

25 June 2021

Mr Paul Harris, SC
Chairman
Hong Kong Bar Association
LG2 Floor, High Court, 38 Queensway
Hong Kong

Dear Mr Harris,

**Proposed amendments to the Legal Practitioners Ordinance
(Cap. 159) (“LPO”) enabling a person holding office
as a legal officer not being a Hong Kong barrister to be eligible
for appointment as Senior Counsel (“the Proposal”)**

In view of some comments made by members of the Bar in the public discussions and Mr Neville Sarony, SC as a representative of the Hong Kong Bar Association (“HKBA”) in the meeting of the Legislative Council (“LegCo”) Panel on Administration of Justice and Legal Services (“AJLS Panel”) on 21 June (“the Panel Meeting”), I am writing again to dispel a number of unwarranted misunderstandings in relation to the Proposal.

The Proposal

According to section 31A(1) of the LPO, the Chief Justice of the Court of Final Appeal (“Chief Justice”) may, after consultation with the chairman of the Bar Council and the president of the Law Society, appoint as Senior Counsel (“SC”) *barristers* who satisfy the substantive eligibility requirements (including sufficient ability and standing, sufficient knowledge of the law, and requisite no-less-than-10 years’ experience).

In other words, under the current regime, legal officers¹ who are not barristers (for example solicitors) are not eligible for the appointment

¹ “Legal officers” include (i) officers stipulated under section 2 and schedule 1 of the Legal Officers Ordinance (Cap. 87) (i.e. all Government Counsel/Public Prosecutors, Senior Government Counsel/Senior Public Prosecutors up to the Secretary for Justice, as well as certain legal professionals in the Lands Department, Companies Registry and Lands Registry); (ii) those who are deemed to be legal officers under section 3(3) of the Director of Intellectual Property (Establishment) Ordinance (Cap. 412) (covering

as SC even if they take up a comparable amount of advocacy work as their legal officer counterparts who are barristers, and satisfy the substantive eligibility requirements stipulated under section 31A(1) of the LPO. The Proposal seeks to amend section 31A of the LPO to include “legal officers” so as to give an equal footing to all legal officers shouldering important public functions (in this and other Government departments) in terms of eligibility for appointment to SC provided that the substantive eligibility requirements stipulated under section 31A(2) of the LPO are satisfied in the opinion of the Chief Justice after consultation with the chairman of the Bar Council and the president of the Law Society.

The Proposal is not “allied to the exigencies” of the Department of Justice as suggested by the HKBA representative at the Panel Meeting, but seeks to address the long dire need for fairly rewarding excellence. This is also in line with the relevant international developments in recognising competent advocates solely based on merits without other artificial eligibility barriers. The Proposal is conducive to the Chief Justice’s exercise of discretion to appoint, based on ability and merits and in the public interest, those suitable ones (eligible barristers in private practice and legal officers alike) as SC.

The Proposal does not affect any rights of the legal practitioners in the private sector (including the opportunities for barristers in private practice to be appointed as SC), nor does it disturb the professional demarcation between the barristers’ and solicitors’ branches as legal services providers. The different roles of solicitors and barristers in private practice would not be confused if one understands the duties of legal officers. The functions of legal officers and private legal practitioners are different. Unlike their counterparts in the private sector, legal officers, regardless of whether they are barristers or solicitors, perform both solicitorial and advocacy duties, with all the rights of barristers and solicitors when handling matters set out in section 4 of the Legal Officers Ordinance (Cap. 87). There is no rational basis for non-barrister legal officers who equally satisfy the relevant substantive eligibility requirements to have to seek to be admitted as barristers first before they may become eligible for appointment as SC.

legal professionals in the Intellectual Property Department); and (iii) those deemed to be legal officers under section 75(3) of the Bankruptcy Ordinance (Cap. 6) (covering legal professionals in the Official Receiver’s Office).

A non-barrister legal officer appointed as SC, under the Proposal, is only entitled to use the title of SC when holding office as a legal officer. We respect the self-regulatory regime currently applicable to the legal profession.

Any suggestion that the Proposal would provide a “shortcut” for our legal officers or diminish the prestigious status of SC is wholly unfounded. The Proposal does not alter the existing selection mechanism and criteria of appointment of SC which apply to all eligible applicants (including barristers in private practice and legal officers). It follows that only the ones who, in the opinion of the Chief Justice after consultation with the chairman of the Bar Council and the president of the Law Society, satisfy the eligibility requirements set out in the LPO would be considered for appointment as SC on a merit basis. No SC appointees would be “secondary”, as suggested by the HKBA representative at the Panel Meeting, since they all have been selected for appointment by the Chief Justice using the same procedures and the same set of substantive eligibility requirements and professional standards. In this regard, we trust that the Chairman of the Bar and the President of the Law Society would duly consider the eligibility of each applicant before tendering their fair and honest advice to the Chief Justice for his consideration.

Next Steps

The Proposal has already received support from the Law Society, a sizeable number of legal and dispute resolution professional bodies, as well as the AJLS Panel. Subject to the Chief Executive in Council’s endorsement, we target to submit to the LegCo the bill effecting the Proposal in July so that the new regime will be in place soonest.

I trust that the above and my earlier public explanations should have addressed the concerns raised. If there is anything else about the Proposal you wish to raise, please let me know soonest and in any event by 2 July 2021.

Yours sincerely,

(Ms Teresa Cheng, SC)
Secretary for Justice