



Legal Practitioners (Amendment) Bill 2023

Law Society Submission

1. The Law Society makes this submission on the Legal Practitioners (Amendment) Bill 2023 (the “Amendment Bill”). The Amendment Bill was gazetted on 21 March 2023.
2. The Amendment Bill aims to introduce legislative amendments to the Legal Practitioners Ordinance (Cap. 159) (“LPO”) to handle matters concerning the participation of overseas lawyers who are not qualified to practise generally in the Hong Kong Special Administrative Region in cases concerning national security (“NS Cases”).
3. We agree that the LPO should be amended in the spirit of the Interpretation by the Standing Committee of the National People’s Congress of the People’s Republic of China 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 (“NSL”) on 30 December 2022. The amendments set out in the Amendment Bill are important to clarify matters of ad hoc admission of lawyers to handle NS Cases.
4. We welcome the Amendment Bill, as it embraces the following principles.
 - (a) Ad hoc admissions of overseas lawyers to handle cases concerning NS Cases are considered on a case-by-case basis. We do not support a blanket ban of ad hoc admission of overseas lawyers in NS Cases.
 - (b) The amendments are limited to NS Cases. They do not impact upon ad hoc admissions for non-NS Cases.

- (c) The amendments are equally applicable to the Prosecution. In other words, if the Prosecution intends to admit an overseas lawyer to prosecute a matter, the Prosecution is to follow the same procedures under the amendments as applicable to the Defence. This is fair; it lays down a level-playing field for the parties.
5. The above principles are important to maintain the robust legal system of Hong Kong. For non-NS Cases, cross-fertilisation of legal expertise and knowledge from other common law jurisdictions helps build up and advance jurisprudence in non-NS matters. On the other hand, participation of legal talents from around the world to Hong Kong to handle non-NS Cases enriches Hong Kong's legal service market.
6. We have studied the Amendment Bill and have considered the proposed amendments in the context of the Basic Law, including BL 35 on the rights to choose lawyers¹. We have also reviewed the Legislative Council papers, including the Administration's reply dated 31 March 2023 to the queries raised by the Assistant Legal Adviser in her letter of 28 March 2023². The Administration's reply explains the logistics of the proposal under the amendments.
7. In relation to the Notice of Permission To Proceed (the "Notice"), which may be issued by the Chief Executive ("CE") under the proposed section 27C(5) of Clause 5 of the Bill, the Administration clarified that there would not be a specified period of time for CE to decide on whether or not to issue a Notice.

We ask that, when considering whether to issue a Notice, CE should take note of the time the Defence required to prepare his case. For example, if the application is refused, time is required for the Defence to engage another local counsel before the trial. The time the CE requires to take to consider the issuance of Notice might affect the time that the Defence requires for the proper preparation of the case.

8. Additionally, a timely decision by the CE made under section 27(C) could dispel any unwarranted or ill-conceived perception that the

¹ In *Re Simpson QC* CACV 543/2019, the Court of Appeal stated that, "The 'choice of lawyers' referred to in art.35 of the Basic Law meant no more than that a litigant was free to choose his counsel from those available to represent him. He had no right to insist on being represented by a lawyer who did not have a general right to practise in Hong Kong."

² This appears on the LegCo Paper : LC Paper No. CB(4)255/2023(01)

Administration is delaying a particular request for the Notice for NS Cases.

9. On the drafting, we note the heading of section 27B in Clause 5 of the Bill provides as follow:

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

The above heading duplicates the contents of the section itself. It also suggests a presumption *against* admission when, in substance, admission is on an ad hoc basis. The section heading could invite the Court and other readers to reach the above presumption. That is not appropriate.

On the other hand, those words in the heading (as underlined in the above) are not needed, as the subject matter is fully and clearly explained in the ensuing paragraphs.

10. We suggest to replace “*Generally, no admission as*” in the heading of the section 27B to “*The Process for admission*”.

The above comments and suggestions apply *mutatis mutandis* to the other headings of Clause 5 of the Amendment Bill (viz. section 27C, 27D and 27F). Those headings should be amended accordingly.

11. The proposed regime under the Amendment Bill encompasses more than one scheme. On one hand, there is a scheme for applications where both the applicants and the Secretary for Justice could agree that the case concerned needs to have a CE certificate on national security under NSL Article 47. On the other hand, there is a separate scheme for cases which start off with no security concerns but as the cases develop, a party asserts that security concerns arise. The logistics and the arrangement (in particular the timing of making of the requisite submissions and representations) for the two schemes are different. It would assist the profession and the public if, for instance, some schematics or flow-charts could be made available to explain the above.

CONCLUSION

12. We reiterate our support to the Amendment Bill. It puts forward a regime for ad hoc admissions for overseas lawyers for NS Cases. Given the regime under the proposal is new, we appreciate the efforts made by the Secretary for Justice in explaining the proposal to the public. We ask that the explanation be repeated in appropriate occasions. As for non-NS Cases, the regime to admit overseas lawyers under the LPO remains unchanged by the Amendment Bill³ and this will greatly facilitate the continual participation of overseas lawyers to take part in non-NS Cases.
13. It is important that strong and clear messages on the above are to be relayed to the public and the international community.

**The Law Society of Hong Kong
25 April 2023**

³ There is a set of guiding legal principles laid down by the Court on section 27(4) of LPO (see *Re Perry QC* [2016] 2 HKLRD 647 at [24]).