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By Fax No: 2877 5029

15 May 2017

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Dear Ms Lee,

**Bills Committee on the Arbitration and Mediation Legislation
(Third Party Funding) (Amendment) Bill 2016 ("Bill")**

We refer to your letter dated 11 May 2017, and reply to the questions raised in its penultimate paragraph as follows.

Meaning of "member" and "legal practice" under the proposed new section 98NA(3)

2. The terms "member" and "legal practice" are not defined because the proposed section 98NA(2) is intended to cover the case where a lawyer works for, or is a member of, a legal practice of whatever description or structure. This is deliberate because of the clear policy

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intent to cover overseas lawyers (see paragraph (c) of the definition of lawyer in the proposed section 98NA(3)), and the permissible business model for a legal practice to be run, as well as the ways by which lawyers are associated with a legal practice, can vary in different jurisdictions. In England and Wales, for example, a law firm may operate under an "alternative business structure", which allows non-lawyers to own and invest in it. Given the very many ways in which a legal practice can (or may) be formed or structured and lawyers can (or may be) associated with it, we consider that the policy intent will be better reflected by leaving the terms to their ordinary meanings, rather than to define them, so as to cater for the myriad circumstances across different jurisdictions, both at present and in the future.

Whether a barrister of a set of barristers' chambers may be considered as "a member of the legal practice" under the proposed new section 98NA(2)

3. In the Hong Kong context, a legal practice would basically cover a firm of solicitors (operated as a general partnership, a limited liability partnership, or, in future, a solicitor corporation) but exclude a barrister in a set of barristers' chambers as barristers are considered sole practitioners. The following passage taken from the Hong Kong Bar Association's website sums up the legal position of a practising barrister compendiously:

'Independence

Every barrister in Hong Kong can only practise law as a sole-proprietor. Unlike solicitors or other professionals, barristers are not allowed to enter into partnership. Nor are barristers allowed to incorporate themselves as a corporation or company. All these restrictions are aimed at ensuring that every barrister can act independently in the course of their practice.

.....

Although each barrister is a sole-proprietor, it should be pointed out that it is quite common for barristers to group themselves together and form a set of "chambers". A set of chambers is an office where barristers practise law. One of the key reasons for forming chambers is to reduce expenses. Another reason is to facilitate interflow. Despite the tradition of forming chambers,

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barristers remain independent. This is because barristers are only allowed to share expenses but not allowed to share profit. Even if they are in the same set of chambers, each barrister remains responsible for his own professional practice.¹

Since each barrister remains responsible for his own professional practice, it is difficult to see how he or she might be regarded as a member of the legal practice under the proposed new section 98NA(2).

4. Whether a lawyer (as defined under section 98NA(3)) is a member of, e.g. a firm of solicitors, is a matter of fact which depends on the actual circumstances. It is nevertheless clear from the surrounding words in section 98NA(2) that the references to "member" in the subsection would not cover any non-lawyer member of a legal practice.

Yours sincerely,



(T Y Lee)

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¹ See <http://www.hkba.org/content/about-barristers-hong-kong> (last checked on 12 May 2017)