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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 to 23 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 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 under this section" and substituting "The Council may, with leave of the Court of Appeal,

appeal an order of a Solicitors Disciplinary Tribunal under subsection (1)".

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 the Court of Appeal, 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 -

- (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 in Hong Kong 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) is 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)".