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19 August 1999

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By Fax

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Total no. of pages : 5

(Attn : Miss Kitty Fung
Government Counsel)

Dear Kitty,

Legal Practitioners (Amendment) Bill 1999

I am scrutinizing the above Bill with a view to advising Members on the legal and drafting aspects. I shall be grateful if you would clarify the following :

Clause 3 - new section 8AAA

Please explain what is intended by the phrase "legal qualifications that would enable him to practise as a lawyer in any jurisdiction" in section 8AAA(1)(a)? Would "a jurisdiction" be more appropriate?

Clause 5 - section 13

In the new section 13(2A), would the Administration consider amending "根據第(1)款" so as to be consistent with the phrase "under this section"?

Clause 6 - new section 13A

The new section 13A empowers the Law Society to publish findings of the Solicitors Disciplinary Tribunal. Please clarify :

- (a) whether section 13A(2) only enables a solicitor of whom the Tribunal found in favour to apply for an order prohibiting the publication of his name but not prohibiting the publication of the findings;
- (b) that such right is not available to a solicitor whom the Tribunal found guilty of a disciplinary offence. Paragraph 8 of the LegCo Brief mentions that unless the Tribunal orders otherwise, concise versions of all findings and orders of proceedings before a Tribunal will be published as well as the name of the solicitor if he is convicted of an offence;
- (c) whether the solicitor has an inherent right to seek an order prohibiting the publication of the findings in either case.

Clause 7 - section 27

The Chinese text of the proposed section 27(2)(b)(i) is not legally accurate as it does not specify "at least", "consecutive" and "immediately before".

Clause 9 - section 29

Would the Administration consider setting out clearly in the proposed section 29(2B) as to when a particular case is completed to avoid confusion in enforcing the deeming provision for removal of name from the roll of barristers.

Clause 10 - section 30

I suggest that the phrase "practising barrister's certificate" at the end of the proposed section 30(3) be replaced with "practising certificate". This would be consistent with the terms used in the remaining parts of section 30, the Chinese text and section 31. It is particularly relevant for the purposes of section 31C(3) which provides that references to a practising certificate be deemed to be references to an employed barrister's certificate.

Clause 11 - section 31

Is it necessary to provide that a barrister shall not be qualified to practise as such, having qualified for admission as a barrister by virtue of section 27(1)(a)(v) before its repeal by the Bill?

Clause 12 - section 31C

- (a) Kindly clarify whether it is the policy of the Administration to create 2 categories of employed barristers : those who hold employed barrister's certificates and those who are not eligible to apply or who do not wish to do so. In other words, an employed barrister need not apply for an employed barrister's certificate in order to be so employed.
- (b) If the answer to (a) is in the affirmative, would section 31(1)(f) be amended as it only disqualifies a barrister to practise if he holds a current employed barrister's certificate? Is a barrister holding a current practising certificate barred from being employed under the Legal Practitioners Ordinance? I note the restriction in the Code of Conduct for the Bar of Hong Kong that practising barrister is not an employed barrister.
- (c) If the answer to (a) is in the negative, I would suggest that the restriction should be expressly provided for and that section 31C(2)(c) be redrafted as a transitional provision.
- (d) Section 31C(3) specifies that the provisions of section 30 respecting practising certificates apply to employed barrister's certificate issued under that section.
 - (i) Section 30(2) provides that the publication in the Gazette by the Bar Council of a list of names and addresses of the barristers who have obtained practising certificates shall be prima facie evidence that such persons are qualified under section 31 to practise as a barrister, and the absence from such list of any name of any person shall be prima facie evidence that such person is not so qualified. Does this subsection apply to employed barristers?
 - (ii) If the policy is to permit an employed barrister to be employed

without having to apply for an employed barrister's certificate, would the provisions of section 30 as applied to employed barristers be unfair to those who do not hold such certificate?

- (iii) Is it necessary to specify in section 31C(3) that for the purposes of that section, the reference to section 30 shall be deemed to be section 31C?

Clause 15 - section 72AA

I note that certain powers of the Bar Council to make rules under the new section 72AA are similar to those of the Chief Justice under sections 72 and 72A. Please clarify whether the duplication (as set out below for easy reference) is intended.

- (a) proposed section 72AA(e) - conduct of an inquiry and investigation by a Barristers Disciplinary Tribunal ;
section 72(b)(ii) - the conduct of proceedings before a Barristers Disciplinary Tribunal.
- (b) proposed section 72AA(g) - the serving of pupillage and the manner in which any person shall qualify for admission under section 27 including, without limiting the foregoing, the period of pupillage and the examinations to be passed;
section 72A(b) - the manner in which pupillage may be served, including applications for pupillage, disqualifications in respect of pupillage, approval and termination of pupillage and the period and requirements of pupillage.
- (c) proposed section 72AA(h) - the admission of persons on the basis of qualifications acquired outside Hong Kong including, without limiting the foregoing, the qualifications for admission, the examinations to be passed and the fees to be paid;
section 72(a)(vii) - fees payable in connection with admissions and registrations.

Clause 16 - Savings provision

Please clarify whether savings provision need to be made for those barristers admitted under section 27(1)(a)(v) before its repeal by this Bill.

Consequential amendment - section 27A and Schedule 1

Paragraph 11 of the LegCo Brief states that the criteria of the General Agreement on Trade in Services (GATs) be implemented. Please explain the reason for not repealing section 27A and Schedule 1 which confer additional powers to the Court of First Instance to admit barristers employed for at least 7 years in the Department of Justice and who have been admitted as barristers or legal practitioners in a jurisdiction listed in Schedule 1.

Yours sincerely,

(Bernice Wong)
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c.c. D of J

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