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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 7, 7A(1) and (2) and 15".

(b) By adding -

"(3) Sections 7 and 7A(2) 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" ()
means an inspector 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 new 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. Sections added

The following is added -

**"74B. Students already
enrolled in legal
studies in the UK**

Notwithstanding the repeal and replacement of section 27 of this

Ordinance by section 7 of the Legal Practitioners (Amendment) Ordinance 2000 (of 2000) ("the amending Ordinance"), where a person is, on the day the amending Ordinance is published in the Gazette, enrolled -

- (a) in 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) in the Bar Vocational Course in the United Kingdom; or
- (c) 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 of this Ordinance 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) do not apply to admission as a barrister under this section."."