

NOTE ON EMPLOYED BARRISTERS

1. The category of “employed barrister” is not new. Code of Conduct (“the Code”), § 180 defines an employed barrister as:-

“a barrister who is engaged to provide legal advice or services for his employer under a contract of employment.”

The term “employed barrister” in cl. 12 of the Legal Practitioners (Amendment) Bill (“LPAB”) reflects this definition.

2. Although an in-house solicitor with a practising certificate may instruct a barrister directly, it may be an offence under s.45(1) of the present Legal Practitioners Ordinance (Cap. 159)(“LPO”) for an employed barrister to instruct a practising barrister directly. The latter would be “a person who, by virtue of [LPO] section 7, is not qualified to act as a solicitor” purporting to act as a solicitor. Thus, any instruction (even if limited to non-litigious matters) must be done either through an in-house or general solicitor.
3. The statutory recognition of “employed barristers” as a distinct category of barristers will:-
 - (1) eliminate the anomaly identified above; and,
 - (2) enable the Bar Council to regulate the instruction of practising barristers by employed barristers.
4. The anomaly will be eliminated by LPB, cl. 12 which expressly authorises the holder of an employed barrister’s certificate to instruct a barrister directly for the limited purpose of obtaining legal advice.
5. On the other hand, the requirement in LPAB, cl.12 that an employed barrister holds a special certificate will ensure that only barristers with a defined standard of practical experience and legal maturity will be able to give instructions directly. For example, it is currently possible for a person to become an employed barrister without having undergone pupillage or any training apart from the PCLL. It would be undesirable for such a person to instruct a barrister immediately upon entering employment.
6. Note that the Bar’s rules regulating direct professional access cannot cater for direct instruction by employed barristers. Code § 50(b) enables a barrister to receive instructions directly from members of certain recognised professional bodies. The Bar’s approach has been to negotiate standard terms of engagement with a recognised professional body which will be responsible for ensuring that its members adhere to such terms (see Code, Annexes 19, 19A and 20). But there is no recognised professional body for employed barristers who are simply a class of members of the Bar Association.
7. Code § 50 and Annexes 19, 19A and 20 are attached to this Note.