

LEGISLATIVE COUNCIL BRIEF

Legal Practitioners Ordinance (Chapter 159)

LEGAL PRACTITIONERS (AMENDMENT) BILL 2023

INTRODUCTION

A At the meeting of the Executive Council on 21 March 2023, the Council ADVISED and the Chief Executive ORDERED that the Legal Practitioners (Amendment) Bill 2023 (“**Bill**”), at **Annex A**, should be introduced into the Legislative Council.

JUSTIFICATIONS

2. We need to introduce legislative amendments to the Legal Practitioners Ordinance (Cap. 159) (“**LPO**”) as soon as practicable to handle matters concerning the participation of overseas lawyers who are not qualified to practise generally in the Hong Kong Special Administrative Region (“**HKSAR**”) in cases concerning national security (“**NS Cases**”) in an appropriate manner, so as to effectively address the potential national security risks associated with the participation of such lawyers in NS Cases, in line with the spirit of the Interpretation by the Standing Committee of the National People’s Congress of the People’s Republic of China (“**NPCSC**”) of Article 14 and 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 30 December 2022 (“**Interpretation**”).

3. Overseas lawyers not qualified to practise generally in the HKSAR may pose national security risks when practising or acting as barristers in NS Cases in the HKSAR. As stipulated in Article 3 of the HK National Security Law, it is the constitutional duty of the HKSAR to safeguard national security, and the executive authorities, the legislature and the judiciary of the HKSAR shall effectively prevent, suppress and impose punishment for any act or activity endangering national security in accordance with the HK National Security Law and other relevant laws. Prompt and effective actions must be taken to address the potential national security risks associated with the participation of such overseas lawyers in NS Cases.

4. Pursuant to Article 2 of the Interpretation, in accordance with the provisions of Article 47 of the HK National Security Law, the courts of the HKSAR shall request and obtain a certificate from the Chief Executive (“**CE**”) to certify whether an act involves national security or whether the relevant evidence involves State secrets when

such question arises in the adjudication of a case concerning an offence endangering national security. The certificate shall be binding on the courts. According to Article 3 of the Interpretation, the question whether overseas lawyers not qualified to practise generally in the HKSAR may serve as defence counsel or legal representatives in cases concerning an offence endangering national security is a question that requires certification under Article 47 of the HK National Security Law¹, and a certificate from the CE shall be obtained.

5. On 30 December 2022, in response to questions by the media concerning the Interpretation, a responsible official of the Legislative Affairs Commission of the NPCSC expressed the view that Article 7 of the HK National Security Law² should be implemented seriously and faithfully, and further noted that during the deliberation of the State Council's proposal, opinions were clearly expressed that the HKSAR should amend and refine the relevant local legislation, including the LPO, in a timely manner, and resolve legal issues encountered in the implementation of the HK National Security Law through local legislation as far as practicable. Such opinions should be taken seriously by the HKSAR Government.

6. On 11 January 2023, the Committee for Safeguarding National Security of the HKSAR (“**Committee**”) held a meeting to discuss the implementation of the Interpretation and relevant explanations. The Committee stated that it supports the HKSAR Government to introduce amendments to the LPO as soon as possible, so as to handle the matter concerning the participation of overseas lawyers who are not qualified to practise generally in Hong Kong in cases involving national security issues in an appropriate manner.

7. In the light of the above, to effectively implement the spirit of the Interpretation, address the potential national security risks associated with the participation of overseas lawyers in NS Cases and discharge the HKSAR Government's duties under Articles 3 and 7 of the HK National Security Law, we recommend that the LPO should be amended to enhance the legal framework for *ad hoc* admission of overseas lawyers for NS Cases.

OTHER OPTIONS

8. The existing provisions under the LPO are not adequate to ensure the full implementation of the duty to effectively safeguard national security. The LPO has to

¹ Article 47 of the HK National Security Law provides that “The courts of the Hong Kong Special Administrative Region shall obtain a certificate from the Chief Executive to certify whether an act involves national security or whether the relevant evidence involves State secrets when such questions arise in the adjudication of a case. The certificate shall be binding on the courts.”

² Article 7 of the HK National Security Law provides that “The HKSAR shall complete, as early as possible, legislation for safeguarding national security as stipulated in the Basic Law and shall refine relevant laws.”

be amended to fully reflect and implement the spirit of the Interpretation. There are no other options.

THE BILL

9. The Bill amends section 27 of the LPO in respect of the power of the Court of First Instance (“**Court**”) to admit barristers on an *ad hoc* basis (the existing provision being amended is at **Annex B**) and adds certain new provisions to the LPO. Based on the instructive guidance of the Interpretation, the approach of the proposed amendments is to resolve the question of whether an overseas lawyer may be admitted on an *ad hoc* basis for an NS Case on a case-by-case basis by making use of the mechanism under Article 47 of the HK National Security Law and highlighting the respective roles of the Court and the CE in this respect.

B

10. Details of the Bill, including the operation of the newly inserted provisions, are set out below—

- (a) The long title sets out the objective of the Bill to amend the LPO and its subsidiary legislation to provide for admission of overseas lawyers as barristers in Hong Kong for NS Cases and to provide for related matters.
- (b) Clause 1 sets out the short title of the Bill.
- (c) Clause 2 is a standard enactments amended clause included in amending legislation.
- (d) Clause 3 adds a new section 27AA to the LPO, which provides for the interpretation of Part III of the LPO.
 - (i) The proposed mechanism applies to “cases concerning national security”, which is defined in the new section 27AA(2) to include 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.
 - (ii) There are queries as to why “cases concerning national security” is not confined to criminal offences endangering national security as referred to in the Interpretation. It is necessary for the proposed mechanism to cover cases other than such criminal offences because, apart from criminal cases concerning offences endangering national security, there are cases which are not criminal in nature but concern national security and/or the HK National Security Law (e.g. judicial review of statutory powers exercised for safeguarding national security, etc.), and the participation of overseas lawyers in those cases may pose similar national security risks. The proposed formulation aims at ensuring that the Government can effectively discharge its duty to prevent the

potential national security risks associated with the participation of overseas lawyers in NS Cases, which is also in line with the spirit of the HK National Security Law and the Interpretation.

- (e) Clause 4 adds a new subsection (4A) to section 27 of the LPO to provide that the existing *ad hoc* admission mechanism in section 27(4) is subject to the new sections 27B, 27C, 27D, 27E and 27F.
- (f) Clause 5 adds the new sections 27B, 27C, 27D, 27E and 27F to the LPO: -

New section 27B – general principle

- (i) 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 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**”).

New section 27C – pre-application screening process and determination of whether a case is an NS Case

Pre-application screening process

- (ii) 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 submitting an admission application to the Court. The applicant is required to give notice of the applicant’s intention to the Secretary for Justice (“**SJ**”) and must provide a written statement and supporting evidence showing grounds that the application falls within the exceptional circumstance, which will be forwarded to the CE for consideration. 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. This aims at screening out wholly unmeritorious applications (for example, where no or plainly insufficient reason or evidence is given to support the application as falling within the exceptional circumstance), which will waste valuable time and resources of the Court, the parties (including the Bar Council), and the CE.

Determination of whether a case is an NS Case

- (iii) If an overseas lawyer makes an application in respect of a case without a notice of permission to proceed but it appears to the Court or 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 HK National Security Law on whether the case is an NS Case.
- (iv) In practice, for most if not all cases, there should be little difficulty for the

applicant or the Court to determine whether a case is an NS Case. Nevertheless, in the unlikely event that SJ (a party to the ad hoc admission proceedings) takes the view that the case is an NS Case but the pre-application screening process is not followed, and an ad hoc admission application has been made to the Court, SJ may request the Court to refer the matter to the CE for issuing a certificate under Article 47 of the HK National Security Law to determine the question whether the case is an NS Case. The determination is binding on the courts.

- (v) The above is in line with the jurisprudence in major common law jurisdictions that the executive is in a better position than the judiciary to make assessments on matters involving national security, and the judiciary will give deference to the executive on such matters.

New section 27D – Court not to admit barrister for NS Cases under section 27(4) without CE certificate

- (vi) 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. The Court must not admit the lawyer unless it receives a certificate from the CE certifying that the exceptional circumstance exists (“**specified certificate**”).
- (vii) This is in line with the spirit of Article 47 of the HK National Security Law and Article 3 of the Interpretation. Given the fundamental and overriding importance of national security, if a person’s practising or acting as a barrister for an NS Case would be contrary to the interests of national security, it would be wrong in principle to admit the person.

New section 27E - review mechanism

- (viii) The new section 27E provides that after an overseas lawyer is admitted for a case, the court of the case 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 case is an NS Case or the exceptional circumstance still exists.
- (ix) This section is added in response to queries as to how any change of circumstances after the issuance of a CE certificate and the grant of an ad hoc admission is to be dealt with. There may be a change of circumstances after the admission proceedings have been concluded (e.g. discovery of new evidence or matters showing that the case is in fact an NS Case), or, in respect of an NS Case, the change of circumstances may bring about additional national security risks. Hence, it is necessary to have in place a mechanism to enable the CE to review the matter.

New section 27F – CE’s decision not subject to challenge

- (x) 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.
- (g) Clause 6 amends section 31 of the LPO, which provides that a person is qualified to practise as a barrister only if certain conditions are met, so that an overseas lawyer admitted under section 27(4) for an NS Case must hold a valid specified certificate in order to be qualified.
- (h) Clause 7 amends section 2 of the Barristers (Admission) Rules (Cap. 159AA) to require that an application for *ad hoc* 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.
- (i) The Bill does not affect the *ad hoc* admission of overseas lawyers in criminal cases and civil cases not involving national security. For a case which is not an NS Case, an application for *ad hoc* admission may be filed and dealt with in accordance with the existing procedures and established principles.

LEGISLATIVE TIMETABLE

11. The legislative timetable will be–

- | | | |
|-----|--|-------------------------|
| (a) | Publication in the Gazette | 21 March 2023 |
| (b) | First Reading and commencement of Second Reading debate | 22 March 2023 |
| (c) | Resumption of Second Reading debate, Committee stage and Third Reading | Tentatively 10 May 2023 |

IMPLICATIONS OF THE PROPOSAL

12. The Bill will not have adverse implications on the rule of law, the court’s independent judicial power as guaranteed by the Basic Law, and the parties’ right to choose their legal representation and the right to a fair trial. It does not take away any lawful right of defendants in criminal cases as there has never been any right to be represented by overseas counsel³.

³ Hong Kong residents have the right to choice of lawyers. Such choice means a right to choose lawyers

13. In practice, the number of general application for *ad hoc* admission and the number of application for *ad hoc* admission in respect of NS Cases are small (see paragraphs 20 and 21 below).

14. The Bill is in conformity with the Basic Law including provisions concerning human rights. The Bill has no economic, financial, civil service, productivity, environmental, sustainability, family or gender implications.

15. The Bill will not affect the current binding effect of the LPO.

CONSULTATION

16. The Government is consulting the Judiciary and the two legal professional bodies on the key features of the Bill. Members of the LegCo Panel on Administration of Justice and Legal Services were consulted on 17 March 2023.

PUBLICITY

17. A press release will be issued on 21 March 2023. A spokesperson will be available for answering media enquiries.

BACKGROUND

Ad hoc admission of overseas lawyers

18. Notwithstanding that a person is not qualified to practise generally in Hong Kong, under section 27(4) of the LPO, the Court has power to admit a person, on an *ad hoc* basis, as a barrister for the purpose of any particular case or cases, if the Court considers that the person is a fit and proper person to be a barrister and is satisfied that he has: (a) the qualification acquired outside Hong Kong to engage in work that would, if undertaken in Hong Kong, be similar to that undertaken by a barrister in the course of ordinary practice as a barrister in the High Court or Court of Final Appeal; and (b) substantial experience in advocacy in a court.

who are available and entitled to practise, and not overseas lawyers who are not qualified to practise. Therefore, even though defendants in cases concerning offence endangering national security cannot engage overseas lawyers in circumstances where the Court has to dismiss an application for *ad hoc* admission under the new provisions, it is still consistent with the respect and protection of defendants' rights and freedom as required by Articles 4 and 5 of the HK National Security Law.

19. In deciding to exercise the discretion to admit overseas counsel for any particular case or cases under section 27(4) of the LPO, it has to be in the public interest and in determining in a particular case where the public interest lies, the courts have developed guiding principles. The facets of the public interest include the maintenance of a strong and independent local bar, the need of Hong Kong people to have adequate representation and the right to instruct counsel of their choice, the proper administration of justice, and the need for the local courts to develop Hong Kong's jurisprudence to a level where it enjoys international recognition and reputation. Relevant considerations include the level of court in which the overseas counsel would appear, the importance of the legal issues to Hong Kong's jurisprudence, the complexity and difficulty of the case, the availability of suitable local counsel, and the suitability of the overseas counsel.⁴

20. The number of applications for *ad hoc* admission copied to the Department of Justice⁵ (“DoJ”) each year from 2015 to 2022 is as follows:

| Year | No. of <i>ad hoc</i> admission applications received by the DoJ | Nature of Cases* |
|-------------------|---|-----------------------|
| 2015 | 33 | 11 criminal/ 22 civil |
| 2016 | 31 | 18 criminal/ 13 civil |
| 2017 | 23 | 7 criminal/ 16 civil |
| 2018 | 27 | 6 criminal/ 21 civil |
| 2019 | 19 | 5 criminal/ 14 civil |
| 2020 | 15 | 4 criminal/ 11 civil |
| 2021 | 7 | 1 criminal/ 6 civil |
| 2022 [#] | 18 | 6 criminal/ 12 civil |

Notes: * Civil cases include applications for judicial review.

Up to 21 December 2022.

21. So far, there was only one application for *ad hoc* admission in respect of an NS Case since the enactment of the HK National Security Law.

The Interpretation of the HK National Security Law by the NPCSC

22. On 28 November 2022, the CE submitted a report to the Central People's Government (“CPG”) as required by the CPG in accordance with Article 11 of the HK

⁴ *Re Perry QC* [2016] 2 HKLRD 647 at paragraphs 24 to 26.

⁵ By virtue of Rule 2(5) of the Barristers (Admission) Rules (Cap. 159AA), a copy of the notice of motion in respect of a person seeking to be admitted as a barrister under section 27(4) of Cap. 159 and of every document accompanying the notice of motion shall be served on the Secretary for Justice. The Secretary for Justice will make submissions to the Court as appropriate in respect of the application for *ad hoc* admission in his capacity as the guardian of the public interest.

National Security Law. In the report, the CE recommended that a request be made to the NPCSC to issue an interpretation in accordance with Article 65 of the HK National Security Law in order to clarify the question: “Based on the legislative intent and objectives of the Hong Kong National Security Law, can an overseas solicitor or barrister who is not qualified to practise generally in Hong Kong participate by any means in the handling of work in cases concerning offence endangering national security?”.

23. On 30 December 2022, in accordance with the provisions of subparagraph (4) of Article 67 of the Constitution of the People’s Republic of China and Article 65 of the HK National Security Law, the NPCSC gave an interpretation of Article 14 and Article 47 of the HK National Security Law (full Chinese text and English translation for information at **Annex C**).

C

ENQUIRY

24. Any enquiry on this brief can be addressed to Ms Agnes Liu, Senior Assistant Solicitor General (Policy Affairs) 1 (Acting) at Tel. No. 3918 4018.

Department of Justice
March 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.

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;”.

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.

Legal Practitioners Ordinance

Part III

3-2

Section 27

Cap. 159

Part III**Barristers***(Format changes—E.R. 2 of 2012)***27. Power of Court to admit barristers**

- (1) Subject to subsection (2), the Court may, in such manner as may be prescribed by the Chief Justice, admit as a barrister of the High Court in Hong Kong, a person whom it considers a fit and proper person to be a barrister, provided such person has—
- (a) complied with the requirements;
 - (b) passed the examinations; and
 - (c) paid the fees,
prescribed by the Bar Council.
- (2) The Court shall not admit a person under subsection (1) unless it is satisfied that that person—
- (a) is not in practice as a solicitor either on his own account or as a partner or salaried employee in a firm of solicitors practising in Hong Kong; and
 - (b) satisfies one of the following requirements—
 - (i) has resided in Hong Kong for at least 3 consecutive months immediately before the date of his application for admission;
 - (ii) has been ordinarily resident in Hong Kong for at least 7 years;
 - (iii) has been physically present in Hong Kong for at least 180 days of each of at least 7 years within

the 10 years immediately preceding the date of his application for admission.

- (3) If at the time of his admission under subsection (1) the person is a solicitor, the Registrar shall remove the person's name from the roll of solicitors.
- (4) Notwithstanding that a person does not satisfy all the requirements specified in subsections (1) and (2)(b), where the Court considers that he is a fit and proper person to be a barrister and is satisfied that he has—
 - (a) the qualification acquired outside Hong Kong to engage in work that would, if undertaken in Hong Kong, be similar to that undertaken by a barrister in the course of ordinary practice as a barrister in the High Court or Court of Final Appeal; and
 - (b) substantial experience in advocacy in a court,the Court may admit such person as a barrister under this section for the purpose of any particular case or cases and may impose such restrictions and conditions on him as it may see fit.
- (5) The Court may, when admitting a person as a barrister, sit in chambers.

(Replaced 42 of 2000 s. 7)

Editorial Note:

For the saving provision in relation to the amendment made by section 7 of the Legal Practitioners (Amendment) Ordinance 2000 (42 of 2000), please see section 17 of that Amendment Ordinance.

27A. *(Repealed 42 of 2000 s. 8)*

28. Formalities for admission as a barrister

Except as may be prescribed by the Chief Justice, no person

全國人民代表大會常務委員會關於《中華人民共和國香港特別行政區維護國家安全法》
第十四條和第四十七條的解釋

(「電子版香港法例」(<https://www.elegislation.gov.hk>) 非正式文件參考編號 A406B)

**Interpretation by the Standing Committee of the National People's Congress of Article
14 and Article 47 of the Law of the People's Republic of China on Safeguarding National
Security in the Hong Kong Special Administrative Region**

(unofficial Instrument no. A406B in Hong Kong e-Legislation (<https://www.elegislation.gov.hk>))

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| 版本日期 Version date 27.1.2023 |
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現刊登以下解釋，以廣週知——

全國人民代表大會常務委員會關於《中華人民共和國香港特別行政區維護國家安全法》第十四條和第四十七條的解釋

(2022 年 12 月 30 日第十三屆全國人民代表大會
常務委員會第三十八次會議通過)

編輯附註：

本文件並無根據《法例發布條例》(第 614 章)編配章號。然而本文件在「電子版香港法例」(<https://www.elegislation.gov.hk>)中獲編配一個非正式的參考編號以作識別，並讓用戶可藉該非正式的參考編號進行搜尋。

第十三屆全國人民代表大會常務委員會第三十八次會議審議了《國務院關於提請解釋〈中華人民共和國香港特別行政區維護國家安全法〉有關條款的議案》。國務院的議案是應香港特別行政區行政長官向中央人民政府提交的有關報告提出的。根據《中華人民共和國憲法》第六十七條第四項和《中華人民共和國香港特別行政區維護國家安全法》第六十五條的規定，全國人民代表大會常務委員會對《中華人民共和國香港特別行政區維護國家安全法》第十四條和第四十七條規定的含義和適用作如下解釋：

This is an English translation of the original instrument in Chinese and is published for information—

Interpretation by the Standing Committee of the National People's Congress of Article 14 and Article 47 of the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region

(Adopted at the 38th Session of the Standing Committee of the Thirteenth National People's Congress on 30 December 2022)

Editorial Note:

This instrument was not given a chapter number under the Legislation Publication Ordinance (Cap. 614). An unofficial reference number, however, is assigned to this instrument in Hong Kong e-Legislation (<https://www.elegislation.gov.hk>) for identification purposes. This also enables users to carry out a search by reference to the unofficial reference number.

At its 38th Session, the Standing Committee of the Thirteenth National People's Congress deliberated the State Council's Proposal Regarding the Request for an Interpretation of Relevant Articles of the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region. The State Council's proposal was put forward in response to the relevant report submitted by the Chief Executive of the Hong Kong Special Administrative Region (HKSAR) to the Central People's Government. In accordance with the provisions of Subparagraph (4) of Article 67 of the Constitution of the People's Republic of China and Article 65 of the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region, the Standing Committee of the National People's Congress hereby gives the following interpretation on the meaning and application of the

一、根據《中華人民共和國香港特別行政區維護國家安全法》第十四條的規定，香港特別行政區維護國家安全委員會承擔香港特別行政區維護國家安全的法定職責，有權對是否涉及國家安全問題作出判斷和決定，工作信息不予公開。香港特別行政區維護國家安全委員會作出的決定不受司法覆核，具有可執行的法律效力。香港特別行政區任何行政、立法、司法等機構和任何組織、個人均不得干涉香港特別行政區維護國家安全委員會的工作，均應當尊重並執行香港特別行政區維護國家安全委員會的決定。

二、根據《中華人民共和國香港特別行政區維護國家安全法》第四十七條的規定，香港特別行政區法院在審理危害國家安全犯罪案件中遇有涉及有關行為是否涉及國家安全或者有關證據材料是否涉及國家秘密的認定問題，應當向行政長官提出並取得行政長官就該等問題發出的證明書，上述證明書對法院有約束力。

三、香港特別行政區行政長官依據《中華人民共和國香港特別行政區維護國家安全法》第十一條的規定於11月28日向中央人民政府提交的有關報告認為，不具有香港特別行政區全面執業資格的海外律師擔任危害國家安全犯罪案件的辯護人或者訴訟代理人可能引發國家安全風險。不具有香港特別行政區全面執業資格的海外律師是否可以擔任危害國家安全犯罪案件的辯護人或者訴訟代理人的問題，屬於《中華人民共和國香港特別行政區維護國家安全法》第四十七條所規定的需要認定的問題，應當取得行政長官發出的證明書。如香港特別行政區法院沒有向行政長官提出並取得行政長官就該等問題發出的證明書，香港特別行政區維護國家安全委員會應當根據《中華人民共和國

provisions of Article 14 and Article 47 of the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region:

1. In accordance with the provisions of Article 14 of the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region, the Committee for Safeguarding National Security of the HKSAR assumes statutory duties and functions for safeguarding national security in the HKSAR and has the power to make judgements and decisions on the question whether national security is involved; and information relating to its work is not subject to disclosure. Decisions made by the Committee for Safeguarding National Security of the HKSAR are not amenable to judicial review and have enforceable legal effect. No institution, including the executive authorities, legislature and judiciary, organisation or individual in the HKSAR shall interfere with the work of the Committee for Safeguarding National Security of the HKSAR; they shall all respect and implement the decisions of the Committee for Safeguarding National Security of the HKSAR.

2. In accordance with the provisions of Article 47 of the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region, the courts of the HKSAR shall request and obtain a certificate from the Chief Executive to certify whether an act involves national security or whether the relevant evidence involves State secrets when such questions arise in the adjudication of a case concerning an offence endangering national security. The certificate shall be binding on the courts.

3. The relevant report submitted by the Chief Executive of the HKSAR to the Central People's Government on 28 November in accordance with the provisions of Article 11 of the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region is of the view that overseas lawyers not

香港特別行政區維護國家安全法》第十四條的規定履行法定職責，對該等情況和問題作出相關判斷和決定。

現予公告。

qualified to practise generally in the HKSAR may pose national security risks when serving as defence counsel or legal representatives in cases concerning an offence endangering national security. The question whether overseas lawyers not qualified to practise generally in the HKSAR may serve as defence counsel or legal representatives in cases concerning an offence endangering national security is a question that requires certification under Article 47 of the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region, and a certificate from the Chief Executive shall be obtained. If the courts of the HKSAR have not requested or obtained a certificate on such question from the Chief Executive, the Committee for Safeguarding National Security of the HKSAR shall perform its statutory duties and functions in accordance with the provisions of Article 14 of the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region to make relevant judgements and decisions on such situation and question.

This Interpretation is hereby announced.