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LEGAL PRACTITIONERS (AMENDMENT) BILL 1999

COMMITTEE STAGE

Amendments to be moved by the Secretary for Justice

Clause

Amendment Proposed

1 (a) In subsection (2), by deleting “section 15” and substituting “sections 7A(1) and 15”.

(b) By adding -

“(3) Sections 7, 7A(2), 8, 9, 10(b), 11(a) and 16 shall come into operation on a day to be appointed by the Secretary for Justice by notice in the Gazette, which shall not be before 1 November 2001.”.

3

By deleting the proposed section 8AAA and

substituting -

**“8AAA. Additional powers of
an inspector**

(1) In this section “inspector” (調査員) means an inspector appointed appointed under section 8AA.

(2) The Council may direct an inspector 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, an inspector may question -

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

5(b) In the proposed subsection (2A), by deleting “Where the Council is not satisfied with an order made by a Solicitors Disciplinary Tribunal, it may appeal the order” and substituting “The Council may, with leave of the Court of Appeal, appeal an order of a Solicitors Disciplinary Tribunal”.

6 In the proposed section 13A -

- (a) in subsection (1), by deleting “The” and substituting
“Unless, on application by the solicitor, the Solicitors
Disciplinary Tribunal or a court, on an appeal under section
13, otherwise orders, the”;
- (b) by deleting subsection (2).

7 In the proposed section 27 -

- (a) in the Chinese text, by deleting subsection (2) (b) (i) and
substituting -

“(i) 在緊接認許申請的日期前的 3 個月內
或更長的時間內一直居於香港；”；

- (b) by deleting subsection (4) and substituting -

“(4) Notwithstanding that a person does
not satisfy all the requirements specified in
subsections (1) and (2) (b), where the Court
considers that he is a fit and proper person to be a
barrister and is satisfied that he has -

- (a) 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; and

(b) substantial experience in advocacy in a court,

the Court may admit such person as a barrister under this section for the purpose of any particular case or cases and may impose such restrictions and conditions on him as it may see fit.”.

New

By adding -

“7A. Additional power of Court to admit barristers

(1) Section 27A(1) (e) and (3) is repealed.

(2) The remainder of section 27A is

repealed.”.

10 By deleting paragraph (b) and substituting -

“(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 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
certificate is to be issued.

(3A) On application by a barrister admitted
under section 27(4), the Bar Council may waive part of
the membership subscription.“;”.

11(c) By deleting the proposed paragraph (f) and substituting -

“(f) if he is an employed barrister within the meaning of
section 31C(1).”.

12 In the proposed section 31C, by adding -

“(3A) The publication in the Gazette by the Bar
Council of a list of the names and addresses of those barristers
who have obtained employed barrister’s certificates for the period
therein stated shall be prima facie evidence that each person
named therein is the holder of such a certificate for the period
specified in such list, and the absence from

any such list of the name of any person shall be prima facie evidence that the person does not hold such a certificate.”.

15

By adding -

“72AAA. Conflict between rules made by Chief Justice and Bar Council

Where power is given to -

- (a) the Chief Justice; and
- (b) the Bar Council,

to make rules in respect of the same matter, rules made by either or both of them in respect of such a matter shall be valid unless there is a conflict between such rules, in which case the rules made by the Chief Justice shall be given precedence to the extent of such conflict.”.

16

- (a) By deleting “(i) and (ii)” and substituting “(i), (ii) and (v)”.
- (b) By deleting “as long as he qualifies to practise as a barrister under section 31 of the principal Ordinance” and substituting “because of such repeal”.

New

By adding -

“17. Legislative Council may

amend Schedule 1

Section 72B is repealed.

18. Sections added

The following are added -

**“74B. Students already
enrolled in legal
studies in the
United Kingdom**

Notwithstanding the repeal and replacement of section 27 by section 7 of the Legal Practitioners (Amendment) Ordinance 2000 (of 2000) (“the amending Ordinance”), where a person, on the day the amending Ordinance is published in the Gazette, is enrolled or registered in, or has been offered a place in -

- (a) a course of studies in the United Kingdom that, on completion, will qualify him for a vocational course leading to admission as a barrister in the United Kingdom;
- (b) the Bar Vocational

Course in the United Kingdom; or

- (c) Hong Kong in an external course of studies offered by an institution in the United Kingdom that, on completion, will qualify him for a vocational course leading to admission as a barrister in the United Kingdom,

the person may, instead of complying with the requirements established under section 27 for admission as a barrister, elect to be admitted under section 27 as that section existed before its repeal by the amending Ordinance, provided he -

- (i) has been called to the Bar in England or Northern Ireland or admitted as an advocate in Scotland;
- (ii) qualifies for admission under the

other criteria established under the repealed section 27(1) (b), (c) and (e) and (1A); and

(iii) applies for admission not later than 31 December 2003.

74C. Lawyers employed in Department of Justice

(1) Notwithstanding the repeal of section 27A by section 7A of the Legal Practitioners (Amendment) Ordinance 2000 (of 2000) (“the amending Ordinance”), where a person, on or before the date appointed by the Secretary for Justice by notice in the Gazette for the coming into operation of section 7A(2) of the amending Ordinance, meets the requirements in section 27A(1) (a) to (d), as that section existed before its repeal, the Court may at any time admit such person as a barrister of the High Court of Hong Kong in accordance with the said

section 27A(1).

(2) The Court shall not admit as a barrister, under subsection (1), more than 4 persons in any period of 12 months.

(3) For the avoidance of doubt, section 27A(1) (e) and (3) does not apply to admission as a barrister under this section.”.

19. Schedule repealed

Schedule 1 is repealed.

CONSEQUENTIAL AMENDEMENTS

Bankruptcy Ordinance

20. Appointment of Official Receiver and other officers

Section 75(2) of the Bankruptcy Ordinance (Cap. 6) amended by repealing “Schedule 1 to the Legal Practitioners Ordinance (Cap. 159)” and substituting “Schedule 2 of the Legal Officers Ordinance (Cap. 87)”.

Legal Officers Ordinance

21. Amendments to Legal Officers Ordinance

The Legal Officers Ordinance (Cap. 87) is amended -

- (a) in section 2, in the definition of “legal officer”
and in sections 3 and 11, by repealing “the
Schedule” and substituting “Schedule 1”;
- (b) in section 2A, by repealing “Schedule 1 of the
Legal Practitioners Ordinance (Cap. 159)” and
substituting “Schedule 2”;
- (c) by renumbering the Schedule as Schedule 1;
and
- (d) by adding -

“SCHEDULE 2 [s. 2A]

1. The States and Territories of the
Commonwealth of Australia.
2. The Territories and Provinces of
Canada, except Quebec.

3. New Zealand.
4. The Republic of Ireland.
5. Zimbabwe.
6. Singapore.”.

Legal Aid Ordinance

22. Appointments

Section 3(2) of the Legal Aid Ordinance (Cap. 91) is amended by repealing “Schedule 1 to the Legal Practitioners Ordinance (Cap. 159)” and substituting “Schedule 2 of the Legal Officers Ordinance (Cap. 87)”.

Director of Intellectual Property (Establishment) Ordinance

23. Interpretation

Section 2 of the Director of Intellectual Property (Establishment) Ordinance (Cap. 412) is amended in the definition of “legally qualified” by repealing “Schedule 1 to the Legal Practitioners Ordinance (Cap. 159)” and substituting “Schedule 2 of the Legal Officers Ordinance (Cap. 87)”.