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OF HONG KONG
香港律師會

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3 July 2014

BY E-MAIL ONLY

Clerk to Bills Committee on
the Administration of Justice (Miscellaneous Provisions) Bill 2014
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Sir,

Administration of Justice (Miscellaneous Provisions) Bill 2014

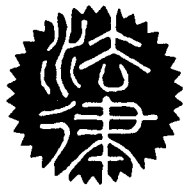
The various specialist committees of the Law Society have reviewed the captioned bill.

The Law Society has previously made submissions on 14 May 2013 and 25 June 2013 on those proposals now set out in the Bill. These previous submissions have been uploaded onto the website of the Law Society, viz. http://www.hklawsoc.org.hk/pub_e/news/submissions.asp

The Law Society has no further comments to add. The proposals in the Bill are supported.

Yours sincerely,


Kenneth Fok
Director of Practitioners Affairs



**CONSULTATION PAPER ON THE ADMINISTRATION OF JUSTICE
(MISCELLANEOUS PROVISIONS) BILL (“The Consultation Paper”)**

SUBMISSIONS

The Law Society’s specialist committees have reviewed the Consultation Paper and our comments are as follows.

Proposal I: Calculation of Qualifying Experience for Appointment as Magistrates

Paragraph 12 - Combining the experience

1. The Law Society notes the proposal to allow the experience of a court-related officer (i.e. court prosecutor, court interpreter or judicial clerk) to be combined with other qualifying professional experience, in order to fulfil the requisite minimum 5-year period for appointment as a Special Magistrate.
2. Currently, a legally qualified person is eligible for the appointment if, for a period of or periods totalling not less than 5 years he or she has:
 - (i) served as a court-related officer in the government, or
 - (ii) other qualifying experience:
 - practised as a barrister, solicitor or advocate; or
 - served as a legal officer or taken up a designated post in related government departments.
3. In our view the proposal equates the experience of a court-related officer to other qualifying professional experience for the purpose of fulfilling the eligibility requirement. There is no justification to equate the two different sets of experience.
4. We cite the following as an illustration:

Under the proposal, a court-related officer with 4 years 11 month court-related experience could be eligible for appointment as a Special Magistrate, as soon as he gains one month post-qualification experience. He can then combine his two sets of experience. The work experience as a court-related officer is being put on the same footing as that of a criminal law practitioner.

Insofar as the eligibility criteria are concerned, this is unjustifiable as the example shows that a Special Magistrate can be appointed with only one month post-qualification professional experience.

5. **We do not support this proposal and recommend a further review.**

Proposal II: Delivery of Reasons for Verdict and Sentences in Criminal Proceedings in the District Court

6. We support this proposal subject to the clarification on the procedures following the handing down of the Reasons for Verdict:
- will the court adjourn the hearing to enable the parties to review and to consider the judgment?
 - will sentencing be adjourned following the handing down of the judgment?
 - Should counsel be instructed to attend the hearing?

Proposal III: Evidence-taking by Live Television Links

7. We support this proposal, as long as the new legislation only covers those facilities used inside the court buildings.

Proposal IV: Administration of Suitors' Fund

Paragraph 22- Acceptance of suitors' fund

8. The Law Society notes that under this Proposal, “[i]n general, suitors’ funds may be accepted in the form of money, *securities* and/or *movable properties*” (emphasis supplied).

Annex D

“securities”

9. We note the word “*securities*” has not been adopted in the following legislation:

- Hong Kong Court of Final Appeal Ordinance Cap 484 (Section 40A(1)(a));
- Labour Tribunal Ordinance Cap 25 (Section 45(2)(a));
- Small Claims Tribunal Ordinance Cap 338 (Section 36(2)(a));

“*movable properties*”

10. We note the Hong Kong Court of Final Appeal Ordinance and the Small Claims Tribunal Ordinance have not been amended to include “*movable properties*”.

11. Has there been an error in the drafting or are there reasons for these omissions?

12. We support these proposals Subject to clarification of our queries. .

Proposal V: Improving the Operation of the Labour Tribunal

13. The Law Society in principle agrees to the various proposals to improve the Operation of the Labour Tribunal.

Jurisdiction to include liquidated and unliquidated claims

14. The proposal to clarify the jurisdiction of the Labour Tribunal to include liquidated as well as unliquidated claims is reasonable, given the intention that the Labour Tribunal will deal with all employment claims.

Case Management Powers

15. We support the proposals to enhance the Labour Tribunal’s case management powers.

Early Disclosure of Information

16. Materials and documents disclosed in the course of the Labour Tribunal proceedings should not be used for any other purpose. We support the introduction of a general statutory duty restricting the use of such documents.

Other Changes

17. The Law Society has no objections on the remaining proposals in this section of the Consultation Paper.

The Law Society of Hong Kong
14 May 2013



**CONSULTATION PAPER ON THE ADMINISTRATION OF JUSTICE
(MISCELLANEOUS PROVISIONS) BILL (“The Consultation Paper”)**

2ND SUBMISSION

Background

1. The Law Society issued its submission on the Consultation Paper on 14 May 2013 (“1st Submission”)¹.
2. The Judiciary responded to the 1st Submission by their letter of 14 June 2013 and clarified those queries we have raised in the 1st Submission. Notwithstanding the aforesaid, there are still issues of concerns on the Consultation Paper.

Proposal I – Calculation of qualifying experience for appointment as Magistrates

3. In the 1st Submission, we stated that it is not justifiable to equate the experience of the *court-related officer*² to the qualified professional experience of a solicitor/barrister, for the purpose of fulfilling the eligibility requirement for appointment as Special Magistrates³.
4. The Judiciary’s responses to the above are that, among other things, under the existing arrangement the experiences of the court-related officers are already given equal standing to those of the solicitors / barristers. No changes are being sought in this regard in the Consultation Paper.
5. Our comments in reply to the above are as follows:

¹ The 1st submission was sent to the Judiciary on 14 May 2013.

² “court-related officer” is defined in the consultation paper to mean a court prosecutor, court interpreter or judicial clerk in the Government.

³ See paragraph 3 of 1st submission.

- (a) The current approach on the appointment of Special Magistrates, by equating the experience of court-related officers to that of solicitors / barristers, is already unsatisfactory. This should be amended.
- (b) The arrangement under the proposal seeks to only reinforce and to rationalize this unsatisfactory approach; it fails to recognize the work of and the qualification of solicitors and barristers:
 - the *nature of work done* and the *amount of time spent* by an unqualified court-related officer are very different from that of the solicitor or barrister.
 - *Work done* – solicitors and barristers *actually represent clients in court* – they handle arguments; cross-examine witnesses; canvass evidence; prepare submissions and research legal issues and law points. Without disrespect, some if not most of the court-related officers would not have the chance to handle or been exposed to these work in their daily work.
 - *Time spent* – solicitors and barristers routinely work long hours to prepare for hearings for court cases. In terms of time spent, the 5 years work experience of court-related officers should not and cannot be accorded the same value as the 5 years post-qualification experience (“PQE”) of solicitors / barristers.
- (c) After all, the legal profession is required to undertake and is obligated to compulsory professional development, in terms of CPD commitment and otherwise.
- (d) The difficulty in the past in recruiting Special Magistrates, if any, no longer exists. Nowadays, there are many qualified and competent solicitors and barristers willing to take up judicial appointments. Consideration on human resources alone is no longer relevant and should be removed.
- (e) The judiciary should be seeking to raise standards.
- (f) The general public expects and deserves high quality members of the judiciary, including Special Magistrates. The expectation upon the Judiciary has been growing and been more demanding. The public nowadays rightly require suitably qualified and trained members of the judiciary to hear and to adjudicate their cases.
- (g) We agree that there is some nexus between the work of the court-related officers to the work of the Special Magistrates. Some recognition should be given, but those should not be on par with those of qualified solicitors / barristers.

We propose that

- **for solicitors / barristers**
the number of PQE years for the appointment of Special Magistrates could remain as 5 years; and
- **for court-related officers** (who have at least 5 years work experience in those court-related positions in court or in the Government, as averred to in the Consultation Paper, prior to obtaining the legal qualification)

the number of PQE years to meet the eligibility requirement could be reduced to 4 years, i.e. their court-related experience could be taken into account and are to be considered as being equivalent to ONE PQE year, for the purpose of consideration of eligibility.

Proposal II – Delivery of reasons for verdict and sentences in criminal proceedings in the District Court

6. In the 1st Submission, we asked for clarification on the procedures following the handing down of the reasons for verdict. The Judiciary has reverted to clarify that
 - (a) the judge may choose not to deliver the reasons for verdict orally, and instead hand down the judgment;
 - (b) if the parties need time to consider the written reasons for verdict, the court may allow such time or adjourn to another date to deliver the sentences and its reasons.
7. So long as the written reasons for verdict could be handed down at the same time as or in place of oral reasons, we have no objection to this proposal.

Proposal IV – Administration of Suitors' Fund

8. We take note of the clarification from the Judiciary as per their letter dated 14 June 2013. On the basis of those clarifications, we support this proposal.

**The Law Society of Hong Kong
25 June 2013**