

Legal Practitioners (Amendment) Bill 2023 to be introduced into LegCo

The Government will introduce the Legal Practitioners (Amendment) Bill 2023 (Bill) into the Legislative Council (LegCo) 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 such cases, in line with the spirit of the 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 (HK National Security Law) on December 30, 2022 (Interpretation).

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 questions arise 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 Law, and a certificate from the CE shall be obtained.

A spokesman for the Department of Justice said today (March 21) that the Bill seeks to amend the existing mechanism for admission of overseas lawyers in Hong Kong on a case-by-case basis (ad hoc admission) by introducing new provisions for the handling of ad hoc admission for the purpose of NS Cases. It will not affect ad hoc admission of overseas lawyers in criminal and civil cases not involving national security.

In gist, the Bill will provide:

- (a) an overriding principle that an overseas lawyer must not be admitted for an NS

Case, 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);

(b) a mechanism for the CE to determine if an application may proceed and if it falls within the exceptional circumstance; and

(c) a mechanism to enable the CE to review the matter when there is a change of circumstances after an ad hoc admission is granted.

The Bill will not affect ad hoc admission applications made or handled by the Court prior to the enactment of the Bill.

The LegCo Panel on Administration of Justice and Legal Services was consulted on March 17. The Panel expressed support for the legislative proposal.

The Bill was gazetted today, and will be introduced into the LegCo on March 22.

Ends/Tuesday, March 21, 2023