

Legal Profession (Amendment) Bill

Bill No. 1/2012.

Read the first time on 16th January 2012.

A BILL

i n t i t u l e d

An Act to amend the Legal Profession Act (Chapter 161 of the 2009 Revised Edition) and to make a related amendment to the Supreme Court of Judicature Act (Chapter 322 of the 2007 Revised Edition).

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

Short title and commencement

1. This Act may be cited as the Legal Profession (Amendment) Act 2012 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

5 Amendment of section 10

2. Section 10 of the Legal Profession Act (referred to in this Act as the principal Act) is amended —

(a) by deleting the words “and Part IIA” wherever they appear in subsection (1) and substituting in each case the words
10 “, Part IIA and section 25(1)(ca)”;

(b) by inserting, immediately after the words “Part IIA” in subsection (2)(h), the words “, section 25(1)(ca)”;

(c) by inserting, immediately after subsection (2), the following subsection:

15 “(3) Disciplinary proceedings may be taken against any advocate and solicitor, or foreign lawyer registered by the Attorney-General under section 130I, who contravenes any rules made under this section.”.

New section 10A

20 3. The principal Act is amended by inserting, immediately after section 10, the following section:

“Protection from personal liability

25 **10A.** No liability shall be incurred by the Board of Directors of the Institute, the Chairman of the Institute or any other member of the Board, the Dean of the Institute, or any other officer or employee of the Institute, any committee appointed under section 7(1) or any member of any such committee, or
30 any other person acting under the direction of the Institute, as a result of anything done (including any statement made) or omitted to be done with reasonable care and in good faith in the

execution or purported execution of the Institute’s functions under this Act or any other written law.”.

Amendment of section 15

4. Section 15 of the principal Act is amended —

5 (a) by deleting the words “where the court is satisfied that it is of sufficient difficulty and complexity and having regard to the circumstances of the case” in subsection (1);

(b) by deleting paragraph (a) of subsection (1) and substituting the following paragraph:

10 “(a) holds —

(i) Her Majesty’s Patent as Queen’s Counsel;
or

(ii) any appointment of equivalent distinction of any jurisdiction;”;

15 (c) by deleting the words “criminal case” in subsection (2) and substituting the words “case involving any area of legal practice prescribed under section 10 for the purposes of this subsection,”; and

20 (d) by inserting, immediately after subsection (6), the following subsection:

25 “(6A) The Chief Justice may, after consulting the Judges of the Supreme Court, by notification published in the *Gazette*, specify the matters that the court may consider when deciding whether to admit a person under this section.”.

Amendment of section 25

5. Section 25(1) of the principal Act is amended by inserting, immediately after paragraph (c), the following paragraph:

30 “(ca) a declaration in writing in such form and containing such statements as may be prescribed by the Institute under section 10 for the purposes of this paragraph;”.

Amendment of section 82B

6. Section 82B(2) of the principal Act is amended by deleting the words “or censured” in paragraph (*j*) and substituting the words “, ordered to pay a penalty, censured or reprimanded”.

5 **Amendment of section 83**

7. Section 83(2) of the principal Act is amended by deleting the words “or censured” in paragraph (*k*) and substituting the words “, ordered to pay a penalty, censured or reprimanded”.

Amendment of section 85

10 **8.** Section 85 of the principal Act is amended —

(*a*) by inserting, immediately after the words “public officer” in subsection (1)(*c*), the words “or any officer of the Institute”;

(*b*) by deleting the words “or the Attorney-General” wherever they appear in subsection (3) and substituting in each case the words “, the Attorney-General or the Institute”; and

(*c*) by deleting subsection (4) and substituting the following subsection:

20 “(4) Notwithstanding subsections (1A), (2) and (3), where 2 or more complaints or information touching upon the conduct of an advocate and solicitor (including any such complaint or information which had been referred to a Disciplinary Tribunal under section 89) have been received by the Council, the Council may do either or both of the following:

25 (*a*) apply to the Chief Justice to refer to the Chairman of the Inquiry Panel one or more of the complaints or information which in the Council’s opinion are more serious in nature first and defer the referral of the remaining complaints or information;

30 (*b*) apply to the Chairman of the Inquiry Panel for 2 or more of the complaints or information to be dealt with by —

- (i) the same Review Committee; or
- (ii) the same Inquiry Committee.”.

Amendment of section 86

5 **9.** Section 86(7) of the principal Act is amended by deleting sub-paragraphs (i) and (ii) of paragraph (b) and substituting the following sub-paragraphs:

- 10 “(i) that the advocate and solicitor should be ordered to pay a penalty under section 88, and a penalty sufficient and appropriate to the misconduct committed;
- (ii) that the advocate and solicitor should be reprimanded or given a warning; or
- (iii) that the complaint be dismissed.”.

Amendment of section 130L

15 **10.** Section 130L of the principal Act is amended —

- (a) by deleting the words “this section” in subsections (2) and (3) and substituting in each case the words “subsection (1)”; and
- 20 (b) by inserting, immediately after subsection (5), the following subsections:
 - “ (6) Subject to the provisions of this Part, nothing in this Act shall prevent a foreign law practice, with the approval of the Attorney-General, from —
 - 25 (a) being a shareholder in any Singapore law practice which is a law corporation; or
 - (b) sharing in the profits of any Singapore law practice.
 - (7) Every foreign law practice and every Singapore law practice referred to in subsection (6) shall comply with —
 - 30 (a) such conditions as may be prescribed; and

(b) such conditions as the Attorney-General may think fit to impose in any particular case on the foreign law practice or Singapore law practice, as the case may be.

5 (8) For the avoidance of doubt, for the purposes of this section and section 130M, it shall be irrelevant whether a foreign law practice is licensed under section 130B, 130C, 130D, 130E or 130F.”.

Amendment of section 130M

10 **11.** Section 130M of the principal Act is amended —

(a) by deleting “130L” where it first appears in subsection (1) and substituting “130L(1)”;

(b) by deleting the word “he” in subsection (1) and substituting the words “the Attorney-General”;

15 (c) by deleting the words “a foreign lawyer, a Singapore law practice or a partner or director of a Singapore law practice” in subsection (2) and substituting the words “any foreign lawyer, Singapore law practice or partner or director referred to in subsection (1)”;

20 (d) by deleting the words “a foreign lawyer, Singapore law practice or partner or director of a Singapore law practice” in subsection (3) and substituting the words “any foreign lawyer, Singapore law practice or partner or director referred to in subsection (1)”;

25 (e) by deleting “130L” in subsection (3)(a) and substituting “130L(1)”;

(f) by inserting, immediately after subsection (4), the following subsections:

30 “(4A) Where a Singapore law practice applies for an approval under section 130L(6) in respect of a foreign law practice, the Attorney-General may require the Singapore law practice making the application, the foreign law practice and any partner or director of the

Singapore law practice or foreign law practice to provide such undertakings as the Attorney-General thinks fit to prevent any direct or indirect circumvention of section 130L or any condition under section 130L(7).

5 (4B) Where any Singapore law practice, foreign law practice or partner or director referred to in subsection (4A) has contravened section 130L or any undertaking provided by the Singapore law practice, foreign law practice or partner or director concerned (as
10 the case may be) under subsection (4A) —

- (a) the Singapore law practice, foreign law practice or partner or director concerned (as the case may be) shall without delay notify the Attorney-General in writing of the contravention;
- 15 (b) the partner or director concerned shall, if he is a partner or director of the Singapore law practice concerned, immediately cease to exercise his voting rights as a shareholder or partner in the Singapore law practice concerned;
- 20 (c) subject to any direction issued by the Attorney-General under subsection (4D)(b), the foreign law practice concerned shall as soon as practicable repay to the Singapore law practice concerned any payment it has received in excess of the amount permitted under any rules made
25 under section 130W;
- (d) the Singapore law practice, foreign law practice or partner or director concerned (as the case may be) shall take all reasonable steps to remove the circumstances giving rise to the contravention;
30 and
- (e) the Singapore law practice, foreign law practice or partner or director concerned (as the case may be) shall comply with any directions issued by

the Attorney-General under subsections (4C) and (4D).

(4C) Where any Singapore law practice, foreign law practice or partner or director referred to in subsection (4A) has contravened section 130L or any undertaking required under subsection (4A), the Attorney-General may —

- (a) cancel the approval under section 130L(6) in respect of the foreign law practice concerned; and
- (b) issue directions to the Singapore law practice, foreign law practice or partner or director concerned (as the case may be) to ensure compliance with section 130L.

(4D) Without prejudice to the generality of subsection (4C)(b), the Attorney-General may direct the foreign law practice concerned —

- (a) to divest itself of any shares it may have in the Singapore law practice concerned within such time as the Attorney-General may specify; and
- (b) to repay to the Singapore law practice concerned any payment the foreign law practice has received in excess of the amount permitted under any rules made under section 130W within such time as the Attorney-General may specify.”.

Amendment of section 130W

12. Section 130W(2) of the principal Act is amended —

- (a) by deleting “130L” in paragraphs (q), (s) and (u) and substituting in each case the words “130L(1) or (6)”;
- (b) by deleting “130L” in paragraph (v)(ii) and substituting “130L(1)”;
- (c) by deleting paragraph (w) and substituting the following paragraph:

“(w) to provide for measures to ensure compliance with the requirements of section 130L, including —

- 5 (i) measures requiring any foreign lawyer who is a shareholder or partner in a Singapore law practice to divest himself of his shares or interests in the Singapore law practice; and
- 10 (ii) measures requiring any foreign law practice which is a shareholder in a Singapore law practice to divest itself of its shares in the Singapore law practice;”.

Amendment of Second Schedule

15 **13.** Paragraph 1 of the Second Schedule to the principal Act is amended —

(a) by deleting sub-paragraph (2) and substituting the following sub-paragraph:

“(2) The Council —

- 20 (a) shall not take any of the directions pursuant to a complaint of the conduct of the solicitor, if the complaint is made to the Society after the expiration of a period of 3 years from the date of the conduct; and
- (b) shall not take any of the directions, unless the Council is satisfied that, in all the circumstances of the case, it is
- 25 appropriate to do so.”;

(b) by deleting the word “and” at the end of sub-paragraph (3)(a); and

(c) by deleting the full-stop at the end of sub-paragraph (b) of sub-paragraph (3) and substituting the word “; and”, and by

30 inserting immediately thereafter the following sub-paragraph:

“(c) where the client has attempted to contact the solicitor with a view to resolving a matter, have regard to whether the

solicitor has responded to the client or attempted to resolve the matter.”.

Miscellaneous amendments

5 **14.** The principal Act is amended by deleting “130L” wherever it appears in the following provisions and substituting in each case “130L(1)”:

Sections 40A(1)(b), 46(1B)(b), 75(3A)(b) and (3B)(b) and 130R(1)(b), (4) and (6).

Related amendment to Supreme Court of Judicature Act

10 **15.** Section 30(2) of the Supreme Court of Judicature Act (Cap. 322) is amended by inserting, immediately after paragraph (c), the following paragraph:

15 “(ca) an appeal against any judgment or order obtained after the hearing of an application for the admission of a person under section 15 of the Legal Profession Act (Cap. 161);”.

EXPLANATORY STATEMENT

This Bill seeks to amend the Legal Profession Act (Cap. 161) —

- (a) to enable disciplinary proceedings to be taken against any advocate and solicitor, or foreign lawyer registered by the Attorney-General under section 130I, who contravenes any rules made by the Singapore Institute of Legal Education (the Institute) under section 10;
- (b) to modify the requirements for the admission of a person under section 15, and to provide for matters related thereto;
- (c) to require an application for a practising certificate to be accompanied by a declaration in writing in such form and containing such statements as may be prescribed by the Institute under section 10, and to empower the Board of Directors of the Institute to make rules to provide for matters related thereto;
- (d) to make certain refinements to the disciplinary processes for advocates and solicitors and for foreign lawyers registered by the Attorney-General under section 130I;

- (e) to enable a foreign law practice, with the approval of the Attorney-General, to be a shareholder in any Singapore law practice which is a law corporation, or to share in the profits of any Singapore law practice, and to provide for matters related thereto;
- (f) to provide for certain refinements to the circumstances in which the Council of the Law Society of Singapore (the Society) may exercise its powers under the Second Schedule; and
- (g) to make certain miscellaneous changes.

The Bill also makes a related amendment to section 30(2) of the Supreme Court of Judicature Act (Cap. 322), to provide for an appeal against any judgment or order obtained after the hearing of an application for the admission of a person under section 15 of the Legal Profession Act to be a matter in respect of which the Court of Appeal in the exercise of its civil jurisdiction is, if it consists of 2 Judges of Appeal, duly constituted for the purposes of hearing and determining.

Clause 1 relates to the short title and commencement.

Clause 2(a) and (b) amends section 10(1) and (2)(h), respectively, to empower the Board of Directors of the Institute to make rules for giving effect to, and for prescribing the forms to be used and the fees to be paid for the purposes of, the new section 25(1)(ca) (to be inserted by clause 5).

Clause 2(c) inserts a new section 10(3) to enable disciplinary proceedings to be taken against any advocate and solicitor, or foreign lawyer registered by the Attorney-General under section 130I, who contravenes any rules made under section 10.

Clause 3 inserts a new section 10A to provide for the Board of Directors of the Institute, the Chairman of the Institute or any other member of the Board, the Dean of the Institute, or any other officer or employee of the Institute, any committee appointed under section 7(1) or any member of any such committee, or any other person acting under the direction of the Institute, to be protected from personal liability for anything done (including any statement made) or omitted to be done with reasonable care and in good faith in the execution or purported execution of the Institute's functions under the Legal Profession Act or any other written law.

Clause 4(a) amends section 15(1) to remove the existing requirements for the court to be satisfied that a case is of sufficient difficulty and complexity, and to have regard to the circumstances of the case, before the court may, for the purpose of the case, admit a person under section 15.

Clause 4(b) deletes and substitutes paragraph (a) of section 15(1) to enable the court to admit under section 15, in addition to any person who holds Her Majesty's Patent as Queen's Counsel (which is the existing position), any person who holds any appointment of equivalent distinction of any jurisdiction.

Clause 4(c) amends section 15(2) to provide that the court will not admit a person under section 15 in any case involving any area of legal practice prescribed under section 10 for the purposes of section 15(2), unless the court is satisfied that there is a special reason to do so.

Clause 4(d) inserts a new section 15(6A) to empower the Chief Justice, after consulting the Judges of the Supreme Court, to specify, by notification published in the *Gazette*, the matters that the court may consider when deciding whether to admit a person under section 15.

Clause 5 inserts a new paragraph (ca) into section 25(1) to require an application for a practising certificate to be accompanied by a declaration in writing in such form and containing such statements as may be prescribed by the Institute under section 10 for the purposes of that paragraph.

Clause 6 amends section 82B(2)(j) to enable due cause to be shown against a foreign lawyer who is registered by the Attorney-General under section 130I, for the purposes of section 82B(1), by proof that the foreign lawyer has been ordered to pay a penalty or reprimanded in his capacity as a legal practitioner by whatever name called in any country other than Singapore.

Clause 7 amends section 83(2)(k) to enable due cause to be shown against an advocate and solicitor, for the purposes of section 83(1), by proof that the advocate and solicitor has been ordered to pay a penalty or reprimanded in his capacity as a legal practitioner by whatever name called in any country other than Singapore.

Clause 8(a) amends section 85(1)(c) to provide that a complaint of the conduct of an advocate and solicitor that is made by any officer of the Institute need not be supported by a statutory declaration.

Clause 8(b) amends section 85(3) —

- (a) to enable the Institute to refer to the Society, at any time, any information touching upon the conduct of an advocate and solicitor; and
- (b) to require the Council of the Society —
 - (i) to refer the matter to the Chairman of the Inquiry Panel; or
 - (ii) where the Institute requests that the matter be referred to a Disciplinary Tribunal, apply to the Chief Justice to appoint a Disciplinary Tribunal.

Clause 8(c) deletes and substitutes section 85(4) to provide that where 2 or more complaints or information touching upon the conduct of an advocate and solicitor (including any such complaint or information which had been referred to a Disciplinary Tribunal under section 89) have been received by the Council of the Society, the Council may do either or both of the following:

- (a) apply to the Chief Justice (instead of obtaining the leave of the court) to refer to the Chairman of the Inquiry Panel one or more of the complaints or information which in the Council's opinion are more serious in nature first and defer the referral of the remaining complaints or information;
- (b) apply to the Chairman of the Inquiry Panel for 2 or more of the complaints or information to be dealt with by —
 - (i) the same Review Committee; or
 - (ii) the same Inquiry Committee.

Clause 9 deletes and substitutes section 86(7)(b)(i) and (ii) and inserts a new section 86(7)(b)(iii) to expressly require an Inquiry Committee to recommend to the Council of the Society, if the Inquiry Committee is of the view that no formal investigation by a Disciplinary Tribunal is required —

- (a) that the advocate and solicitor should be ordered to pay a penalty under section 88, and a penalty sufficient and appropriate to the misconduct committed;
- (b) that the advocate and solicitor should be reprimanded or given a warning; or
- (c) that the complaint be dismissed.

Clause 10(a) makes amendments to section 130L(2) and (3) that are consequential to the insertion of the new section 130L(6) (by clause 10(b)).

Clause 10(b) inserts into section 130L new subsections (6), (7) and (8), which, respectively —

- (a) enable a foreign law practice, with the approval of the Attorney-General —
 - (i) to be a shareholder in any Singapore law practice which is a law corporation; or
 - (ii) to share in the profits of any Singapore law practice;
- (b) provide for the conditions to be complied with by —
 - (i) every foreign law practice to which such approval has been granted; and
 - (ii) every Singapore law practice in which such a foreign law practice is a shareholder, or the profits of which such a foreign law practice is able to share in; and
- (c) clarify, for the avoidance of doubt, that for the purposes of sections 130L and 130M, it is irrelevant whether a foreign law practice is licensed under section 130B, 130C, 130D, 130E or 130F.

Clause 11(*a*), (*c*), (*d*) and (*e*) makes amendments to section 130M(1), (2) and (3) that are consequential to the insertion of the new section 130L(6) (by clause 10(*b*)).

Clause 11(*b*) makes a technical amendment to section 130M(1) to clarify that the reference in section 130M(1) to “he” is a reference to the Attorney-General.

Clause 11(*f*) inserts into section 130M new subsections (4A), (4B), (4C) and (4D) to provide for measures to ensure compliance with section 130L by —

- (*a*) a Singapore law practice which applies for approval under section 130L(6) in respect of a foreign law practice;
- (*b*) the foreign law practice; and
- (*c*) any partner or director of the Singapore law practice or foreign law practice.

Clause 12(*a*) and (*b*) makes amendments to section 130W(2)(*q*), (*s*), (*u*) and (*v*)(ii) that are consequential to the insertion of the new section 130L(6) (by clause 10(*b*)).

Clause 12(*c*) deletes and substitutes paragraph (*w*) of section 130W(2) to extend the Minister’s power under that paragraph (to make rules to provide for measures to ensure compliance with the requirements of section 130L) to include, in addition to measures requiring any foreign lawyer who is a shareholder or partner in a Singapore law practice to divest himself of his shares or interest in the Singapore law practice (which is the existing position), measures requiring any foreign law practice which is a shareholder in a Singapore law practice to divest itself of its shares in the Singapore law practice.

Clause 13(*a*) deletes and substitutes sub-paragraph (2) of paragraph 1 of the Second Schedule to provide that the Council of the Society will, in addition to not taking any of the directions mentioned in paragraph 2 of that Schedule with respect to a solicitor unless the Council is satisfied that in all the circumstances of the case it is appropriate to do so (which is the existing position), also not take any of those directions pursuant to a complaint of the conduct of the solicitor, if the complaint is made to the Society after the expiration of a period of 3 years from the date of the conduct.

Clause 13(*b*) makes a technical amendment to paragraph 1(3)(*a*) of the Second Schedule that is consequential to the insertion of the new paragraph 1(3)(*c*) of that Schedule (by clause 13(*c*)).

Clause 13(*c*) —

- (*a*) inserts new paragraph 1(3)(*c*) of the Second Schedule to enable the Council of the Society, in determining in any case whether it is appropriate to take any of the directions mentioned in paragraph 2 of that Schedule, to have regard, where a client has attempted to contact a

solicitor with a view to resolving a matter, to whether the solicitor has responded to the client or attempted to resolve the matter; and

(b) makes a consequential technical amendment to paragraph 1(3)(b) of that Schedule.

Clause 14 makes amendments to sections 40A(1)(b), 46(1B)(b), 75(3A)(b) and (3B)(b) and 130R(1)(b), (4) and (6) that are consequential to the insertion of the new section 130L(6) (by clause 10(b)).

Clause 15 makes a related amendment to section 30(2) of the Supreme Court of Judicature Act, to provide for an appeal against any judgment or order obtained after the hearing of an application for the admission of a person under section 15 of the Legal Profession Act to be a matter in respect of which the Court of Appeal in the exercise of its civil jurisdiction is, if it consists of 2 Judges of Appeal, duly constituted for the purposes of hearing and determining.

EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.
