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By email

21 July 2021

Mr Mark Lam
Assistant Legal Adviser
Legal Service Division
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Mr Lam,

Legal Practitioners (Amendment) Bill 2021

We refer to your letter dated 14 July 2021 regarding the captioned Bill (“**the Bill**”) and set out below our reply to the issues raised therein.

Object of the Bill (paragraph 2 of your letter)

2. In compliance with Rule 50(3) of the Rules of Procedure of the Legislative Council (“**RoP**”), the long title as quoted in your said letter only sets out the purpose of the Bill in general terms.

3. As Rule 50(7) of the RoP further provides that an explanatory memorandum stating the contents and objects of the bill in non-technical language shall be attached, paragraph 2 of the explanatory memorandum of the Bill states unequivocally as follows:

“The **sole object** of this Bill is to amend section 31A of the LPO so that a person (not being a barrister) who holds office as a legal officer (as defined by section 2 of the Legal Officers Ordinance (Cap.87) (***LOO***) and including a person deemed to be a legal officer for the purposes of the LOO) is eligible to be appointed as a Senior Counsel.” (emphasis added)

4. Paragraph 3 of the explanatory memorandum of the Bill further elaborates that:

“The Bill does **not otherwise change the eligibility requirements or other aspects relating to the appointment of Senior Counsel under the LPO.**” (emphasis added)

5. It is therefore abundantly clear that the Bill does not intend to alter, nor is there any clause under the Bill to such effect, the existing substantive eligibility requirements for appointment of Senior Counsel under either section 31A(2) or section 31A(3) of the Legal Practitioners Ordinance (Cap. 159) (“**LPO**”) which will continue to apply after the Bill is passed and comes into operation. In other words, a legal officer, whether or not a barrister, is required, *inter alia*, to have practised as an advocate while holding office as a legal officer before he or she is eligible for appointment as Senior Counsel if such legal officer wishes to have such period of service as a legal officer counted in his or her favour for the purpose of satisfying the minimum of 10 years’ requisite experience condition.

Difference between non-barrister legal officers and solicitor advocates in private practice (paragraph 3 of your letter)

6. As highlighted in paragraph 3(a) of the Legislative Council Brief, the Bill seeks only to address the question that all legal officers, be they barristers or not, should deserve equal treatment in terms of eligibility because there is no practical distinction between the duties of legal officers who are barristers and those who are not. In only removing the anomalous restriction between legal officers all of whom do not practise in the private sector while holding office as legal officers, the Bill does not, as stated clearly in paragraph 3(c) of the Legislative Council Brief, seek to affect any rights of the legal practitioners in the private sector, nor disturb the professional demarcation between the barristers’ and solicitors’ branches as

legal services providers. It is therefore necessary to confine the scope of the legislative exercise without extending the proposal to cover solicitor advocates in private practice. This is precisely why it is expressly provided in the new section 31A(3A) of the LPO (to be added by clause 3(8) of the Bill) that if a non-barrister legal officer is appointed as a Senior Counsel, he or she is entitled to use the title, and to enjoy the status, of Senior Counsel only while holding office as a legal officer.

Reader's aids (paragraph 4 of your letter)

7. Reader's aids may, in suitable situations, be added in legislative text if they are considered to be effective in helping the general reader to understand the provisions in the relevant context. A note without legislative effect as suggested in paragraph 4 of your letter is one form of reader's aids which has been used from time to time.

8. The relevant existing provisions deeming persons to be legal officers for the purposes of the Legal Officers Ordinance (Cap. 87) (i.e. section 3(3) of the Director of Intellectual Property (Establishment) Ordinance (Cap. 412) and section 75(3) of the Bankruptcy Ordinance (Cap. 6)) are already set out in footnote 1 to the Legislative Council Brief for the Bill. Given the confined scope and technical nature of the Bill and after taking into account the information which could have been included in the suggested note (without legislative effect) and the general availability of such information to those who may be interested, the deployment of reader's aids is considered unnecessary in the circumstances.

9. We hope the above will have sufficiently addressed the issues raised.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'William Liu', with a stylized flourish at the end.

(William Liu)

Deputy Law Officer (Civil Law) (Ag)

c.c. Internal

Mr Henry Chan, SALD/LDD

Mr Christopher Ng, SGC/CPAD

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