hong Kong Bar Association; (Amended 70 of 1991 s. 2)
- "barrister" (大律師) means a person who is enrolled as a barrister on the roll of barristers and who, at the material time, is not suspended from practice;
- "client" (當事人), except in relation to non-contentious business, includes any person who as principal or on behalf of another person retains or employs, or is about to retain or employ, a solicitor, and any person who is or may be liable to pay a solicitor's costs;
- "contentious business" (爭訟事務) includes any business done by a solicitor in any court, whether as a solicitor or as an advocate;
- "costs" (訟費、事務費) includes fees, charges, disbursements, expenses and remuneration;
- "Costs Committee" (事務費委員會) means the Costs Committee appointed under section 74;
- "Council" (理事會) means the council of the Society elected in accordance with the provisions of its articles of association; (Added 52 of 1980 s. 2)
- "Court" (法院) means the Court of First Instance; (Amended 92 of 1975 s. 59; 25 of 1998 s. 2)
- "employee" (僱員) includes a former employee; (Added 25 of 1968 s. 2)
- "foreign firm" (外地律師行) means a law firm or sole practitioner that is registered as a foreign firm under Part IIIA; (Added 60 of 1994 s. 2. Amended 23 of 1998 s. 2)
- "foreign jurisdiction" (外地司法管轄區) means a jurisdiction other than Hong Kong; (Added 60 of 1994 s. 2. Amended 23 of 1998 s. 2)
- "foreign law" (外地法律) means the law of a foreign jurisdiction; (Added 60 of 1994 s. 2. Amended 23 of 1998 s. 2)
- "foreign lawyer" (外地律師) means a person registered as a foreign lawyer under Part IIIA; (Added 60 of 1994 s. 2. Amended 23 of 1998 s. 2)
- "Hong Kong firm" (香港律師行) means a law firm in which-
- (a) all of the partners resident in Hong Kong are solicitors: or
  - (b) the sole practitioner of which is a solicitor; (Added 60 of 1994 s. 2)
- "non-contentious business" (非爭訟事務) includes any business connected with sales, purchases, leases, mortgages and other matters of conveyancing;
- "notary public" (公證人) means a person who is registered on the register of notaries public and who, at the material time, is not suspended from practice;
- "Postgraduate Certificate in Laws" (法學專業證書) means a Postgraduate Certificate in Laws awarded by the University of Hong Kong, the City University of Hong Kong or the City Polytechnic of Hong Kong; (Added 1 of 1992 s. 2. Amended 100 of 1994 s. 5)
- "practising certificate" (執業證書) means-
- (a) a certificate issued by the Society under section 6; and

(b) a certificate issued by the Bar Council under section 30; (Replaced 58 of 1976 s. 2. Amended 70 of 1991 s. 2)

"qualified person" (合資格人士) means a person qualified for admission as a solicitor; (Added 50 of 1982 s. 2)

"register of notaries public" (公證人註冊紀錄冊) means the register kept by the Registrar in accordance with the provisions of section 41;

"Registrar" (司法常務官) means the Registrar of the High Court and any deputy registrar or assistant registrar of the High Court; (Amended 25 of 1998 s. 2)

"roll of barristers" (大律師登記冊) means the roll kept by the Registrar in accordance with the provisions of section 29;

"roll of solicitors" (律師登記冊) means the roll kept by the Registrar in accordance with the provisions of section 5;

"Society" (律師會) means The Law Society of Hong Kong; (Replaced 14 of 1970 s. 2)

"solicitor" (律師) means a person who is enrolled on the roll of solicitors and who, at the material time, is not suspended from practice;

"trainee solicitor contract" (實習律師合約) means a contract in writing, whether entered into before or after the commencement of this Ordinance, under which a person is employed as an articled clerk or trainee solicitor for the purpose of being admitted as a solicitor; (Added 70 of 1991 s. 2)

"unqualified person" (不合資格人士) means a person who is not a solicitor.

(Amended 70 of 1991 s. 2; 61 of 1992 s. 2)

(1A) In this Ordinance, a reference to the Department of Justice shall, in relation to any period of time before 1 July 1997, be deemed to be a reference to the then Legal Department. (Added 11 of 1999 s. 3)

(2) For the avoidance of doubt, it is hereby declared that any conduct of a trainee solicitor or employee of a solicitor which would reasonably be regarded as disgraceful, dishonourable or discreditable by a solicitor of good repute shall be deemed misconduct. (Added 25 of 1968 s. 2. Amended 1 of 1981 s. 2; 70 of 1991 s. 13)

(3) Any rules made under section 73(1)(d) or (f) shall, subject to section 73(3) and unless the context otherwise requires, apply to a qualified person as they apply to a solicitor. (Added 50 of 1982 s. 2)

Chapter:	159	Title:	LEGAL PRACTITIONERS ORDINANCE	Gazette Number:	
Section:	9	Heading:	<b>Solicitors Disciplinary Tribunal Panel</b>	Version Date:	30/06/1997

(1) The Chief Justice shall appoint a Solicitors Disciplinary Tribunal Panel consisting of not more than 60 practising solicitors of at least 10 years' standing, not more than 10 foreign lawyers and not more than 30 lay persons who are not in the opinion of the Chief Justice, connected in any way with the practice of law. (Amended 60 of 1994 s. 12)

(2) A member of the Council is not eligible to be appointed to or remain on the Panel.

(3) A person appointed to the Panel shall be appointed for a term specified by the Chief Justice not to exceed 5 years but may be reappointed for a further term or terms.

(4) The Chief Justice shall appoint one of the solicitors on the Panel as the Tribunal Convenor for a 3 year term and he may appoint one or more of the other solicitors on the Panel and one or more foreign lawyers on the Panel as Deputy Tribunal Convenors for 3 year terms. (Amended 60 of 1994 s.)

12)

(5) If the Tribunal Convenor is precluded by illness, absence from Hong Kong or any other cause from exercising his functions under this Ordinance, a Deputy Tribunal Convenor may act in his place. (Added 60 of 1994 s. 12)

(Replaced 61 of 1992 s. 5)

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Chapter: 159	Title: LEGAL PRACTITIONERS ORDINANCE	Gazette Number: 25 of 1998 s. 2
Section: 13	Heading: <b>Appeal and saving</b>	Version Date: 01/07/1997

Remarks:

Amendments retroactively made - see 25 of 1998 s. 2

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(1) Subject to section 12(6), an appeal against any order made by a Solicitors Disciplinary Tribunal shall lie to the Court of Appeal and the provisions of Order 59 of the Rules of the High Court (Cap 4 sub. leg.) shall apply to every such appeal save that the time for serving notice of motion of appeal shall be 21 days from the date of the decision and not 6 weeks as provided in the said Order and the decision of the Court of Appeal on any such appeal shall be final. (Amended 61 of 1992 s. 6; 25 of 1998 s. 2)

(2) In any appeal under subsection (1) the Society shall be the respondent.

(3) Nothing herein contained shall affect the jurisdiction of the Court under sections 3(2) and 45.

(4) The hearing of every appeal under this section shall be in open court unless, and to the extent to which, the Court of Appeal may otherwise direct.

(Amended 92 of 1975 s. 59; 61 of 1992 s. 9)

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Chapter: 159	Title: LEGAL PRACTITIONERS ORDINANCE	Gazette Number: 25 of 1998 s. 2
Section: 27	Heading: <b>Power of Court to admit barristers</b>	Version Date: 01/07/1997

Remarks:

Amendments retroactively made - see 25 of 1998 s. 2

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### PART III

#### BARRISTERS

(1) The Court may, in such manner as may be prescribed by the Chief Justice, admit as a barrister of the High Court in Hong Kong, any person who satisfies the following requirements, that is to say - (Amended 25 of 1998 s. 2)

- (a) (i) he has been called to the Bar in England or Northern Ireland; (Replaced 32 of 1972s. 2)
- (ii) he has been admitted as an advocate in Scotland: (Replaced 32 of 1972 s. 2)
- (iii) he is a Bachelor of Laws of the University of Hong Kong, the City University of

- Hong Kong or the City Polytechnic of Hong Kong and has obtained a Postgraduate Certificate in Laws; (Replaced 58 of 1976 s. 7. Amended 1 of 1992 s. 3; 100 of 1994 s. 6)
- (iv) he has obtained a Postgraduate Certificate in Laws and he is a Hong Kong permanent resident within the meaning of the Immigration Ordinance (Cap 115), or is a Commonwealth citizen or citizen of the Republic of Ireland who has been ordinarily resident in Hong Kong for a period of at least 7 years; or (Added 58 of 1976 s. 7. Amended 14 of 1981 s. 2; 31 of 1987 s. 28; 70 of 1991 s. 5; 1 of 1992 s. 3)
  - (v) he has been admitted as a solicitor in Hong Kong for at least 3 years immediately or recently before the date of his application for admission and during that time he was in practice as a solicitor in Hong Kong or employed in the public service of the Government as a legal officer; (Added 70 of 1991 s. 5. Amended 60 of 1994 s. 30)
- (b) he is not at the time of the application disbarred or removed from the roll of advocates in Scotland or suspended from practice as such barrister or advocate;
  - (c) he is not in practice as a solicitor either on his own account or as a partner or salaried employee in a firm of solicitors practising in Hong Kong; (Replaced 70 of 1991 s. 5. Amended 61 of 1992 s. 12)
  - (d) (Repealed 58 of 1976 s. 7)
  - (e) he has been ordinarily resident in Hong Kong for a period of at least 8 consecutive months immediately prior to the date of his application for admission or satisfies the Court that he intends to be ordinarily resident in Hong Kong. (Amended 50 of 1982 s. 8)
- (1A) In addition to the requirements under subsection (1)(a)(i) or (ii), a person must also-
- (a) have practised as a barrister or advocate in the United Kingdom for at least 3 years;
  - (b) be a Hong Kong permanent resident as defined in the Immigration Ordinance (Cap 115); or
  - (c) have been ordinarily resident in Hong Kong for at least 7 years. (Added 46 of 1989 s. 8)
- (1B) If at the time of admission under subsection (1) the person is a solicitor, the Registrar shall remove the person's name from the roll of solicitors. (Added 61 of 1992 s. 12)
- (2) The Court may admit a person as a barrister under this section-
- (a) (Repealed 58 of 1976 s. 7)
  - (b) either generally or for the purpose of any particular case or cases and may impose on a person so admitted restrictions and conditions as the Court may see fit, notwithstanding that such person does not satisfy the requirements of subsection (1)(e) and subsection (1A). (Amended 46 of 1989 s. 8)
- (3) The Court may, when admitting a person as a barrister, sit in chambers. (Added 58 of 1976 s. 7)
- (4) In this section-
- "Commonwealth citizen" (英聯邦公民) means a person who is recognized by the law of a Commonwealth country as being a citizen of that country;
- "Commonwealth country" (英聯邦國家) means a country that is an independent sovereign member of the Commonwealth. (Added 14 of 1981 s. 2)
- "legal officer" (律政人員) means-
- (a) a legal officer within the meaning of the Legal Officers Ordinance (Cap 87);
  - (b) a person appointed under section 3 of the Legal Aid Ordinance (Cap 91); and
  - (c) any person deemed to be a legal officer for the purpose of the Legal Officers Ordinance (Cap 87). by virtue of section 75(3) of the Bankruptcy Ordinance (Cap 6) or section 3(3) of the Director of Intellectual Property (Establishment) Ordinance (Cap 412). (Added 60 of 1994 s. 30)
- (Replaced 25 of 1968 s. 8)
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Chapter:	159	Title:	LEGAL PRACTITIONERS ORDINANCE	Gazette Number:	
Section:	28	Heading:	<b>Formalities for admission of a barrister</b>	Version Date:	30/06/1997

Save as may be prescribed by the Chief Justice, no person shall be admitted as a barrister unless he has deposited with the Registrar his certificate of call to the Bar in England or Northern Ireland, his certificate of admission as an advocate in Scotland, documentary evidence of his practice or employment in the case of an admission under section 27(1)(a)(v) or his Postgraduate Certificate in Laws, as the case may be, and has filed in the Court an affidavit of identity in such form as may be prescribed by the Chief Justice together with an affidavit showing the manner in which he satisfies the requirements set out in section 27(1).

(Amended 25 of 1968 s. 9; 58 of 1976 s. 8; 1 of 1992 s. 4; 61 of 1992 s. 14)

Chapter:	159	Title:	LEGAL PRACTITIONERS ORDINANCE	Gazette Number:	
Section:	29	Heading:	<b>Roll of barristers</b>	Version Date:	30/06/1997

(1) The Registrar shall keep a roll of all barristers admitted by the Court under sections 27 and 27A and shall have custody of the roll of barristers and of all documents relating thereto and shall allow any person to inspect the roll of barristers during office hours without payment. (Amended 61 of 1992 s. 15)

(2) The Registrar, upon production of a certificate of admission signed by a judge and upon payment to the Registrar of such fee as may be prescribed by the Chief Justice, shall enter upon the roll of barristers the name of the person enrolled. (Amended 60 of 1994 s. 31)

(3) (Repealed 61 of 1992 s. 15)

Chapter:	159	Title:	LEGAL PRACTITIONERS ORDINANCE	Gazette Number:	
Section:	30	Heading:	<b>Practising certificates - barristers</b>	Version Date:	30/06/1997

(1) The Bar Council, upon application in writing by a barrister in the month of November in a year and upon payment of such fee as may be prescribed by the Bar Council and upon being satisfied in such manner as may be prescribed by the Bar Council that the person to whom the application relates is qualified to practise as a barrister or is qualified to practise to a limited extent under section 31 (2), shall issue to the applicant a practising certificate as a barrister in such form as may be prescribed by the Bar Council for the period of one calendar year from 1 January next following the date of the application: (Amended 25 of 1968 s. 10; 58 of 1976 s. 9)

Provided that-

- (a) the Bar Council, in its absolute discretion and upon such condition as it may consider necessary, may permit the application for a practising certificate to be made under this subsection at any time and upon such application may issue to the applicant a practising certificate for any period not exceeding one calendar year and ending on 31 December in any year; and (Amended 70 of 1991 s. 6)
- (b) where the name of a barrister is removed from or struck off the roll of barristers, the practising certificate of that barrister shall automatically determine without any entitlement to any refund of the prescribed fee or of any part thereof.

(2) The publication in the Gazette by the Bar Council of a list of the names and addresses of those barristers who have obtained practising certificates for the period therein stated shall be prima facie evidence that each person named therein is a person qualified under section 31 to practise as a barrister and to whom a practising certificate for the period specified in such list has been issued under this section and the absence from any such list of the name of any person shall be prima facie evidence that such person is not so qualified. (Amended 70 of 1991 s. 6)

(3) Except with respect to an applicant who has been admitted under section 27(2) for a particular case or cases, a practising certificate may only be issued to an applicant who has paid to the Hong Kong Bar Association the membership subscription in respect of the period for which the practising certificate is to be issued.

(4) Subject to the prior approval of the Chief Justice, the Bar Council may make rules regulating the issue to barristers of practising certificates and the fees payable for, the conditions of issue of, the manner of applying for, the period and form of, the publication of the issue and the suspension of practising certificates and in relation to practising certificates generally. (Added 70 of 1991 s. 6)

(Added 70 of 1991 s. 6)

Chapter:	159	Title:	LEGAL PRACTITIONERS	Gazette Number:	
			ORDINANCE		
Section:	31	Heading:	<b>Qualifications for practising as barrister</b>	Version Date:	30/06/1997

- (1) A barrister shall not be qualified to practise as such-
  - (a) subject to subsection (2), unless he has completed the prescribed qualifying period of active practice;
  - (b) unless he holds a valid practising certificate;
  - (c) having qualified for admission as a barrister by virtue of section 27(1)(a)(i) or (ii), unless he continues to be a barrister in England or Northern Ireland or an advocate in Scotland and is not there suspended from practice as such;
  - (d) if he is suspended from practice under section 37; (Amended 61 of 1992 s. 16)
  - (e) if he is on the roll of solicitors or he is a solicitor on his own account or a partner or salaried employee of a firm of solicitors practising in the United Kingdom. (Replaced 70 of 1991 s. 7. Amended 61 of 1992 s. 16)

(2) After the expiry of the first 6 months of the prescribed qualifying period of active practice, a barrister shall be qualified to practise as a barrister to such limited extent as the Bar Council may determine.

(Replaced 58 of 1976 s. 10. Amended 70 of 1991 s. 7)

Chapter:	159	Title:	LEGAL PRACTITIONERS ORDINANCE	Gazette Number:	
Section:	<b>50B</b>	Heading:	<b>Offences in relation to foreign lawyers, foreign firms and Associations</b>	Version Date:	30/06/1997

- (1) A person who offers his services to the public as a practitioner of foreign law commits an offence unless he is a solicitor, barrister or foreign lawyer.
- (2) A person who is qualified to practise foreign law and who-
- (a) from within a foreign firm but not as a foreign lawyer; or
  - (b) from within a Hong Kong firm but not as a solicitor or foreign lawyer, offers his services to the public as a practitioner of foreign law, does not commit an offence under subsection (1) so long as he does not so offer his services in any 12 month period for more than 3 continuous months or more than 90 days.
- (3) A foreign lawyer who offers his services to the public as a practitioner of foreign law in a capacity other than as a practitioner in a foreign firm or a Hong Kong firm commits an offence.
- (4) A foreign lawyer or foreign firm shall not take a solicitor into partnership or employ a solicitor who holds a practising certificate or a barrister who holds a practising certificate.
- (5) Where a Hong Kong firm and a foreign firm have an agreement as described in section 39C(1) and they are not registered as an Association, the partners or the sole practitioners of each firm commit an offence.
- (6) A person who commits an offence under this section is liable to a fine of \$500000.  
(Added 60 of 1994 s. 39)

Chapter:	159	Title:	LEGAL PRACTITIONERS ORDINANCE	Gazette Number:	
Section:	<b>72A</b>	Heading:	<b>Rules for barristers in Hong Kong</b>	Version Date:	30/06/1997

- The Chief Justice may make rules in relation to the admission of persons who seek to qualify or have qualified as barristers in Hong Kong-
- (a) regulating the enrolment of students seeking to become barristers in Hong Kong;
  - (b) regulating the manner in which pupillage may be served, including applications for pupillage, disqualifications in respect of pupillage, approval and termination of pupillage and the period and requirements of pupillage; (Replaced 58 of 1976 s. 12)
  - (ba) regulating the examinations to be passed by students seeking to become barristers in Hong Kong; (Added 58 of 1976 s. 12)
  - (bb) prescribing the qualifying period of active practice for the purposes of section 31, which period may include such periods of active practice served before admission as a barrister in Hong Kong or before call to the Bar in England or Northern Ireland or admission as an advocate in Scotland as may be prescribed; (Added 58 of 1976 s. 12)
  - (c) generally for the better control of such students.
- (Added 32 of 1972 s. 3)

Chapter:	159	Title:	LEGAL PRACTITIONERS ORDINANCE	Gazette Number:	25 of 1998 s. 2
Section:	27	Heading:	<b>Power of Court to admit barristers</b>	Version Date:	01/07/1997

Remarks:

Amendments retroactively made - see 25 of 1998 s. 2

**PART III**

**BARRISTERS**

(1) The Court may, in such manner as may be prescribed by the Chief Justice, admit as a barrister of the High Court in Hong Kong, any person who satisfies the following requirements, that is to say- (Amended 25 of 1998 s. 2)

- (a)
  - (i) he has been called to the Bar in England or Northern Ireland; (Replaced 32 of 1972 s. 2)
  - (ii) he has been admitted as an advocate in Scotland; (Replaced 32 of 1972 s. 2)
  - (iii) he is a Bachelor of Laws of the University of Hong Kong, the City University of Hong Kong or the City Polytechnic of Hong Kong and has obtained a Postgraduate Certificate in Laws; (Replaced 58 of 1976 s. 7. Amended 1 of 1992 s. 3; 100 of 1994 s. 6)
  - (iv) he has obtained a Postgraduate Certificate in Laws and he is a Hong Kong permanent resident within the meaning of the Immigration Ordinance (Cap 115), or is a Commonwealth citizen or citizen of the Republic of Ireland who has been ordinarily resident in Hong Kong for a period of at least 7 years; or (Added 58 of 1976 s. 7. Amended 14 of 1981 s. 2; 31 of 1987 s. 28; 70 of 1991 s. 5; 1 of 1992 s. 3)
  - (v) he has been admitted as a solicitor in Hong Kong for at least 3 years immediately or recently before the date of his application for admission and during that time he was in practice as a solicitor in Hong Kong or employed in the public service of the Government as a legal officer; (Added 70 of 1991 s. 5. Amended 60 of 1994 s. 30)
- (b) he is not at the time of the application disbarred or removed from the roll of advocates in Scotland or suspended from practice as such barrister or advocate;
- (c) he is not in practice as a solicitor either on his own account or as a partner or salaried employee in a firm of solicitors practising in Hong Kong; (Replaced 70 of 1991 s. 5. Amended 61 of 1992 s. 12)
- (d) (Repealed 58 of 1976 s. 7)
- (e) he has been ordinarily resident in Hong Kong for a period of at least 8 consecutive months immediately prior to the date of his application for admission or satisfies the Court that he intends to be ordinarily resident in Hong Kong. (Amended 50 of 1982 s. 8)

(1A) In addition to the requirements under subsection (1)(a)(i) or (ii), a person must also-

- (a) have practised as a barrister or advocate in the United Kingdom for at least 3 years;
- (b) be a Hong Kong permanent resident as defined in the Immigration Ordinance (Cap 115); or
- (c) have been ordinarily resident in Hong Kong for at least 7 years. (Added 46 of 1989 s. 8)

(1B) If at the time of admission under subsection (1) the person is a solicitor, the Registrar shall remove the person's name from the roll of solicitors. (Added 61 of 1992 s. 12)

(2) The Court may admit a person as a barrister under this section-

- (a) (Repealed 58 of 1976 s. 7)
- (b) either generally or for the purpose of any particular case or cases and may impose on a person so admitted restrictions and conditions as the Court may see fit, notwithstanding that such person does not satisfy the requirements of subsection (1)(e) and subsection (1A). (Amended 46 of 1989 s. 8)

(3) The Court may, when admitting a person as a barrister, sit in chambers. (Added 58 of 1976 s.7)

(4) In this section-  
"Commonwealth citizen" (英聯邦公民) means a person who is recognized by the law of a Commonwealth country as being a citizen of that country;

"Commonwealth country" (英聯邦國家) means a country that is an independent sovereign member of the Commonwealth. (Added 14 of 1981 s. 2)

"legal officer" (律政人員) means-

- (a) a legal officer within the meaning of the Legal Officers Ordinance (Cap 87);
- (b) a person appointed under section 3 of the Legal Aid Ordinance (Cap 91); and
- (c) any person deemed to be a legal officer for the purpose of the Legal Officers Ordinance (Cap 87), by virtue of section 75(3) of the Bankruptcy Ordinance (Cap 6) or section 3(3) of the Director of Intellectual Property (Establishment) Ordinance (Cap 412). (Added 60 of 1994 s. 30)

(Replaced 25 of 1968 s. 8)

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