

**For discussion on
15 July 2024**

**Legislative Council Panel on
Administration of Justice and Legal Services**

**Government Officers (Legal) (Appointment Qualification)
Legislation (Amendment) Bill 2024**

I. PURPOSE

This paper briefs Members on the Government’s proposal to amend the Legal Officers Ordinance (Cap. 87) and other related Ordinances to revise the appointment qualification for legal officers and certain officers specified in those Ordinances to allow only the legal practitioners admitted in Hong Kong to be appointed as such officers.

II. BACKGROUND

2. The Government has recently reviewed the appointment qualification requirement for legal officers designated in Cap. 87, which in effect also applies to the appointment of certain officers specified in the Bankruptcy Ordinance (Cap. 6), the Legal Aid Ordinance (Cap. 91) and the Director of Intellectual Property (Establishment) Ordinance (Cap. 412). The relevant provisions are set out in the **Annex** for reference.

3. The main provision under review is section 2A of Cap. 87 which reads:

“No person shall be appointed as a legal officer unless he has been admitted as a legal practitioner in Hong Kong, the United Kingdom or in a jurisdiction listed in Schedule 2¹.” (underline added for emphasis)

¹ The jurisdictions listed in Schedule 2 are The States and Territories of the Commonwealth of Australia, The Territories and Provinces of Canada, except Quebec, New Zealand, The Republic of Ireland, Zimbabwe and Singapore.

4. Similar appointment qualifications provisions are set out in section 75(2) of Cap. 6, section 3(2) of Cap. 91 and sections 2 and 3(2) of Cap. 412 for the officers specified therein.

5. A “legal officer” is defined in section 2 of Cap. 87 as meaning “*an officer appointed to and serving in Hong Kong as a legal officer, or an officer lawfully performing the functions of any of the officers designated in Schedule 1*”. Schedule 1 to Cap. 87 includes officers of various ranks in the Department of Justice (“DoJ”), Lands Department, Companies Registry and Land Registry. Officers of certain ranks in the Official Receiver’s Office and the Intellectual Property Department are also deemed to be legal officers under section 75(3) of Cap. 6 and section 3(3) of Cap. 412 respectively. However, for the Legal Aid Department, there is no such deeming provision for officers specified in Cap. 91.

6. We note that the appointment qualification requirement of a legal officer was introduced by the Legal Practitioners (Amendment) Ordinance 1989. At the time, due to the fact that there were relatively fewer locally qualified lawyers in Hong Kong, a considerable number of expatriate lawyers who had been admitted in the United Kingdom and five of the six jurisdictions were working in the then government legal service². However, the above appointment qualification requirement can no longer be justified, as there is now an ample supply of Hong Kong qualified legal practitioners who are supposedly more familiar with the legal system of Hong Kong compared with those who have been admitted in other jurisdictions only.

7. In 2023, DoJ conducted a survey on the jurisdiction(s) from which its legal officers have been admitted. Similar information was sought from the policy bureaux having policy responsibilities for the government departments referred to in Cap. 6³, Cap. 91⁴ and Cap. 412⁵ and for other

² While Singapore was not one of the five jurisdictions, it was added to reflect the views of the Bar Association that (a) the list should not be confined to places from which lawyers had been recruited by the Government in the past; and (b) Singapore should be included as it had a system of legal education and training comparable to that of Hong Kong.

³ The Financial Services and the Treasury Bureau is the policy bureau for the Official Receiver’s Office.

⁴ The Chief Secretary for Administration Office is the policy bureau for the Legal Aid Department.

⁵ The Commerce and Economic Development Bureau (“CEDB”) is policy bureau for the Intellectual Property Department.

government departments referred to in Schedule 1 to Cap. 87⁶. The results revealed that, save for a very small number of counsel in DoJ⁷, the officers in other government departments referred to in paragraph 4 above were all legal practitioners admitted in Hong Kong.

8. Having reviewed the matter within DoJ and consulted the relevant policy bureaux, we consider that there is no longer the need to recruit practitioners who have only been admitted in a jurisdiction other than Hong Kong to serve as legal officers or officers specified in Cap. 6, Cap. 91 and Cap. 412.

III. KEY FEATURES OF THE LEGISLATIVE PROPOSAL

9. The legislative proposal seeks to (a) amend the appointment qualification requirements in Cap. 6, Cap. 87, Cap. 91 and Cap. 412 to the effect that only legal practitioners admitted in Hong Kong may be appointed as legal officers or officers specified therein; and (b) repeal Schedule 2 to Cap. 87.

10. The legislative proposal will also reflect our policy intent that the appointment and employment of officers joining the Government prior to the commencement of the amendments will not be affected.

IV. IMPLICATIONS

11. The legislative proposal will not have adverse implications, as there is now an ample supply of Hong Kong qualified legal practitioners who can serve as legal officers or officers specified in Cap. 6, Cap. 91 and Cap. 412. In the event that there is a need to recruit lawyers to advise on certain areas of law and there is a lack of relevant expertise amongst the local legal practitioners, the Government may still employ lawyers admitted in a jurisdiction outside Hong Kong to work in the capacity of Temporary Legal Consultants without conferring them with the status of a legal officer or an officer specified in the above Ordinances.

⁶ The Development Bureau is the policy bureau for the Lands Department and the Land Registry. CEDB is the policy bureau for the Companies Registry.

⁷ In DoJ, only 7 out of the 514 officers of the Government Counsel Grade were legal practitioners who had been admitted only in a jurisdiction outside Hong Kong.

V. OUTCOME OF THE CONSULTATION EXERCISE

12. The Government has consulted the relevant stakeholders, including the two legal professional bodies on the key features of the proposal. The Hong Kong Bar Association and The Law Society of Hong Kong have no comment on the proposal.

VI. WAY FORWARD

13. Subject to Members' comments, the Government plans to introduce the bill containing the legislative proposal into the Legislative Council in the fourth quarter of 2024.

VII. ADVICE SOUGHT

14. Members are invited to note and comment on the legislative proposal.

Department of Justice
July 2024

**Existing Statutory Provisions Relating to the
Appointment Qualification of Legal Officers and
Officers Specified in Related Ordinances**

Legal Officers Ordinance (Cap. 87)

Section 2

“... ”

legal officer (律政人員) means an officer appointed to and serving in Hong Kong as a legal officer, or an officer lawfully performing the functions of any of the officers designated in Schedule 1;

“... ”

Section 2A

“No person shall be appointed as a legal officer unless he has been admitted as a legal practitioner in Hong Kong, the United Kingdom or in a jurisdiction listed in Schedule 2.” (underline added for emphasis)

Schedule 1

Department of Justice¹

Secretary for Justice

Deputy Secretary for Justice

Law Officer

Principal Government Counsel

Deputy Principal Government Counsel

Assistant Principal Government Counsel

Senior Government Counsel

Government Counsel

¹ The DoJ list was last amended by the Legal Officers Ordinance (Amendment of Schedule 1) Order 2022 (L.N. 183 of 2022, s.3) to add “Deputy Secretary for Justice” to the list and to amend the titles of the posts thereunder.

Lands Department²

Principal Solicitor, Legal Advisory and Conveyancing Office
 Deputy Principal Solicitor, Legal Advisory and Conveyancing Office
 Assistant Principal Solicitor, Legal Advisory and Conveyancing Office
 Senior Solicitor, Legal Advisory and Conveyancing Office
 Solicitor, Legal Advisory and Conveyancing Office

Companies Registry³

Deputy Principal Solicitor, Companies Registry
 Assistant Principal Solicitor, Companies Registry
 Senior Solicitor, Companies Registry
 Solicitor, Companies Registry

Land Registry⁴

Deputy Principal Solicitor, Land Registry
 Assistant Principal Solicitor, Land Registry
 Senior Solicitor, Land Registry
 Solicitor, Land Registry

² Added by the Registrar General (Establishment) (Transfer of Functions and Repeal) Ordinance (8 of 1993, s. 9(b)). The heading at the time was “Buildings and Lands Department”. It was amended to “Lands Department” by the Interpretation and General Clauses Ordinance—Resolution of the Legislative Council (L.N. 291 of 1993, para. (1)(1)).

³ Added by the Registrar General (Establishment) (Transfer of Functions and Repeal) Ordinance (8 of 1993).

⁴ Ibid. The Land Registry list was last amended by the Legal Officers Ordinance (Amendment of Schedule 1) Order 2005 (L.N. 105 of 2005, s.2)

Schedule 2⁵

1. The States and Territories of the Commonwealth of Australia
2. The Territories and Provinces of Canada, except Quebec
3. New Zealand
4. The Republic of Ireland
5. Zimbabwe
6. Singapore

Bankruptcy Ordinance (Cap. 6)

Section 75(2)

“No person shall be appointed Official Receiver or to any of the offices specified in Part I of Schedule 2 unless on the date of such appointment he is qualified to practise as a legal practitioner in Hong Kong, the United Kingdom or in a jurisdiction listed in Schedule 2 to the Legal Officers Ordinance (Cap. 87).” (underline added for emphasis)

Section 75(3)

“The Official Receiver and the holder of an office specified in Part I of Schedule 2 shall be deemed to be legal officers for the purpose of the Legal Officers Ordinance (Cap. 87) and shall have all rights conferred upon legal officers by that Ordinance.”

Part 1 of Schedule 2

“Assistant Official Receiver (Legal)
Assistant Principal Solicitor
Senior Solicitor
Solicitor”

⁵ This list of jurisdictions was initially added as Schedule 1 to the Legal Practitioners Ordinance (Cap. 159) by the Legal Practitioners (Amendment) Ordinance 1989 (46 of 1989, s.19). Schedule 1 to Cap. 159 was repealed by the Legal Practitioners (Amendment) Ordinance 2000 (42 of 2000, s. 20). In the same amendment exercise, the list of jurisdictions was added as Schedule 2 to the Legal Officers Ordinance (Cap. 87) (42 of 2000, s. 27).

Legal Aid Ordinance (Cap. 91)

Section 2(1)

“... ”

Legal Aid Officer (法律援助主任) means an officer appointed to a post of and serving as, or lawfully performing the functions of, any of the officers designated in Schedule 1;

“... ”

Section 3(2)

“No person shall be appointed to be, or shall act temporarily as, the Director of Legal Aid or a Deputy Director of Legal Aid or an Assistant Director of Legal Aid or a Legal Aid Officer unless he is qualified to practise as a legal practitioner in Hong Kong, the United Kingdom or in a jurisdiction listed in Schedule 2 to the Legal Officers Ordinance (Cap. 87).”

(underline added for emphasis)

Schedule 1

Legal Aid Officers—Designations

1. Assistant Principal Legal Aid Counsel
2. Senior Legal Aid Counsel
3. Legal Aid Counsel

Director of Intellectual Property (Establishment) Ordinance (Cap. 412)

Section 2

“... ”

Director (署長) means the Director of Intellectual Property appointed under section 3;

legally qualified (具有專業法律資格) means qualified to practise as a legal practitioner in Hong Kong, the United Kingdom or in a jurisdiction listed in Schedule 2 to the Legal Officers Ordinance (Cap. 87);

...” (underline added for emphasis)

Section 3(2)

“No person shall be appointed to any of the offices specified in Part 1 of Schedule 1 unless on the date of such appointment he is legally qualified.”

Section 3(3)

“The Director, where he is legally qualified, and the holder of an office specified in Part 1 of Schedule 1 shall be deemed to be legal officers for the purpose of the Legal Officers Ordinance (Cap. 87) and shall have all rights conferred upon legal officers by that Ordinance.”

Part 1 of Schedule 1

1. Deputy Director of Intellectual Property
2. Assistant Director of Intellectual Property
- 2A. Assistant Principal Solicitor
3. Senior Solicitor
4. Solicitor