

立法會
Legislative Council

LC Paper No. LS36/10-11

**Paper for the House Committee Meeting
on 11 March 2011**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 4 March 2011**

Date of tabling in LegCo : 9 March 2011

Amendment to be made by : 6 April 2011 (or 4 May 2011 if extended by resolution)

**Legal Practitioners Ordinance (Cap. 159)
Practising Certificate (Barristers) (Amendment) Rules 2011 (L.N. 37)**

Section 72 of the Legal Practitioners Ordinance (Cap. 159) (LPO) empowers the Chief Justice, among other things, generally to prescribe or provide for any certificate, form or other document required under LPO. Section 30 of LPO provides that the Council of the Hong Kong Bar Association (Bar Council) may, upon application in writing, issue a practising certificate to an applicant upon being satisfied that the applicant is qualified to practise as a barrister. Section 30(3)(b) of LPO also contemplates the issuance of a practising certificate to an applicant (e.g. a London silk) who has been admitted by the Court of First Instance as a barrister for the purpose of any particular case or cases under section 27(4) of LPO. Under section 31C of LPO, the Bar Council may also issue an employed barrister's certificate to an employed barrister¹.

2. The Practising Certificate (Barristers) Rules (Cap. 159, sub. leg. K) (the Rules) were made by the Chief Justice under section 72 of LPO to prescribe various forms to be used:

¹ "Employed barrister" means a barrister who, under a contract of employment, provides legal services exclusively to his employer: section 31C(1) of LPO.

- (a) by barristers and employed barristers for the purpose of applying for practising certificates and employed barrister's certificates (collectively "application forms"); and
- (b) by the Bar Council for the purpose of issuing practising certificates and employed barrister's certificates (collectively "certificates").

3. L.N. 37 is made by the Chief Justice under section 72 of LPO to amend the Rules. The main amendments are summarized below:

- (a) changing the references to section 27(2) of LPO in rules 2(1)(c) and 3(3) (which are concerned with the application for and issuance of a practising certificate to a barrister admitted for the purpose of any particular case or cases) to the correct section, i.e. section 27(4);
- (b) repealing the existing Schedule to the Rules and substituting it with a new Schedule which:
 - (i) prescribes the application forms and certificates in bilingual format, in substitution for existing forms which are in either English or Chinese only;
 - (ii) changes all references to "The Bar Council" in the application forms and certificates to its full name "The Council of the Hong Kong Bar Association";
 - (iii) changes all references to "the current Code of Conduct for the Bar of Hong Kong" in the application forms and practising certificates to "the current Code of Conduct of the Bar of the Hong Kong Special Administrative Region" (the current Code of Conduct of the Bar);
 - (iv) adds to Form 1C a note referring the applicant for an employed barrister's certificate to the current Code of Conduct of the Bar (such note already appears in the other application forms (Forms 1, 1A and 1B) under the existing Schedule);

- (v) adds to Form 5 (employed barrister's certificate) a note that the holder of the certificate is subject to the current Code of Conduct of the Bar and that the certificate is not evidence that the holder is or has been in practice as a barrister during the specified period (such note already appears in the other certificates (Forms 2, 3 and 4) under the existing Schedule);
- (vi) removes from the practising certificates the expressions "entitled to practise" and replaces them with "qualified to practise" which is the expression used in section 30 of LPO; and
- (vii) updates the references to year in the forms and certificates from "19__" to "20__".

4. L.N. 37 will come into operation on 6 May 2011.

5. Upon enquiry by the Legal Service Division on the amendments referred to in paragraph 3(b)(iv) and (v) above, the Administration has confirmed that employed barristers have all along been subject to the Code of Conduct of the Bar, and that the addition of the notes to Forms 1C and 5 merely rectifies the omission of those notes from the forms (which is a clerical error) under the existing Schedule.

6. Members may refer to the LegCo Brief issued by the Hong Kong Bar Association in March 2011 (no reference number provided) for background information.

7. The amendments contained in L.N. 37 have not been discussed by the Panel on Administration of Justice and Legal Services.

Arbitration Ordinance (17 of 2010)

Arbitration Ordinance (Commencement) Notice (L.N. 38)

8. By L.N. 38, the Secretary for Justice appoints 1 June 2011 as the day on which the Arbitration Ordinance (17 of 2010) (the Ordinance) comes into operation.

9. The Arbitration Bill (enacted as the Ordinance) was passed by the Legislative Council on 10 November 2010 and the enacted Ordinance was gazetted on 12 November 2010. The Ordinance, which repeals the existing Arbitration Ordinance (Cap. 341), reforms the law relating to arbitration by unifying the existing domestic and international regimes of arbitration under Cap. 341 and implementing in Hong Kong certain provisions of the United Nations Commission on International Trade Law Model Law on International Commercial Arbitration, subject to the modifications and supplements as expressly provided for in the Ordinance. Members may wish to refer to the Report of the Bills Committee on Arbitration Bill dated 3 November 2010 (LC Paper No. CB(2)162/10-11) for further information.

10. No difficulties have been identified in relation to the legal and drafting aspects of the above items of subsidiary legislation.

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