

A BILL

To

Amend the Legal Practitioners Ordinance.

Enacted by the Legislative Council.

1. Citation and commencement

(1) This Ordinance may be cited as the Legal Practitioners (Amendment) Ordinance 1999.

(2) This Ordinance other than section 15 shall come into operation on a day to be appointed by the Secretary for Justice by notice in the Gazette.

2. Interpretation

Section 2 of the Legal Practitioners Ordinance (Cap. 159) is amended in paragraph (a) of the definition of “Hong Kong firm” by repealing “resident in Hong Kong”.

3. Section added

The following section is added -

“8AAA. Appointment and powers of a prosecutor

- (1) In this section “prosecutor” means a person who -
- (a) is employed by the Law Society and has legal

training; or

(b) is a solicitor.

(2) The Council may appoint a person as a prosecutor 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, a prosecutor may, in accordance with procedural rules prescribed by the Council, summon -

(a) persons who are, or were at the material time, members or employees of any law firm; or

(b) persons whom the prosecutor considers may be able to assist the Council,

to appear before him for the purpose of answering such questions as he may put to them.

4. Solicitors Disciplinary Tribunal Panel

Section 9(1) is amended by repealing “60” and “30” and substituting “120” and “60” respectively.

5. Appeal and saving

Section 13 is amended -

(a) in subsection (2) by repealing “In” and substituting “Subject to subsection (2A), in”;

(b) by adding -

“(2A) Where the Council is not satisfied with an order made by a Solicitors Disciplinary Tribunal it may appeal the order under this section, in which case the Society shall be the appellant and the person whose conduct was the subject of the inquiry by the Solicitors Disciplinary Tribunal shall be the respondent.

6. Section added

The following is added -

“13A. Publication of findings of Solicitors Disciplinary Tribunal

(1) The Society may, after the expiry of the time for filing an appeal under section 13 or after completion of such an appeal, as the case may be, publish a summary of the finding and order of a Solicitors Disciplinary Tribunal and the name of the solicitor who was the subject of it in any publication produced by, or at the direction of, the Society.

(2) Subject to a contrary order made on an appeal, subsection (1) does not apply to the publication of the name of the solicitor where the Solicitors Disciplinary Tribunal found in favour of the solicitor and, on application by the solicitor, made an order prohibiting such publication.”.

7. Power of Court to admit barristers

Section 27 is repealed and the following substituted -

“27. Power of Court to admit barristers

(1) Subject to subsection (2), the Court may, in such manner as may be prescribed by the Chief Justice, admit as a barrister of the High Court in Hong Kong, a person whom it considers a fit and proper person to be a barrister, provided such person has -

- (a) complied with the requirements;
- (b) passed the examinations; and
- (c) paid the fees,

prescribed by the Bar Council.

(2) The Court shall not admit a person under subsection (1) unless it is satisfied that that person -

- (a) is not in practice as a solicitor either on his own account or as a partner or salaried employee in a firm of solicitors practising in Hong Kong; and
- (b) satisfies one of the following requirements -
 - (i) has resided in Hong Kong for at least 3 consecutive months immediately before the date of his application for admission;
 - (ii) has been ordinarily resident in Hong Kong for at least 7 years;
 - (iii) has been physically present in Hong Kong for at least 180 days of each of at least 7 years within the 10 years immediately preceding the date

of his application for admission.

(3) If at the time of his admission under subsection: (1) the person is a solicitor, the Registrar shall remove the person's name from the roll of solicitors.

(4) The Court may admit a person as a barrister under this section for the purpose of any particular case or cases if the Court considers that person a fit and proper person to be a barrister and provided that he has 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, notwithstanding that such person does not satisfy all the requirements specified in subsections (1) and (2) (b), and the Court may impose on a person so admitted such restrictions and conditions as the Court may see fit.

(5) The Court may, when admitting a person as a barrister, sit in chambers.”.

8. Formalities for admission of a barrister

Section 28 is repealed and the following substituted -

“28. Formalities for admission as a barrister

Except as may be prescribed by the Chief Justice, no person shall be admitted as a barrister unless he has deposited with the Registrar documentary evidence together with an affidavit showing the manner in which he satisfies

the requirements specified in section 27(1) and (2).”.

9. Roll of barristers

Section 29 is amended by adding -

“(2A) A barrister who was admitted pursuant to section 27(1) or section 27A may -

- (a) apply by motion to have his name removed from the roll of barristers; and
- (b) where he has had his name removed under paragraph (a), on giving at least 7 days’ notice to the Bar Council, apply by motion to have his name restored to the roll of barristers.

(2B) A barrister who was admitted pursuant to section 27(4) for a particular case or cases shall, on completion of such case or cases including any appeal relating thereto, be deemed to have had his name removed from the roll of barristers.

(2C) Where a barrister has had his name removed from the roll of barristers under subsection (2A) or (2B), he shall forthwith surrender to the Bar Council any current practising certificate.”.

10. Practising certificates-barristers

Section 30 is amended -

- (a) in subsection (1) by repealing “in the month of November in a year”; and

(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 -

- (i) the applicant has been admitted as a barrister under section 27(4); or
- (ii) 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 barrister’s certificate is to be issued.”;

- (c) by repealing subsection (4).

11. Qualifications for practising as a barrister

Section 31(1) is amended -

- (a) in paragraph (c) by adding “(as that section existed before its repeal by the Legal Practitioners (Amendment) Ordinance, 1999 (of 1999))” after “section 27(1) (a) (i) or (ii)”;
- (b) in paragraph (e) by repealing everything after “roll of solicitors”;
- (c) by repealing the period at the end of paragraph (e) and substituting a semi-colon;
- (d) by adding -

“(f) if he holds a current employed barrister’s certificate.”.

12. Section added

The following is added -

“31C. Employed barristers

(1) In this section “employed barrister” means a barrister who, under a contract of employment, provides legal services exclusively to his employer.

(2) An employed barrister may apply to the Bar Council for an employed barrister’s certificate if -

- (a) at any time, he has been issued a practising certificate under section 30; or

(b) he has completed the prescribed qualifying period of active practice; or

(c) he has been an employed barrister in Hong Kong for at least 12 months immediately preceding the date of his application.

(3) The provisions of sections 29(2C) and 30 respecting practising certificates apply to employed barrister's certificates issued under this section and, for the purposes of this section, references in those sections to a barrister or a practising certificate shall be deemed to be references to an employed barrister and an employed barrister's certificate, respectively.

(4) An employed barrister who holds a current employed barrister's certificate is entitled to instruct a barrister who holds a current practising certificate, on behalf of his employer, without retaining a solicitor.

13. Offences in relation to foreign lawyers, foreign firms and Associations

Section 50B(1) is amended by repealing "solicitor, barrister or foreign lawyer" and substituting "a solicitor who satisfies all the requirements set forth in section 7, a barrister or a foreign lawyer".

14. Rules for barristers in Hong Kong

Section 72A(bb) is amended by repealing everything after "31".

15. Section added

The following section is added -

“72AA. Power of Bar Council to make rules

Subject to the prior approval of the Chief Justice, the Bar Council may make rules

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- (a) in respect of the professional practice, conduct and discipline of barristers and pupils;
- (b) for the purpose of harmonizing the relationship of barristers inter se and, with the prior approval of the Council, governing the relationship of solicitors and barristers;
- (c) regulating the issuing of practising certificates to barristers and employed barrister’s certificates to employed barristers including, without limiting the foregoing, the fees payable for, the conditions of issue of, the manner of applying for, the period and form of and the publication of the issue and suspension of, such certificates;
- (d) providing for any continuing legal education or training that must be undertaken by barristers and the consequences of failing to do so;
- (e) providing for the conduct of an inquiry and investigation by a Barristers Disciplinary

Tribunal;

- (f) requiring a barrister or pupil, to whom an order of misconduct is made by the Bar Council, to pay the Bar Council's costs of investigating the conduct which resulted in the order;
- (g) regulating the service 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;
- (h) respecting the admission of foreign barristers including, without limiting the foregoing, the qualifications for admission, the examinations to be passed and the fees to be paid;
- (i) respecting the exemption by it of any person from compliance with the provisions of any rules made under this section and the conditions upon which such exemption may be granted in any particular case; and
- (j) prescribing anything which, under this Ordinance, is to be or may be prescribed by the Bar Council.

16. Savings Provision

Notwithstanding the repeal of section 27(1) (a) (i) and (ii) of the principal Ordinance by section 7 of this Ordinance, a

barrister who was admitted under that provision shall not have his name removed from the roll of barristers as long as he qualifies to practise as a barrister under section 31.

Explanatory Memorandum

The purpose of this Bill is to make miscellaneous amendments to the Legal Practitioners Ordinance. The Bill -

- (a) amends the definition of “Hong Kong firm” to clarify that all the partners must be enrolled on the roll of solicitors, not just those resident in Hong Kong (clause 2);
- (b) establishes a position of “prosecutor” to assist the Law Society in its investigations (clause 3);
- (c) doubles the number of solicitors and lay persons who can be appointed to the Solicitors Disciplinary Tribunal (clause 4);
- (d) gives the Council of the Law Society power to appeal against a decision of a Solicitors Disciplinary Tribunal (clause 5);
- (e) gives a Solicitors Disciplinary Tribunal power to publish a summary of its findings and order in any publication produced by the Law Society (clause 6);
- (f) removes the right of UK barristers to be admitted in Hong Kong on the basis of their UK status, gives the Bar Council the power to prescribe the requirements for admission of all barristers and establishes a residence requirement (clause 7);
- (g) makes a consequential amendment resulting from

- amendments to section 27 (clause 8);
- (h) provides mechanisms for removing a person's name from the roll of barristers (clause 9);
 - (i) removes the requirement for barristers to apply in November for a practising certificate and makes it a statutory requirement to take out professional indemnity insurance before receiving a practising certificate (clause 10);
 - (j) makes consequential amendments resulting from amendments to section 27 and the new section 31C (clause 11);
 - (k) establishes a new category of "employed barrister" (clause 12);
 - (l) clarifies that a solicitor must meet the requirements in section 7 (qualifications to act as a solicitor) before he can be a practitioner of foreign law (clause 13);
 - (m) makes a consequential amendment resulting from amendments to section 27 (clause 14);
 - (n) gives the Bar Council power to make rules with the prior approval of the Chief Justice, including the rules that were formerly made under section 30(4) (clause 15)
 - (o) makes a savings provision in respect of British barristers admitted before the repeal of section 27(1) (a) (i) and (ii) (clause 16).