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13 August 2021

**By email**

Mr Lemuel Woo  
Clerk to the Bills Committee on  
the Legal Practitioners (Amendment) Bill 2021  
Legislative Council Complex  
1 Legislative Council Road,  
Central, Hong Kong

Dear Mr Woo,

**Legal Practitioners (Amendment) Bill 2021**

**Written Submission of Mr Alan Hoo, QC, SC, JP and  
Mr Simon Westbrook SC dated 10 August 2021**

In response to the Chairman's request, we write to provide our views on the above submission ("**Submission**") in respect of the Legal Practitioners (Amendment) Bill 2021 ("**Bill**") enabling a person holding office as a legal officer not being a Hong Kong barrister to be eligible for appointment as Senior Counsel ("**Proposal**").

The Submission does not express any disagreement with the Government that non-barrister legal officers being competent advocates also

deserve due recognition of their excellence. This is an objective of the Proposal. The Submission, however, suggests that such recognition given to non-barrister legal officers should take a different form, and thus counter-proposes that such legal officers with the requisite experience be made eligible for appointment as honorary Senior Counsel instead or, in the alternative, that the three-month pupillage requirement should be waived for solicitor legal officers with the requisite experience who wish to switch to the Bar.

We do not share the expressed concern raised in the Submission about the Proposal. The Proposal can most directly address the need for fairness by recognising worthy candidates for appointment as SC solely based on merits, free from other artificial eligibility barriers and without affecting the existing professional demarcation between barristers and solicitors in the private sector:-

- (a) The contention in the Submission that the Proposal “arises from an internal staff retention problem within the Department of Justice” (paragraph 4 thereof) and aims to “address the retention of senior staff problems [within] the [department]” (paragraph 7 thereof) is misconceived. Under the existing regime, legal officers admitted as barristers have already been eligible for appointment as Senior Counsel (“**SC**”) just as those practising at the private bar. As already clarified at the Bills Committee meeting on 9 August 2021, the Proposal seeks to provide an equal treatment, in terms of eligibility for appointment as SC, to all legal officers performing advocacy duties in the Department of Justice (“**DoJ**”) and other relevant government departments. The Proposal seeks to directly address the unfairness by removing the artificial eligibility barrier.
- (b) We take strong exception to any argument that a legal officer that meets the requirements set out in section 31A(2) of the Legal Practitioners Ordinance, Cap 159 (“**LPO**”) should not enjoy the same recognition as their counterparts in the private bar simply because one is not subject to the Bar’s Code of Conduct (paragraphs 4 and 5 of the Submission). Whilst non-barrister legal officers to be eligible for appointment to SC under the Proposal would not be subject to the Bar’s Code of Conduct, their conduct, as lawyers, is governed by the codes of professional ethics applicable to their branch of profession.

Further, legal officers as civil servants are subject to various disciplinary rules and regulations such as the Civil Service Regulations. All SC appointees, whether now or under the Proposal, must satisfy the same substantive eligibility requirements under the LPO. If any candidate does not have the required standing or does not satisfy any of the substantive eligibility requirements, we trust that the Chairman of the Bar and the President of the Law Society would tender their fair and honest advice to the Chief Justice for his consideration about the eligibility of the candidate concerned.

- (c) The Proposal will not bring any confusion as asserted to the public (paragraph 5 of the Submission). The functions of legal officers and private legal practitioners are different and indeed not entirely comparable. Unlike their counterparts in the private sector, legal officers, regardless of whether they are barristers or solicitors, perform both solicitorial and advocacy duties, with all the rights of barristers and solicitors when handling matters set out in section 4 of the Legal Officers Ordinance (Cap. 87). Therefore, unlike private legal practitioners, there is no practical distinction between the roles and duties of legal officers who are barristers and those who are solicitors. We therefore consider that all legal officers should deserve the same treatment and rights, including that legal officers irrespective of whether they are barristers or not should be equally eligible for consideration to be appointed as SC upon satisfying the substantive eligibility requirements under section 31A(2) of the LPO.
- (d) We are unable to agree that the Proposal will create a “new category of SC” (paragraph 5 of the Submission) and any non-barrister legal officers appointed as SC would be of an “elevated office title” (paragraph 6 of the Submission). Under the Proposal, there will be no change to the existing statutory selection mechanism and criteria as set out in sections 31A(1) and (2) of the LPO, which will continue to apply to all eligible applicants (including barristers in private practice and legal officers). These officers are considered and assessed by the Chief Justice under the same eligibility requirements and their appointment as SC is purely based on merits. There should not

be any distinction in terms of merits and standing among SC who are appointed in accordance with section 31A of the LPO.

- (e) The Proposal will not bring about any “substantial negative impact to the senior structure of the Bar” as suggested in paragraph 8 of the Submission, given the different functions of legal officers and private legal practitioners. The Proposal does not affect any rights of the legal practitioners in the private sector (including the opportunities for barristers in private practice to be appointed as SC). Whilst appreciating that the SC title is to recognise individual excellence, we propose that non-barrister legal officers will not retain their SC title upon ceasing to be legal officers so as to avoid affecting the existing professional demarcation between barristers and solicitors in the private sector. This reflects our respect of the self-regulatory regime currently applicable to the legal profession in the private market.
- (f) The counter-proposal to make all legal officers eligible for consideration for appointment as honorary Senior Counsel (paragraph 7 of the Submission) cannot meet the objective of the Proposal to address the unfairness that only barrister legal officers are eligible for consideration for appointment as SC whilst non-barrister legal officers are not so eligible.
- (g) If the counter-proposal for “a waiver of the 3 months pupillage requirement for solicitor legal officers with the exquisite experience and thereby join the ranks of the Bar” (paragraph 8 of the Submission) materialises, it will only further demonstrate the artificiality of the barrier preventing meritorious non-barrister legal officers from being eligible for consideration for appointment as SC.

Yours sincerely,



(William Liu)

Deputy Law Officer (Civil Law)(Ag)