

Legal Practitioners (Amendment) Bill 2021 to be introduced into LegCo

A spokesman for the Department of Justice (DoJ) said today (July 7) that the Government will introduce the Legal Practitioners (Amendment) Bill 2021 into the Legislative Council (LegCo) to enable legal officers who are not barristers, upon satisfying the relevant eligibility requirements, to be eligible for appointment as Senior Counsel (SC).

According to section 31A(1) of the Legal Practitioners Ordinance (Cap. 159) (LPO), only barristers are eligible to be appointed as SC. Under the current regime, legal officers who are not admitted as barristers (for example those admitted as solicitors) are not eligible for appointment as SC even if they take up the same amount of advocacy work as those who are barristers, and satisfy the substantive eligibility requirements stipulated in section 31A(2) of the LPO.

The DoJ proposes to amend section 31A of the LPO so that a person (not being a barrister) who holds office as a legal officer (as defined by section 2 of the Legal Officers Ordinance (LOO) and including a person deemed to be a legal officer for the purposes of the LOO) is eligible to be appointed as an SC upon satisfaction of the relevant eligibility requirements. The key justifications include:

(1) There has always been no practical distinction between the duties of legal officers who are barristers and those who are not, and the proposal allows those who satisfy the substantive eligibility requirements but are not admitted as barristers to receive a fair recognition;

(2) The proposal aligns with the merit-based selection principle and is in the public interest. According to section 31A(1) of the LPO, the Chief Justice may, after consultation with the chairman of the Hong Kong Bar Association and the president of the Law Society of Hong Kong, appoint as SC barristers who satisfy the eligibility requirements. The proposal is also conducive to the Chief Justice's exercise of discretion to appoint, based on ability and merits and in the interest of the public, those suitable ones (including eligible barristers in private practice and legal officers) as SC; and

(3) 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 disturb the professional demarcation between the barristers' and solicitors' branches as legal services providers. Under the proposal, a legal officer (non-barrister) appointed as SC is only entitled to use the title of SC when holding office as a legal officer. More importantly, the proposal does not alter the selection mechanism and criteria of appointment of SC. Same as barristers in private practice, legal officers are equally required to satisfy the series of eligibility requirements under section 31A of the LPO, including possessing sufficient ability, standing and

knowledge of the law and having the requisite experience, to be appointed as SC by the Chief Justice.

The LegCo Panel on Administration of Justice and Legal Services was consulted on June 21, and expressed support for the legislative proposal. The DoJ has already briefed the Chief Justice and the legal sector on the legislative proposal. Organisations from the sector include the Law Society of Hong Kong, Hong Kong Bar Association and the other bodies specified for the legal subsector as provided in Annex 6 of the Schedule to the Chief Executive Election Ordinance (Cap. 569). The Law Society and some legal bodies have expressed clear support for the proposal. The DoJ will continue to engage in further communication with the Bar Association with a view to addressing its concern.

The Bill will be gazetted on July 9, and introduced into LegCo on July 14.