
Legal Practitioners (Amendment) Bill 2023

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A BILL

To

Amend the Legal Practitioners Ordinance and its subsidiary legislation to provide for admission of overseas lawyers as barristers in Hong Kong for cases concerning national security; and to provide for related matters.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title

This Ordinance may be cited as the Legal Practitioners (Amendment) Ordinance 2023.

2. Enactments amended

- (1) The Legal Practitioners Ordinance (Cap. 159) is amended as set out in Part 2.
 - (2) The Barristers (Admission) Rules (Cap. 159 sub. leg. AA) are amended as set out in Part 3.
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Part 2

Amendments to Legal Practitioners Ordinance

3. Section 27AA added

Part III, before section 27—

Add

“27AA. Interpretation (Part III)

(1) In this Part—

Admission Rules (《認許規則》) means the Barristers (Admission) Rules (Cap. 159 sub. leg. AA);

CE certificate (行政長官證明書) means a certificate issued by the Chief Executive under Article 47 of the HK National Security Law;

HK National Security Law (《香港國安法》) means the Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (a translation of “《中華人民共和國香港特別行政區維護國家安全法》”), as applied in the Hong Kong Special Administrative Region under the Promulgation of National Law 2020 (L.N. 136 of 2020);

notice of permission to proceed (准許進行申請通知書) means a notice of permission to proceed issued by the Chief Executive, as referred to in section 27C(5).

(2) To avoid doubt, for sections 27B, 27C, 27D and 27E—

(a) a reference to a case is a reference to a case of any nature, whether criminal, civil or otherwise; and

- (b) a reference to a case concerning national security includes, but is not limited to—
 - (i) a case in connection with an offence under the HK National Security Law or any other offence endangering national security; and
 - (ii) a case in connection with any measures taken for, or in connection with, safeguarding national security, whether under the HK National Security Law or any other law.”.

4. Section 27 amended (power of Court to admit barristers)

After section 27(4)—

Add

“(4A) Subsection (4) is subject to sections 27B, 27C, 27D, 27E and 27F.”.

5. Sections 27B to 27F added

Before section 28—

Add

“27B. Generally, no admission as barrister for cases concerning national security under section 27(4)

- (1) A person must not be admitted as a barrister for a case concerning national security under section 27(4) unless there is exceptional circumstance as specified in subsection (2).

- (2) The exceptional circumstance is that the Chief Executive has sufficient grounds for believing that the person's practising or acting as a barrister for the case does not involve national security or would not be contrary to the interests of national security.
- (3) Sections 27C, 27D, 27E and 27F contain provisions in relation to establishing whether the exceptional circumstance exists.

27C. No application for admission as barrister for cases concerning national security under section 27(4) without notice of permission to proceed

- (1) A person (*applicant*) intending to seek to be admitted as a barrister for a case (or cases) concerning national security under section 27(4) must, before making an application under section 2 of the Admission Rules, notify the Secretary for Justice in writing of the applicant's intention.
- (2) The notification must be accompanied by—
 - (a) the documents referred to in section 2(4)(a), (b) and (c) of the Admission Rules; and
 - (b) a written statement personally signed by the applicant and (if the applicant is represented by a solicitor) the solicitor, showing grounds that the applicant's practising or acting as a barrister for the case (or any of the cases) does not involve national security or would not be contrary to the interests of national security.
- (3) The applicant and the solicitor must also provide with the statement any documents or other evidence in support of the grounds.

- (4) The Secretary for Justice must, as soon as practicable after receiving the notification under subsection (1) and the documents, written statement and evidence mentioned in subsections (2) and (3), refer the matter to the Chief Executive.
- (5) The Chief Executive will issue a notice of permission to proceed in respect of the application only if the Chief Executive considers that there is a real prospect that the exceptional circumstance specified in section 27B(2) exists.
- (6) The Secretary for Justice must, as soon as practicable after receiving a notice of permission to proceed from the Chief Executive, send the notice to the applicant.
- (7) If the Chief Executive decides not to issue a notice of permission to proceed, the Secretary for Justice must, as soon as practicable after receiving the decision from the Chief Executive, notify the applicant in writing of the decision.
- (8) If the notice of motion filed by the applicant for the application is not accompanied by a notice of permission to proceed issued in respect of the case (or cases), the Court must not take any further action in respect of the notice of motion, including fixing a hearing date of the motion.
- (9) Subsections (10), (11) and (12) apply if—
 - (a) a person seeks to be admitted as a barrister for a case under section 27(4), and the application made by the person under section 2 of the Admission Rules is not accompanied by a notice of permission to proceed issued in respect of the case; but

- (b) it appears to the Court or the Secretary for Justice that the case is a case concerning national security.
- (10) The Court must, on its own motion or on request of the Secretary for Justice, request and obtain a certificate from the Chief Executive under Article 47 of the HK National Security Law on whether the case is a case concerning national security.
- (11) Unless the Court receives a certificate under subsection (10) certifying that the case is not a case concerning national security, the Court must not take any further action in respect of the application, including fixing a hearing date of the application, until the person obtains a notice of permission to proceed in accordance with this section.
- (12) If the Court is notified by the Secretary for Justice that the Chief Executive has decided not to issue a notice of permission to proceed in respect of the application, the Court must dismiss the application immediately.

27D. Court not to admit barrister for cases concerning national security under section 27(4) without CE certificate

- (1) Before making any order as to the admission of a person for a case concerning national security, the Court must request and obtain a certificate from the Chief Executive under Article 47 of the HK National Security Law on—
 - (a) whether the person's practising or acting as a barrister for the case involves national security; and

- (b) whether the person's practising or acting as a barrister for the case would be contrary to the interests of national security.
- (2) The Court must not admit the person as a barrister for the case under section 27(4) unless the Court receives a CE certificate certifying both or either of the following decisions of the Chief Executive—
 - (a) the person's practising or acting as a barrister for the case does not involve national security;
 - (b) the person's practising or acting as a barrister for the case would not be contrary to the interests of national security.

27E. Questions arising after admission under section 27(4) that require referral to Chief Executive

- (1) After a person is admitted as a barrister for a case under section 27(4), if it appears to the relevant court or the Secretary for Justice that there are new circumstances giving rise to—
 - (a) whether a decision certified in respect of the case by a CE certificate under section 27D(2) (*previous certificate*) remains appropriate; or
 - (b) whether the case is a case concerning national security,the relevant court must, on its own motion or on request of the Secretary for Justice, request and obtain in respect of the case a CE certificate certifying the questions referred to in section 27D(1) (*new certificate*).

- (2) The specified proceedings must be stayed until the relevant court receives a new certificate, unless otherwise ordered by the relevant court on the ground that it is in the interests of justice that the specified proceedings should continue without the person's practising or acting as a barrister for the case.
- (3) If the Chief Executive, on request of the relevant court under subsection (1), issues a new certificate in respect of the case, the new certificate replaces the previous certificate issued in respect of the case (if any), and the previous certificate ceases to have effect.
- (4) In this section—
relevant court (有關法院), in relation to specified proceedings, means the court in which the proceedings are pending;
specified proceedings (指明程序), in relation to a case, means the proceedings of the case for which a person is admitted under section 27(4).

27F. No questioning of, and no legal proceedings be instituted in respect of, decision of Chief Executive

A decision made by the Chief Executive under section 27C, 27D or 27E is not liable to be questioned in any court of law, and no legal proceedings of any form may be instituted in respect of the decision.”.

6. Section 31 amended (qualifications for practising as a barrister)

After section 31(1)(b)—

Add

- “(ba) for a barrister admitted under section 27(4) for a case (or cases) concerning national security, unless the Chief Executive issues, in respect of the barrister for the case (or cases), a CE certificate certifying both or either of the decisions under section 27D(2), and the certificate remains in effect;”.
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Part 3

Amendments to Barristers (Admission) Rules

7. **Section 2 amended (application for admission as a barrister)**

(1) Section 2(4)(b)—

Repeal

“Ordinance; and”

Substitute

“Ordinance;”.

(2) Section 2(4)(c)—

Repeal the full stop

Substitute

“; and”.

(3) After section 2(4)(c)—

Add

“(d) if admission is sought for a case (or cases) concerning national security—a notice of permission to proceed (as defined by section 27AA(1) of the Ordinance) issued to the person in respect of the case (or cases).”.

Explanatory Memorandum

The main object of this Bill is to amend the Legal Practitioners Ordinance (Cap. 159) (*Cap. 159*) and the Barristers (Admission) Rules (Cap. 159 sub. leg. AA) (*Cap. 159AA*) to provide for admission of overseas lawyers as barristers in Hong Kong for cases concerning national security.

Part 1—Preliminary

2. Clause 1 sets out the short title.
3. Clause 2 is a standard enactments amended clause included in amending legislation.

Part 2—Amendments to Cap. 159

4. The existing section 27(4) of Cap. 159 empowers the Court of First Instance (*Court*) to admit an overseas lawyer for any particular case or cases. Part 2 of the Bill amends Part III (barristers) of Cap. 159 to provide for a mechanism for admission of an overseas lawyer for a case concerning national security (*NS case*).
5. Clause 3 adds a new section 27AA to Cap. 159, which provides for the interpretation of Part III of Cap. 159. In particular, the new section 27AA(2) clarifies that a reference to an NS case includes a case (whether criminal, civil or otherwise) in connection with an offence endangering national security and a case (whether criminal, civil or otherwise) in connection with any measures taken for safeguarding national security.

6. Clause 4 adds a new subsection (4A) to section 27 of Cap. 159 to provide that section 27(4) of Cap. 159 is subject to the new sections 27B, 27C, 27D, 27E and 27F (see paragraphs 7 to 13).
7. Clause 5 adds the new sections 27B, 27C, 27D, 27E and 27F to Cap. 159. The new section 27B sets out the general principle for admission of an overseas lawyer for an NS case—an overseas lawyer must not be admitted for an NS case in general, unless the Chief Executive (**CE**) has sufficient grounds for believing that the lawyer’s practising or acting as a barrister for the NS case does not involve national security or would not be contrary to the interests of national security (*exceptional circumstance*).
8. The new sections 27C, 27D, 27E and 27F contain provisions in relation to establishing whether the exceptional circumstance exists.
9. The new section 27C requires an overseas lawyer seeking to be admitted for an NS case (*applicant*) to obtain a notice of permission to proceed issued by the CE, before an admission application may be made. The applicant must provide a written statement and supporting evidence showing grounds that the application falls within the exceptional circumstance. The CE will issue a notice of permission to proceed only if the CE considers that there is a real prospect that the exceptional circumstance exists.
10. If an overseas lawyer makes an admission application in respect of a case without a notice of permission to proceed but it appears to the Court or the Secretary for Justice (**SJ**) that the case is an NS case, the new section 27C also provides that the Court must, on its own motion or on request of the SJ, request and obtain a certificate from the CE under Article 47 of the

Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (*HK National Security Law*) on whether the case is an NS case.

11. The new section 27D provides that before making any order as to the admission of an overseas lawyer for an NS case, the Court must request and obtain a certificate from the CE under Article 47 of the HK National Security Law and must not admit the lawyer unless the Court receives a certificate from the CE certifying that the exceptional circumstance exists (*specified certificate*).
12. The new section 27E provides that after an overseas lawyer is admitted for a case, the court (in which the proceedings of the case are pending) must, on its own motion or on request of the SJ, request and obtain a certificate from the CE under Article 47 of the HK National Security Law if it appears to the court or the SJ that there are new circumstances giving rise to whether the exceptional circumstance still exists or the case is an NS case.
13. The new section 27F states that a decision made by the CE under the new section 27C, 27D or 27E is not liable to be questioned or challenged in any court of law.
14. The existing section 31 of Cap. 159 provides that a person is qualified to practise as a barrister only if certain conditions are met. Clause 6 amends that section 31 so that an overseas lawyer admitted under section 27(4) of Cap. 159 for an NS case must hold a valid specified certificate in order to be qualified to practise as a barrister.

Part 3—Amendments to Cap. 159AA

15. Clause 7 amends section 2 of Cap. 159AA to require that an application for admission of an overseas lawyer for an NS case must also be accompanied by a notice of permission to proceed issued to the lawyer in respect of the case.