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25 January 2000

Miss Bernice Wong, Assistant Legal Adviser
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central
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Fax No. 2877 5029

via Mr Michael Scott, SASG/GAU

Dear Bernice,

Re : Legal Practitioners (Amendment) Bill 1999

We refer to the Bills Committee meeting held on 24 January 2000 in respect of the above Bill. At the request of the Chairman of the Bills Committee, we set out the current line of thinking on CSAs that the Administration proposes to introduce, having consulted both the Bar Association and the Law Society.

Clause 1

We intend to propose a CSA so that the commencement date of the provision relating to admission of barristers, i.e. clause 7, will not be earlier than, say, 1 November 2001. This is to ensure that those who have already embarked or enrolled on the Bar vocational course for the year 2000/2001 will have sufficient time to complete it and sit the qualifying examinations, and if necessary, re-sit those examinations. The delayed commencement date will allow sufficient time for the Bar Council to prepare the necessary rules in relation to the amendments, for example, rules in relation to the examinations to be sat by persons from foreign jurisdictions for the purpose of admission as barristers in Hong Kong. It is estimated by the Bar Association that the time required before commencement can take place will be not less than 12 months from now. But we note the views of the Bills Committee regarding the desirability of having more clarity and certainty in the transitional provisions. We will further discuss this point with the Bar Association.

Clause 6

As it is clarified by the Law Society that it is its 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or otherwise) should have an inherent right to request that his/her name and/or the finding in his/her case should not be published, we intend to propose a CSA to make this right clear in the legislation by deleting the proposed s. 13A(2) and to insert “Unless, on application by the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). The effect will be that the Law Society’s discretion to publish will be limited by the possibility that the solicitor may be able to persuade the Tribunal or a court that, in the circumstances of the case, such summary should not be published.

Clause 7 - the new s. 27(4)

We intend to include in the proviso of s. 27(4) that ad hoc admittees are required to have “substantial experience in advocacy in court”. This amendment is made as a result of the Bar Association’s suggestion to make it plain that only barristers of substantial experience can be admitted on an ad hoc basis and avoid the risk that inexperienced or freshly admitted barristers may be admitted.

Clause 10 – section 30(3)(b)

For drafting purposes, the reference to “practising barrister’s certificate” should be amended to refer to “practising certificate”.

The Bar Association proposed that ad hoc admittees should be subject to a statutory obligation to observe the Code of Conduct, which is essentially a non-statutory professional code, enforceable by the Bar Association.

We consider that it would be more appropriate to subject ad hoc admittees to the Code of Conduct in the same manner as those who are generally admitted. That is, through the statutory requirement to obtain a practising certificate and to pay the Bar Association’s membership subscription. Further, we consider that the Bar ought to be prepared to charge a pro rata or reduced fee for ad hoc admittees.

The Bar Council does not favour a pro rata reduction of membership subscription for ad hoc admittees and submits that it is difficult to ascertain when the admittees actually perform work in Hong Kong; for example, giving advice before the trial. The Bar Council, however, will agree to a provision in the Bill giving it a discretion to waive part of the membership subscription payable by ad hoc admittees if they so apply.

We therefore intend to propose a CSA to require that ad hoc admittees will be required to pay to the Hong Kong Bar Association a membership subscription in respect of the period for which the practising certificate is to be issued. The provision will also allow the Bar Council to waive part of the membership subscription payable by ad hoc admittees if they so apply.

Clause 12 – new section 31C

A provision in the new s. 31C will be inserted to the effect that s. 30(2) should also be applicable to employed barristers; that is, the names and addresses of employed barristers holding employed barristers' certificates will be published in the Gazette and the absence of any person's name in the list will be prima facie evidence that the person does not hold such a certificate.

Clause 15 – new s. 72AA

In order to avoid any possible confusion caused by the overlapping powers of the Bar Council and the Chief Justice, we intend to make it clear that the Bar Council has the power to make rules under s. 72AA notwithstanding the power of the CJ to make the relevant rules under s. 72A and vice versa. Should there be a conflict in the rules made by the Bar Council and the Chief Justice, the rules made by the latter will prevail.

Clause 16 – savings provision

At the suggestion of the Bar Association, the savings provision is proposed to be amended to cover those persons who have gained admission under the existing section 27 but have yet to become qualified to practise under section 31 (e.g. those who have not commenced pupillage). Again, we note the views of Bills Committee; that is, it is necessary to ensure that the position of those who have already been admitted and/or are practising will not be affected by the amendments.

I should welcome any comments that you may have at this stage.

Yours sincerely,

(Ms Kitty Fung)
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