

II. REPORT

The date of First Reading of the Bill is 14 July 2021. Members may refer to the Legislative Council ("LegCo") Brief (File Ref.: SF(37) TO CPA 272/00C) issued by the Department of Justice on 7 July 2021 for further details.

Object of the Bill

2. The Bill seeks to amend the Legal Practitioners Ordinance (Cap. 159) so that a person (not being a barrister) who holds office as a legal officer is eligible to be appointed as a Senior Counsel.

Background

3. Under section 31A(1) of Cap. 159, only barristers within the meaning of Cap. 159¹ who satisfy the eligibility requirements of section 31A(2) of Cap. 159 ("Eligibility Requirements") are eligible to be appointed as Senior Counsel by the Chief Justice of the Court of Final Appeal ("Chief Justice"). The Eligibility Requirements include sufficient ability and standing as a barrister, sufficient knowledge of the law, the requisite experience and practising at the bar in Hong Kong or as an advocate while holding office as a legal officer. Currently, under section 31A of Cap. 159, legal officers within the meaning of the Legal Officers Ordinance (Cap. 87)² who are not admitted as barristers are not eligible for appointment as Senior Counsel.

4. According to paragraph 3 of the LegCo Brief, since there is no practical distinction between the duties of legal officers who are barristers and those who are not, the Administration considers that legal officers irrespective of whether they are barristers or not should be equally eligible for consideration to be appointed as Senior Counsel upon satisfying the Eligibility Requirements.

¹ Under section 2(1) of Cap. 159, "barrister" means a person who is enrolled as a barrister on the roll of barristers and who, at the material time, is not suspended from practice.

² Under section 2 of and Schedule 1 to Cap. 87, "legal officer" includes the Secretary for Justice, Director of Public Prosecutions, Law Officer (Civil Law), Law Draftsman, Solicitor General, all Government Counsel and Public Prosecutors, as well as certain legal professionals in the Lands Department, Companies Registry and Lands Registry.

Provisions of the Bill

Eligibility for appointment as Senior Counsel

5. Clause 3 of the Bill seeks to amend section 31A(1) of Cap. 159 so that a person (not being a barrister) who holds office as a legal officer and satisfies the Eligibility Requirements would also be eligible to be appointed as a Senior Counsel by the Chief Justice. The Eligibility Requirements in section 31A(2) of Cap. 159 are also proposed to be amended to include a person's ability and standing as a legal officer.

Meaning of "legal officer"

6. Clause 3(9) of the Bill seeks to add a new section 31A(6) to Cap. 159 to provide for a definition of "legal officer" which would include:

- (a) a legal officer within the meaning given by section 2 of Cap. 87; and
- (b) a person deemed to be a legal officer for the purpose of Cap. 87.³

Restriction on using the title of Senior Counsel

7. Under clause 3(8) of the Bill, it is proposed that a legal officer (not being a barrister) who is appointed by the Chief Justice as a Senior Counsel would be entitled to use the title, and enjoy the status, of Senior Counsel only while holding office as a legal officer (proposed new section 31A(3A)).

Commencement

8. The Bill, if passed, would come into operation on the day on which the enacted Ordinance is published in the Gazette.

Public consultation

9. According to paragraph 8 of the LegCo Brief, the Administration has briefed the Chief Justice and the legal sector (including the Bar Association,

³ This includes holders of an office who are deemed to be legal officers under (i) section 3(3) of the Director of Intellectual Property (Establishment) Ordinance (Cap. 412) (i.e. the Director of Intellectual Property, where he is legally qualified, and certain legally qualified officers specified in Part 1 of Schedule 1 to Cap. 412); and (ii) section 75(3) of the Bankruptcy Ordinance (Cap. 6) (e.g. certain legally qualified officers appointed to assist the Official Receiver).

the Law Society and other relevant legal bodies) on the legislative proposal. The Law Society and some legal bodies have expressed clear support to the proposal. However, the Bar Association expressed its opposition to the proposal.⁴

Consultation with LegCo Panel

10. As advised by the Clerk to the Panel on Administration of Justice and Legal Services, the Administration briefed the Panel on 21 June 2021 on the legislative proposal. While supporting the proposal in general, members invited the Administration to take note of the various concerns expressed by members and the Bar Association, including the effect of the legislative proposal on the fair treatment of legal officers, the retention of talents in the Department of Justice, and the status of Senior Counsel.

Conclusion

11. The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. Since the Bill seeks to change the eligibility requirements for appointment as a Senior Counsel, Members may consider forming a Bills Committee to study the Bill in detail.

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⁴ Members may refer to the Position Paper concerning the Secretary for Justice's Proposal on Amendment to Eligibility of Application for the Status of Senior Counsel issued by the Bar Association on 5 July 2021 for the Bar Association's reasons of opposition.