

律政司
法律政策科

香港金鐘道 66 號
金鐘道政府合署高座 4 樓

圖文傳真：852-2869 0720



DEPARTMENT OF JUSTICE
Legal Policy Division

4/F., High Block
Queensway Government Offices
66 Queensway, Hong Kong.

Fax: 852-2869 0720

本司檔號 Our Ref.: LP 272/00C IV
來函檔號 Your Ref.:
電話號碼 Tel. No.: 2867 4226

20 January 2000

Miss Bernice Wong, Assistant Legal Adviser
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Fax No. 2877 5029

via Mr Michael Scott, SASG/GAU

Dear Bernice,

Re : Legal Practitioners (Amendment) Bill 1999

Thank you for your fax to us dated 14 January 2000. Our reply to your query raised is as follows:

Clause 3 – new section 8AAA

We are now consulting our draftsman in respect of your view. We will let you have our reply as soon as possible.

Clause 6 – new section 13A

We have confirmed that it is the Law Society's intention that the solicitor (regardless of whether he/she has been found guilty or otherwise) should have an inherent right to request that his/her name and/or the finding in his/her case should not be published. Therefore we intend to propose a CSA to delete the proposed s. 13A(2) and to insert "Unless, on application by the solicitor, the Solicitors Disciplinary Tribunal or a court, on appeal under section 13, otherwise orders," at the beginning of the proposed section 13A(1).

Clause 7 – section 27

Our draftsman's view is sought in respect of your suggested version to the Chinese text of section 27. It is considered that it is repetitious in meaning by adopting “連續.....一直”. As stated in para. 5 of my reply to you dated 10 November 1999, it is considered that the rendition “在.....申請的日期前 3 個月內” does contain the element “immediately before” because it is very unlikely that the current Chinese text could be sensibly construed to mean “3 months period well before the application”. In any event, “緊接.....前” is not the only correct Chinese equivalent for “immediately before”.

Clause 11 – section 31

Our view is that the way in which the conditions for admission to be provided in the subsidiary legislation would be consistent with the drafting format of section 4 of the Legal Practitioners Ordinance which applies to solicitors.

The empowering provision for the making of subsidiary legislation on the conditions for admission is in the new sections 27(1) and 72AA(j) and they are sufficiently wide to enable subsidiary legislation to be made in respect of those barristers qualified for admission by virtue of s. 27(1)(a)(v) before its repeal by the present Bill. It is also confirmed by the Bar Association that admission via the route of the existing s. 27(1)(a)(v) will be preserved in the subsidiary legislation to be proposed by the Bar Council.

Clause 12 – new section 31C

We are now consulting our draftsman on your suggested amendment to section 31(1)(f) and will let you have a reply as soon as possible.

In respect of your second paragraph, neither the Bar Association nor us are aware of any real prejudice to those who fail to obtain their employed barristers' certificates.

Clause 15 – new s. 72AA

Thank you for providing us with some background information in relation to the respective powers of the Chief Justice and the Bar Council under sections 72 and 30(4).

We have proposed in clause 10 that section 30(4) be repealed and that such power of the Bar Council will be incorporated in the new s. 72AA(c).

This will enable all the powers of the Bar Council to make rules to be tidily gathered under the heading of the new s. 72AA(c). The powers of the Bar Council to make rules are subject to the prior approval of the Chief Justice. As replied to you in my previous letter to you on this point, we consider that there will be no practical problem with the overlapping powers of the Chief Justice and the Bar Council. We also intend to propose a CSA which will make it clear that should there be any conflict between the rules made by the Chief Justice and the Bar Council, the rules made by the Chief Justice will prevail.

(Ms Kitty Fung)
Government Counsel
General Advisory Unit/Legal Policy Division