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29 March 2000

Mrs. Percy Ma,
Clerk to Bills Committee,
Legislative Council Building,
8 Jackson Road,
Central,
Hong Kong.

via Mr. Michael Scott, SASG/GAU

Dear Mrs. Ma,

Legal Practitioners (Amendment) Bill 1999

Thank you for your letter dated 13 March 2000. The Administration's reply is set out according to the notation of your letter.

(a) Exemption for students studying LLB in UK

The Administration is presently considering the Bills Committee's proposal to exempt all students who are studying for LLB in the UK from the new admission criteria in consultation with the Bar. We will revert to the Committee when a settled view has been reached.

(b) External LLB students in Hong Kong

Our information to date is that the following number of external students are studying for the LLB degree in Hong Kong –

1 st year	1674
2 nd year	530
3 rd year	278
4 th year	18
Not specified	<u>198</u>
Total	2698

As at the date of this letter we have received three replies from eight of the bar vocational course institutions advising that they do not have external LLB students who have enrolled in the bar vocational course in the past three years. With respect to the criteria for admitting external LLB students to the bar vocational course we have been advised that they are admitted according to the same criteria as any other candidate and are based on merit.

(c) **The present role of an inspector and the interaction between an inspector and a prosecutor**

The Law Society has advised that –

- (a) The powers and the role of an inspector are as set out in section 8AA of the Ordinance and the Inspectors Powers Rules.

Inspectors are usually, but not necessarily, Investigation Officers in the Conduct Section of the Law Society. Other suitably qualified inspectors (e.g. accountants) have been appointed when necessary.

Currently, an inspector's ability to question is limited as to the place (only in the premises of any court or place of lawful detention) and the category of person (only in relation to any person who acts or purports to act as an employee of a solicitor).

The proposed amendments seek to remove these restrictions so that an inspector may question any person who can materially assist in an enquiry.

- (b) The Law Society maintains a Panel of Prosecutors who are appointed by the Standing Committee on Compliance either to conduct disciplinary proceedings or to advise on evidence.

The relationship between a prosecutor and the Law Society is that of solicitor and client. As such, a prosecutor would advise on the adequacy of the evidence gathered by an inspector, advise on whether and how the evidence can be improved, and, where warranted, rely on the evidence to present the case of the Law Society before the Solicitors Disciplinary Tribunal.

- (c) The relationships between inspectors/investigation officers and prosecutors are unlikely to be materially affected by the proposed section 8AAA.

(d) Case law relevant to “has resided in Hong Kong”

The authorities are helpfully summarised in Reed (Inspector of Taxes) v Clark [1986] Ch 1, per Nicholls J. The following case law cited by Nicholls J is noted below –

- It is now well settled that where a person resides is essentially a question of fact and degree: Inland Revenue Commissioners v Lysaght [1928] AC 234.
- “During the year of assessment ... this gentleman was not residing in this country at all. I do not think that that fact taken by itself would be by any means conclusive, because if he had been travelling, or had been a mariner and had been absent the whole of the year, I do not think that would have prevented him from having a residence in this country”: Turnbull v Foster (1904) 6 T.C. 206, 210, per Lord Moncrieff.
- “Residing” has no special or technical meaning but bears its natural and ordinary meaning as a word in common use in the English language, see Viscount Cave LC in Levene v Inland Revenue Commissioners [1928] AC 217 –

“The word ‘reside’ is a familiar English word and is defined in the Oxford English Dictionary as meaning ‘to dwell permanently or for a considerable time, to have one’s settled or usual abode, to live in or at a particular place’. [Subject to any statutory modification, this definition] may be accepted as an accurate indication of the meaning of the word ‘reside’.”

In the Administration’s view, with specific regard to the meaning of “has resided in Hong Kong”, it is worth noting that, in the passage from Levene cited above, Viscount Cave LC added that –

“In most cases there is no difficulty in determining where a man has his settled or usual abode, and if that is ascertained he is not the less

resident there because from time to time he leaves it for the purpose of business or pleasure.”

Accordingly, while each case is dependent on its own facts, it appears that absences on travel or business would not necessarily deprive an applicant of the status of having “resided in Hong Kong”.

(e) **Definition of “Hong Kong firm”**

A law firm would not cease to be a “Hong Kong firm” under the definition in clause 2 were one of the partners to be suspended from practice as a solicitor since, by definition, a solicitor is a person who is on the Roll and is not suspended. Therefore a suspended solicitor could not be a partner in a solicitors’ firm. The proposed amendment does not affect the position in any way. The remaining partners, or sole practitioner, would continue to be a “Hong Kong firm”.

(f) **Outstanding issues in the Administration’s letter dated 10 March 2000**

(i) Section 27A

As noted in our letter dated 10 March 2000, the Administration considers that section 27A should be repealed. However, we are still in the process of consulting affected counsel and the Bar on the appropriate transitional arrangements.

(ii) Number of Hong Kong students in UK

The information which we have received to date is as follows –

1 st year	48
2 nd year	49
3 rd year	40
New students on 4 th year course (Oxford Brookes University only)	8
Not specified	<u>5</u>
Total	150

(iii) Number of Hong Kong students in Commonwealth

We have received insufficient replies to date for meaningful figures to be given

Attendance of Bills Committee

This is to confirm that the names of the representatives of the Administration who will be attending the meeting of the Bills Committee on 31 March 1999 are –

Mr Michael Scott, SASG
Mr William Maddaford, SALD
Miss Agnes Cheung, SGC
Ms Carmen Chu, SGC

Yours sincerely,

(Agnes Cheung)
Senior Government Counsel
Legal Policy Division