



REPUBLIC OF SINGAPORE

GOVERNMENT GAZETTE

BILLS SUPPLEMENT

Published by Authority

NO. 16]

FRIDAY, MARCH 2

[2018

First published in the *Government Gazette*, Electronic Edition, on 2 March 2018 at 3 pm.

Notification No. B 16 — The Legal Profession (Amendment) Bill is published for general information. It was introduced in Parliament on 2 March 2018.

Legal Profession (Amendment) Bill

Bill No. 16/2018.

Read the first time on 2 March 2018.

A BILL

intituled

An Act to amend the Legal Profession Act (Chapter 161 of the 2009 Revised Edition) and to make related amendments 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 is the Legal Profession (Amendment) Act 2018 and comes into operation on a date that the Minister appoints by notification in the *Gazette*.

5 Amendment of section 2

2. Section 2(1) of the Legal Profession Act (called in this Act the principal Act) is amended —

(a) by inserting, immediately after the definition of “relevant legal officer”, the following definition:

10 “ “remedial measure” means a remedial measure prescribed by rules made under section 97A for the purposes of Part VII;” and

15 (b) by deleting the full-stop at the end of the definitions of “trust” and “trustee” and substituting a semi-colon, and by inserting immediately thereafter the following definition:

“ “wholly-owned subsidiary of the Society” includes a company limited by guarantee the sole member of which is the Society.”.

Amendment of section 25

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

“(cb) a declaration in writing under section 75E, if the solicitor is required by that section to make the declaration;”.

25 Amendment of section 26

4. Section 26(3) of the principal Act is amended by inserting, immediately after the words “the Society” in paragraph (a), the words “or a wholly-owned subsidiary of the Society”.

Repeal of section 36F

30 5. Section 36F of the principal Act is repealed.

Amendment of section 36H

6. Section 36H of the principal Act is amended by deleting subsections (7) and (8).

Amendment of section 36K

7. Section 36K(2) of the principal Act is amended — 5
- (a) by deleting the words “or 36F” in paragraph (a); and
 - (b) by deleting the words “or 36F(4) (as the case may be)” in paragraph (a)(ii).

Amendment of heading to Part IVB

8. Part IVB of the principal Act is amended by deleting the word “FOREIGN” in the Part heading. 10

Amendment of section 36O

9. Section 36O of the principal Act is amended —
- (a) by inserting, immediately after the definition of “Judge” in subsection (1), the following definition: 15
 - “ “law expert” —
 - (a) means an individual —
 - (i) who has specialised knowledge, based on training, study or experience, on matters of foreign law, or is otherwise qualified to submit on matters of foreign law; and 20
 - (ii) whom the Singapore International Commercial Court or the Court of Appeal specifies, in an order that a question of foreign law be determined on the basis of submissions instead of proof, 30

may make submissions on that question of law; but

(b) excludes all of the following:

(i) an advocate and solicitor who has in force a practising certificate;

(ii) a person who is admitted under section 15;

(iii) a foreign lawyer who is registered under section 36P;”;
and

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

“(3) For the purposes of sections 36S, 36T, 36U and 36Y, a reference to a law expert who is registered under section 36PA includes a law expert whose registration under section 36PA is cancelled or suspended, or lapses, after the commencement of proceedings under section 36S against the law expert.”.

Amendment of section 36P

10. Section 36P of the principal Act is amended by deleting the word “Notwithstanding” in subsections (1) and (2) and substituting in each case the word “Despite”.

New section 36PA

11. The principal Act is amended by inserting, immediately after section 36P, the following section:

“Registration of law expert to act in relation to relevant proceedings

36PA.—(1) Despite anything to the contrary in this Act, a law expert who is registered under this section may do all or any of the following:

- (a) appear in any relevant proceedings, solely for the purposes of making submissions on such matters of foreign law as are permitted by the Singapore International Commercial Court, or the Court of Appeal, in accordance with the Rules of Court; 5
- (b) appear in the Court of Appeal in any relevant appeal, solely for the purposes of making submissions on such matters of foreign law as are permitted by the Singapore International Commercial Court, or the Court of Appeal, in accordance with the Rules of Court; 10
- (c) give advice and prepare documents, solely for the purposes of making submissions, in any relevant proceedings or relevant appeal, on such matters of foreign law as are permitted by the Singapore International Commercial Court, or the Court of Appeal, in accordance with the Rules of Court. 15

(2) An application may be made for a law expert to be registered under this section, if the law expert possesses such qualifications and satisfies such requirements as may be prescribed. 20

(3) An application for a law expert to be registered under this section must be —

- (a) made to the Registrar in such form and manner as may be prescribed; and 25
- (b) accompanied by such fee, undertakings, documents and information as may be prescribed.

(4) The Registrar may register a law expert under this section subject to such conditions as the Registrar thinks fit to impose in any particular case. 30

(5) A Judge may, of the Judge's own motion or on the application of any interested party, order the cancellation of a law expert's registration under this section, if —

(a) the law expert does not possess any qualification mentioned in subsection (2) for registration under this section;

5 (b) the law expert does not satisfy any requirement mentioned in subsection (2) for registration under this section;

(c) the law expert fails to comply with any condition imposed under subsection (4); or

10 (d) the Judge is satisfied that the law expert should not have been registered under this section.

(6) The Judge must, before making an order under subsection (5), give the law expert a reasonable opportunity to be heard by the Judge.

15 (7) An International Judge of the Supreme Court may, in the course of any relevant proceedings before the International Judge, of the International Judge's own motion or on the application of any interested party, order the cancellation of the registration under this section of a law expert who appears in those proceedings, if —

20 (a) the law expert does not possess any qualification mentioned in subsection (2) for registration under this section;

25 (b) the law expert does not satisfy any requirement mentioned in subsection (2) for registration under this section;

(c) the law expert fails to comply with any condition imposed under subsection (4); or

(d) the International Judge is satisfied that the law expert should not have been registered under this section.

30 (8) The International Judge of the Supreme Court must, before making an order under subsection (7), give the law expert a reasonable opportunity to be heard by the International Judge.

- (9) No appeal lies from —
- (a) any order made by a Judge under subsection (5); or
 - (b) any order made by an International Judge of the Supreme Court under subsection (7).”.

Amendment of section 36S

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12. Section 36S of the principal Act is amended —

- (a) by inserting, immediately after the words “Every foreign lawyer who is registered under section 36P” in subsection (1), the words “, and every law expert who is registered under section 36PA,”; 10
- (b) by inserting, immediately after the words “registration under section 36P” in subsection (1)(a), the words “or 36PA (as the case may be)”;
- (c) by inserting, immediately after the words “the conduct of a foreign lawyer who is registered under section 36P” in subsections (2) and (9), the words “, or the conduct of a law expert who is registered under section 36PA”; 15
- (d) by inserting, immediately after the words “the conduct of a foreign lawyer registered under section 36P,” in subsection (4), the words “or the conduct of a law expert registered under section 36PA,”; 20
- (e) by inserting, immediately after the words “the foreign lawyer” wherever they appear in subsections (4)(a), (9)(a), (c) and (d), (10)(a), (b) and (c), (11), (13)(b), (15)(b), (16)(a), (24) and (25)(b), the words “or law expert”; 25
- (f) by deleting the word “shall” in subsection (8)(a) and substituting the word “must”;
- (g) by inserting, immediately after subsection (8), the following subsection: 30
 - “(8A) A complaints committee appointed to hear and investigate a complaint of the conduct of a law expert who is registered under section 36PA must, within 4 weeks after the date of its appointment —

(a) determine whether there is a prima facie case for an investigation into the complaint; and

(b) if it is of the opinion that there is no prima facie case for an investigation into the complaint, determine that no cause of sufficient gravity for disciplinary action exists against the law expert.”;

(h) by inserting, immediately after the words “the conduct of a foreign lawyer who is registered under section 36P” in subsection (10), the words “, or the conduct of a law expert who is registered under section 36PA,”;

(i) by inserting, immediately after the words “subsection (8)(a)” in subsection (12)(a), the words “or (8A)”;

(j) by inserting, immediately after the words “subsection (8)(a)(ii)” in subsection (13), the words “or (8A)(b)”;

(k) by deleting subsection (14) and substituting the following subsection:

“(14) Where a complaints committee makes a determination under subsection (11)(b)(ii), it may give the foreign lawyer or law expert concerned a warning, reprimand the foreign lawyer or law expert, or order the foreign lawyer or law expert to pay a penalty of not more than \$20,000.”; and

(l) by inserting, immediately after the words “foreign lawyers registered under section 36P” in the section heading, the words “and law experts registered under section 36PA”.

Amendment of section 36T

13. Section 36T of the principal Act is amended —

(a) by inserting, immediately after the words “section 36S(8)(a)(ii)” in subsections (1) and (2)(a), “, (8A)(b)”;

- (b) by inserting, immediately after the words “the foreign lawyer” wherever they appear in subsections (1), (3)(b)(ii) and (5)(b)(i)(A), the words “or law expert”.

Amendment of section 36U

14. Section 36U of the principal Act is amended —

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- (a) by inserting, immediately after the words “a foreign lawyer who is registered under section 36P” in subsection (1), the words “, or a law expert who is registered under section 36PA”;

- (b) by inserting, immediately after the words “registration under section 36P” in subsection (1)(a), the words “or 36PA (as the case may be)”;

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- (c) by inserting, immediately after the word “may” in subsection (3)(d), the words “, in the case of a foreign lawyer who is registered under section 36P,”;

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- (d) by deleting subsection (5) and substituting the following subsections:

“(5) Where a foreign lawyer’s registration under section 36P has been cancelled pursuant to an order of the court of 3 Judges —

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- (a) in any case where the order prohibits the foreign lawyer from reapplying for registration under section 36P until after a date specified in the order, the foreign lawyer cannot reapply for such registration, and cannot apply as a law expert for registration under section 36PA, until after that date; or

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- (b) in any other case, the foreign lawyer is permanently prohibited from reapplying for registration under section 36P, and is permanently prohibited from applying as a law expert for registration under section 36PA.

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(6) Where a law expert's registration under section 36PA has been cancelled pursuant to an order of the court of 3 Judges —

(a) in any case where the order prohibits the law expert from reapplying for registration under section 36PA until after a date specified in the order, the law expert cannot reapply for such registration, and cannot apply as a foreign lawyer for registration under section 36P, until after that date; or

(b) in any other case, the law expert is permanently prohibited from reapplying for registration under section 36PA, and is permanently prohibited from applying as a foreign lawyer for registration under section 36P.”; and

(e) by inserting, immediately after the words “section 36P” in the section heading, the words “or 36PA”.

Amendment of section 36W

15. Section 36W(1) of the principal Act is amended by inserting, immediately after the words “foreign lawyer” wherever they appear, the words “or law expert”.

Amendment of section 36Y

16. Section 36Y(2) of the principal Act is amended —

(a) by inserting, immediately after paragraph (b), the following paragraph:

“(ba) to prescribe the qualifications, experience and expertise required of a law expert, and any other requirement, for eligibility to apply for registration under section 36PA;”;

(b) by inserting, immediately after paragraph (c), the following paragraph:

“(ca) to provide, without prejudice to the generality of section 36PA, for the making of any application for registration under that section, or for the renewal of any such registration, and for all other related matters;”;

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(c) by inserting, immediately after the words “registration under section 36P” in paragraphs (d)(i)(A) and (e), the words “or 36PA”;

(d) by inserting, immediately after the words “foreign lawyer registered under section 36P” in paragraph (f), the words “or law expert registered under section 36PA”; and

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(e) by inserting, immediately after the words “foreign lawyers registered under section 36P” in paragraphs (g), (i) and (j), the words “and law experts registered under section 36PA”.

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Amendment of section 50

17. Section 50(2) of the principal Act is amended by deleting the words “which shall be credited to the Compensation Fund established under section 75” in paragraph (b) and substituting the words “to the Society”.

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New Part VB

18. The principal Act is amended by inserting, immediately after section 70H, the following Part:

“PART VB

UNCLAIMED MONEY FUND

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Interpretation of this Part

70I. In this Part, unless the context otherwise requires —

“claimant” means any person who claims to be entitled to, or to be authorised to receive, any transferred unclaimed client money;

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“Fund” means the Unclaimed Money Fund maintained and administered by the Society under section 70J;

“transfer date” means —

(a) in relation to any transferred unclaimed client money, the date on which the Society approves an application for the payment of that money into the Fund under section 70K; and

(b) in relation to any transferred unclaimed intervention money, the date on which that money is paid into the Fund under paragraph 11(3) of the First Schedule;

“transferred unclaimed client money” means any money paid into the Fund under section 70K;

“transferred unclaimed intervention money” means any money paid into the Fund under paragraph 11(3) of the First Schedule;

“trust account” means a trust account within the meaning of any rules made under section 72(1).

Unclaimed Money Fund

70J.—(1) The Society must maintain and administer, in accordance with this section, a fund called the Unclaimed Money Fund.

(2) Subject to any limitation prescribed by rules made under section 70N, any transferred unclaimed client money or transferred unclaimed intervention money paid into the Fund vests in the Society, and belongs to the Society absolutely, with effect from the transfer date of that money.

(3) Subject to any limitation prescribed by rules made under section 70N —

(a) any moneys that form part of the Fund and are not immediately required for any other purpose may be invested by the Society;

(b) the following moneys in the Fund may be used to fund pro bono services provided by the Society or by any wholly-owned subsidiary of the Society:

- (i) any interest, dividends and other accretions of capital arising from the investment of moneys that form part of the Fund;
- (ii) such transferred unclaimed client money and transferred unclaimed intervention money as may be prescribed by rules made under section 70N; 5
- (c) such transferred unclaimed client money and transferred unclaimed intervention money, as may be prescribed by rules made under section 70N, may be used to make payments to claimants under section 70L; 10
- (d) such transferred unclaimed intervention money, as may be prescribed by rules made under section 70N, may be used to make payments to claimants under paragraph 11(5) of the First Schedule; and 15
- (e) any interest, dividends and other accretions of capital arising from the investment of moneys that form part of the Fund may be used to pay any costs, charges and expenses of — 20
 - (i) establishing, maintaining, administering and applying the Fund; and
 - (ii) administering this Part.

(4) Except with the prior written approval of the Minister, the Society must not invest or use any moneys that form part of the Fund other than in accordance with subsection (3). 25

Transfer of unclaimed client money to Fund

70K.—(1) A solicitor or Singapore law practice may apply to pay into the Fund any money that is held by the solicitor or Singapore law practice for or on account of a client (except any money held in a trust account), if that solicitor or Singapore law practice — 30

- (a) intends to pay the money to the client; but

(b) is unable to do so, despite making such reasonable efforts as the Society may require.

5 (2) The Society may approve an application made under subsection (1), subject to any conditions imposed by the Society, if the solicitor or Singapore law practice making the application satisfies such requirements as may be prescribed under section 70N for the purposes of this subsection.

10 (3) No action to recover any transferred unclaimed client money (or any interest, dividends and other accretions of capital arising from the investment of such money) may be brought, on or after the transfer date of the transferred unclaimed client money, against —

(a) the Society; or

15 (b) any wholly-owned subsidiary of the Society to which any money is transferred under section 70J(3)(b).

20 (4) No action to recover any transferred unclaimed client money (or any interest, dividends and other accretions of capital arising from the investment of such money) may be brought, after the expiry of 6 years after the transfer date of the transferred unclaimed client money, against —

(a) the solicitor or Singapore law practice that paid the transferred unclaimed client money into the Fund under subsection (1); or

25 (b) any solicitor or Singapore law practice that held that money for or on account of a client at any time before that money was paid into the Fund.

(5) To avoid doubt —

(a) subsection (3) does not affect any limitation period that expires before the transfer date; and

30 (b) subsection (4) does not affect any limitation period that expires before the limitation period under that subsection.

(6) In this section, “client” includes, in addition to any person mentioned in the definition of “client” in section 2(1) —

- (a) a person for, or on behalf of, whom is held any money that was transferred, directly or indirectly to a solicitor or Singapore law practice from another solicitor or Singapore law practice; and
- (b) the estate or personal representative of a deceased client.

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Application for payment of transferred unclaimed client money

70L.—(1) Despite section 70K(3), at any time within 6 years after the transfer date of any transferred unclaimed client money, any claimant may apply to the Society for the payment of the whole or part of the amount of that money that the claimant claims to be entitled to, or to be authorised to receive.

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(2) On an application under subsection (1), the Society must pay the relevant amount to the claimant from the Fund if such requirements, as may be prescribed by rules made under section 70N for the purposes of this subsection, are satisfied.

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(3) Subject to subsection (6), the relevant amount mentioned in subsection (2) is —

- (a) the amount of any money paid into the Fund under section 70K that a solicitor or Singapore law practice is required, under a court order, to pay the claimant; or
- (b) the amount declared in a statutory declaration (made by any solicitor, or by a solicitor on behalf of any Singapore law practice, mentioned in subsection (4)(b)) to be the amount of any money paid into the Fund under section 70K that the claimant is entitled to or is authorised to receive.

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(4) A payment to a claimant under subsection (2) discharges the following from liability to the claimant for the amount paid:

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- (a) the Society;

(b) any solicitor or Singapore law practice that —

(i) paid the transferred unclaimed client money, which the claimant claims to be entitled to, or to be authorised to receive, into the Fund; or

5 (ii) held the money mentioned in sub-paragraph (i) at any time before that money was paid into the Fund.

10 (5) Despite section 70K(3) and subsection (1), if any claimant applies to the Society, after the expiry of 6 years after the transfer date of any transferred unclaimed client money, for the payment of any amount of that money that the claimant claims to be entitled to, or to be authorised to receive, the Society may pay the whole or any part of that amount to the claimant from the Fund.

15 (6) No interest is payable on any transferred unclaimed client money by the Society to any claimant under this section.

Application of law

20 **70M.**—(1) Money may be paid into the Fund under section 70K(1) or paragraph 11(3) of the First Schedule, despite any rules made under section 73D of the Conveyancing and Law of Property Act (Cap. 61).

25 (2) No breach of trust or other legal liability arises by virtue only of the payment into the Fund of any transferred unclaimed client money or transferred unclaimed intervention money, or the investment or use of money that forms part of the Fund, in accordance with this Part or paragraph 11 of the First Schedule.

30 (3) To avoid doubt, this Part and paragraph 11 of the First Schedule do not affect any right to any money that has accrued to the Government on the death of a person who dies intestate without next of kin, before the transfer date of that money.

Rules for this Part

70N.—(1) The Council may, with the approval of the Minister, make rules for the purposes of this Part.

(2) Without limiting subsection (1), the rules made under that subsection may prescribe —

- (a) any limitation for the purposes of section 70J(2) or (3), and the classes of transferred unclaimed client money and transferred unclaimed intervention money (as the case may be) to which section 70J(3)(b)(ii), (c) or (d) applies; 5
- (b) any information or declaration that must be provided with an application under section 70K(1);
- (c) any requirements for the purposes of section 70K(2); 10
- (d) any requirements for the purposes of section 70L(2);
- (e) any action that the Society may take to ascertain whether the rules made under this section are being complied with, which action may include imposing a requirement that a solicitor or Singapore law practice that pays any transferred unclaimed client money into the Fund under section 70K must — 15
 - (i) continue to keep and maintain such records relating to the money as the Society may require; and 20
 - (ii) produce to the Society those records and such other information as the Society may, from time to time, require for the administration of this Part; and
- (f) any other thing that may be prescribed for the purposes of this Part. 25

(3) Disciplinary proceedings may be taken against any solicitor who contravenes any rules made under this section.

(4) The Director of Legal Services may exercise, against any law firm, any limited liability law partnership and any law corporation that contravenes any rules made under this section, the powers under sections 133, 145 and 161, respectively. 30

(5) This Part and any rules made under subsection (1) apply, with such modifications as may be prescribed under subsection (6), to —

(a) any regulated foreign lawyer; and

(b) any Joint Law Venture or its constituent foreign law practice, any Qualifying Foreign Law Practice or any licensed foreign law practice.

(6) The Minister may make rules to prescribe the modifications to be made, for the purposes of subsection (5), to this Part and any rules made under subsection (1).”.

Amendment of section 75

19. Section 75 of the principal Act is amended by deleting subsection (10) and substituting the following subsection:

“(10) The Council may, in its discretion, transfer from the Fund the whole or any part of the interest, dividends and other accretions of capital arising from the Fund —

(a) to any other fund of the Society for —

(i) the purpose of purchasing or maintaining a library for the use of the members of the Society; or

(ii) such purposes as the Minister may specify by notification in the *Gazette*; or

(b) to any wholly-owned subsidiary of the Society, for such purposes as the Minister may specify by notification in the *Gazette*.”.

New section 75E

20. The principal Act is amended by inserting, immediately after section 75D, the following section:

“Declaration on practice in prescribed area of law

75E.—(1) A solicitor must make a declaration in writing under this section, if the solicitor —

- (a) belongs to a prescribed class of solicitors; and
- (b) practises, or intends to practise, in a prescribed area of the law.

(2) The Council may, by written notice, exempt any solicitor from making a declaration under this section in respect of a particular area of the law, if the Council is satisfied that the solicitor is already equipped with the knowledge and skills required for practice in that area of the law. 5

(3) The Council may, by notification in the *Gazette*, exempt any class of solicitors from making a declaration under this section in respect of a particular area of the law, if the Council is satisfied that the class of solicitors is already equipped with the knowledge and skills required for practice in that area of the law. 10

(4) The Council may, after consulting the Minister and the Chief Justice, make rules to prescribe — 15

- (a) the classes of solicitors and areas of the law to which subsection (1) applies;
- (b) the form of any declaration under this section; and
- (c) any fees to be paid in relation to any such declaration.”. 20

Amendment of section 78

21. Section 78 of the principal Act is amended by deleting the section heading and substituting the following section heading:

“Employment or remuneration of certain persons by solicitor”. 25

Amendment of section 86

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

- “(i) that the regulated legal practitioner should be ordered under section 88 to pay a penalty that is 30

sufficient and appropriate to the misconduct committed;

(ii) that the regulated legal practitioner should be reprimanded or given a warning;

5 (iii) that the regulated legal practitioner should be ordered to comply with one or more remedial measures;

10 (iv) that the regulated legal practitioner should be subjected to the measure in sub-paragraph (iii) in addition to the measure in sub-paragraph (i) or (ii); or

(v) that the complaint be dismissed.”.

Amendment of section 87

15 **23.** Section 87(1) of the principal Act is amended by deleting paragraph (b) and substituting the following paragraph:

“(b) that, while no cause of sufficient gravity exists for a formal investigation, the regulated legal practitioner should be —

20 (i) ordered under section 88 to pay a penalty that is sufficient and appropriate to the misconduct committed;

(ii) reprimanded or given a warning;

(iii) ordered to comply with one or more remedial measures; or

25 (iv) subjected to the measure in sub-paragraph (iii) in addition to the measure in sub-paragraph (i) or (ii);”.

Amendment of section 88

24. Section 88 of the principal Act is amended —

30 (a) by deleting the words “may give” in subsection (1) and substituting the words “must give”; and

(b) by inserting, immediately after subsection (1), the following subsections:

“(1A) Where the Council determines under section 87 that, while no cause of sufficient gravity exists for a formal investigation, the regulated legal practitioner should be ordered to comply with one or more remedial measures —

(a) the Council must order the regulated legal practitioner to comply with the remedial measure or remedial measures (as the case may be); and

(b) if a regulated legal practitioner fails, within the time specified by the Council, to comply fully with the Council’s order under paragraph (a), the Council may —

(i) give the regulated legal practitioner a warning;

(ii) reprimand the regulated legal practitioner; or

(iii) order the regulated legal practitioner to pay a penalty of not more than \$10,000.

(1B) Where the Council makes a determination under section 87(1)(b)(iv) —

(a) any action taken by the Council under subsection (1A)(b) is in addition to any action taken by the Council under subsection (1); but

(b) the total amount of penalty ordered to be paid under subsections (1) and (1A)(b) must not exceed \$10,000.”.

Amendment of section 90

25. Section 90(1) of the principal Act is amended by deleting paragraph (a) and substituting the following paragraph:

“(a) a president, who —

- 5 (i) is a Senior Judge of the Supreme Court;
- (ii) has at any time held office as a Judge of the Supreme Court or Judicial Commissioner of the Supreme Court; or
- 10 (iii) is an advocate and solicitor who is a Senior Counsel; and”.

Amendment of section 93

26. Section 93 of the principal Act is amended —

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

- 15 “(b) while no cause of sufficient gravity for disciplinary action exists under section 83 or 83A (as the case may be), the regulated legal practitioner should be —
- (i) ordered to pay a penalty that is
- 20 sufficient and appropriate to the misconduct committed;
- (ii) reprimanded;
- (iii) ordered to comply with one or more remedial measures; or
- 25 (iv) subjected to the measure in sub-paragraph (iii) in addition to the measure in sub-paragraph (i) or (ii); or”; and

(b) by deleting the words “subsection (1)(b)” in subsection (2) and substituting the words “subsection (1)(b)(i), (ii) or (iv)”.

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Amendment of section 94

27. Section 94 of the principal Act is amended —

- (a) by deleting the words “determination of the Disciplinary Tribunal under section 93 is that cause of sufficient gravity for disciplinary action exists under section 83 or 83A (as the case may be)” in subsection (1) and substituting the words “Disciplinary Tribunal makes a determination under section 93(1)(c)”;
- (b) by deleting the words “determination of the Disciplinary Tribunal under section 93 is that no cause of sufficient gravity for disciplinary action exists under section 83 or 83A (as the case may be)” in subsection (2) and substituting the words “Disciplinary Tribunal makes a determination under section 93(1)(a)”;
- (c) by deleting the words “determination of the Disciplinary Tribunal under section 93 is that, while no cause of sufficient gravity for disciplinary action exists under section 83 or 83A (as the case may be), the regulated legal practitioner should be reprimanded or ordered to pay a penalty” in subsection (3) and substituting the words “Disciplinary Tribunal makes a determination under section 93(1)(b)(i), (ii) or (iv)”;
- (d) by inserting, immediately after subsection (3), the following subsections:
- “(3A) Where the Disciplinary Tribunal makes a determination under section 93(1)(b)(iii) or (iv) —
- (a) the Council must —
- (i) if the Council agrees with the determination, order the regulated legal practitioner to comply with the remedial measure or remedial measures (as the case may be); or
- (ii) if the Council disagrees with the determination, without further

direction make an application under section 98 within one month after the date of the determination of the Disciplinary Tribunal; and

5 (b) if paragraph (a)(i) applies, and the regulated legal practitioner fails, within the time specified by the Council, to comply fully with the Council's order under paragraph (a)(i), the Council must, if the
10 determination so provides —

(i) reprimand the regulated legal practitioner; or

(ii) order the regulated legal practitioner to pay a penalty of not more than
15 \$20,000.

(3B) Where the Disciplinary Tribunal makes a determination under section 93(1)(b)(iv), and the Council agrees with that determination —

20 (a) any action taken by the Council under subsection (3A)(b)(ii) is in addition to any action taken by the Council under subsection (3)(a); but

(b) the total amount of penalty ordered to be paid under subsections (3)(a) and
25 (3A)(b)(ii) must not exceed \$20,000.”; and

(e) by inserting, immediately after the words “subsection (3)” in subsection (4)(b), the words “or (3A)”.

New section 97A

30 **28.** The principal Act is amended by inserting, immediately after section 97, the following section:

“Remedial measures

97A. For the purposes of this Part, the Council may, with the approval of the Minister, make rules to prescribe —

- (a) the remedial measures to address any issue concerning the professional practice, etiquette, conduct or discipline of a regulated legal practitioner; and
- (b) any requirements that the Council may specify for compliance with an order of the Council under section 88(1A) or 94(3A).”.

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Amendment of section 101

29. Section 101 of the principal Act is amended by inserting, immediately after subsection (2), the following subsection:

“(3) An order to comply with one or more remedial measures (whether or not in addition to an order to pay a penalty, a reprimand or a warning) need not be entered on the roll.”.

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New Division 5 of Part IXA

30. The principal Act is amended by inserting, immediately after section 184, the following Division:

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“Division 5 — Group practices

Formation of group practices

184A.—(1) Two or more Singapore law practices may apply jointly to practise as a Singapore group practice.

(2) Two or more foreign law practices may apply jointly to practise as a foreign group practice.

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(3) The Director of Legal Services may, after consulting such authorities as the Director of Legal Services thinks fit, grant or refuse an application under subsection (1) or (2).

(4) An application under subsection (1) or (2) may be granted subject to such conditions as the Director of Legal Services thinks fit to impose in any particular case.

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Rules for this Division

184B.—(1) The Minister may make such rules as may be necessary or expedient for the purposes of this Division.

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(2) Without limiting subsection (1), the Minister may make rules to prescribe —

- (a) the types of Singapore law practice that may form a Singapore group practice and the requirements that any Singapore group practice, and any member of a Singapore group practice, must comply with;
- (b) the types of foreign law practice that may form a foreign group practice and the requirements that any foreign group practice, and any member of a foreign group practice, must comply with;
- (c) the manner of making an application to the Director of Legal Services under section 184A(1) or (2), and the fees payable for such an application;
- (d) the grounds for cancellation of an approval of the Director of Legal Services to practise as a Singapore group practice or foreign group practice; and
- (e) such saving and transitional provisions as the Minister considers necessary or expedient.”.

Amendment of First Schedule

31. Paragraph 11 of the First Schedule is amended —

- (a) by deleting the words “Compensation Fund maintained under section 75” in sub-paragraph (3) and substituting the words “Unclaimed Money Fund maintained under section 70J”; and
- (b) by deleting sub-paragraph (4) and substituting the following sub-paragraphs:

“(4) No action to recover any money paid into the Unclaimed Money Fund under sub-paragraph (3) (called in this paragraph transferred unclaimed intervention money), or any interest, dividends and other accretions of capital arising from the investment of the transferred unclaimed intervention money, may be brought on or after the date the transferred unclaimed intervention money is paid into the Unclaimed Money Fund under sub-paragraph (3), against —

(a) the Society or any wholly-owned subsidiary of the Society to which the transferred unclaimed intervention money is transferred under section 70J(3)(b); or

(b) any other person from whom the Society took possession under sub-paragraph (1) of the transferred unclaimed intervention money.

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(5) If any claimant applies to the Society for payment of any amount of any transferred unclaimed intervention money, after the money is paid into the Unclaimed Money Fund under sub-paragraph (3), the Society may pay the whole or any part of that amount to the claimant from the Unclaimed Money Fund.

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(6) No interest is payable on any transferred unclaimed intervention money by the Society to any claimant under sub-paragraph (5).”.

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Miscellaneous amendments

32.—(1) The principal Act is amended by deleting the words “(Cap. 322)” in the following provisions:

Sections 17, 36O(1) (definition of “Singapore International Commercial Court”) and 78(1)(e).

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(2) The principal Act is amended by deleting the words “(Cap. 322, R 5)” in the following provisions:

Sections 82A(14), 98(3) and 126.

Related amendments to Supreme Court of Judicature Act

33. The Supreme Court of Judicature Act (Cap. 322) is amended —

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(a) by inserting, immediately after the words “a foreign lawyer” in sections 18M and 80(2A)(g), the words “or law expert”; and

(b) by inserting, immediately after the words “foreign lawyers” in the section heading of section 18M, the words “and law experts”.

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Saving and transitional provisions

34.—(1) Despite section 7, section 36K(2) of the principal Act as in force immediately before the date of commencement of section 7 continues to apply, as if that section had not been enacted, to any legal services provided before that date by a solicitor who —

(a) was required to be registered under the repealed section 36F of the principal Act as in force immediately before that date; but

(b) failed to apply for such registration and was not deemed under the repealed section 36F(4) to be so registered.

(2) Despite section 17, where an advocate and solicitor is required to vote for the election of members of the Council at an election held before the date of commencement of that section but fails to do so, section 50(2) of the principal Act as in force immediately before that date continues to apply to any penalty that the advocate and solicitor may be liable to pay on account of that failure, as if section 17 had not been enacted.

(3) For a period of 2 years after the date of commencement of any provision of this Act, the Minister may, by rules, prescribe such additional provisions of a saving or transitional nature consequential on the enactment of that provision as the Minister may consider necessary or expedient.

EXPLANATORY STATEMENT

This Bill seeks to amend the Legal Profession Act (Cap. 161) for the following main purposes:

- (a) to require certain solicitors to make declarations, when applying for their practising certificates, concerning their practice in certain areas of the law;
- (b) to facilitate the carrying out of the functions and activities of the Law Society of Singapore (the Society) through wholly-owned subsidiaries of the Society;
- (c) to repeal section 36F, which is spent;

- (d) to allow law experts (who are not practising solicitors, persons admitted under section 15, or foreign lawyers registered under section 36P) to appear in relevant proceedings in the Singapore International Commercial Court and relevant appeals in the Court of Appeal;
- (e) to provide for penalties under section 50(2)(b) to be paid to the Society, instead of the Compensation Fund;
- (f) to allow the Society to apply the interest, dividends and other accretions of capital from the Compensation Fund to a wider range of uses;
- (g) to expand the range of measures that may be imposed in disciplinary proceedings to include remedial measures;
- (h) to clarify that a Senior Judge of the Supreme Court (appointed under Article 95(4)(b) of the Constitution of the Republic of Singapore) may be appointed as the president of a Disciplinary Tribunal;
- (i) to restate the requirements for the formation of Singapore group practices and foreign group practices;
- (j) to establish an Unclaimed Money Fund, and to provide for unclaimed client money and unclaimed intervention money to be paid into the Unclaimed Money Fund, to be invested or used as prescribed to fund pro bono services provided by the Society or by any wholly-owned subsidiary of the Society, and at the same time relieve certain regulated legal practitioners and certain law practice entities from the regulatory burden of continuing to hold and be liable for unclaimed client moneys, in certain circumstances.

The Bill also makes related amendments to the Supreme Court of Judicature Act (Cap. 322).

Clause 1 relates to the short title and commencement.

Clause 2 amends section 2(1) to insert new definitions of “remedial measure” and “wholly-owned subsidiary of the Society”.

Clause 3 amends section 25(1) to require a solicitor, when applying for a practising certificate, to make a declaration in writing under the new section 75E (to be inserted by clause 20) if the solicitor is required under the new section to make the declaration.

Clause 4 amends section 26(3) to enable a solicitor who is employed by a wholly-owned subsidiary of the Society to apply for a practising certificate.

Clause 5 repeals section 36F (Registration of solicitor to practise foreign law in Joint Law Venture or foreign law practice) as that section is spent.

Clause 6 amends section 36H by deleting subsections (7) and (8), which are spent.

Clause 7 amends section 36K(2) to make amendments that are consequential to the repeal of section 36F (by clause 5).

Clauses 8 to 16 relate to amendments to allow law experts (who are not practising solicitors, persons admitted under section 15 or foreign lawyers registered under section 36P) to appear in relevant proceedings in the Singapore International Commercial Court and relevant appeals in the Court of Appeal.

Clause 8 deletes the word “FOREIGN” from the heading of Part IVB because that Part has been extended to include representation by law experts, and a law expert need not be a foreign lawyer.

Clause 9 amends section 36O(1), and inserts a new section 36O(3), to define the term “law expert” for Part IVB.

Clause 10 makes editorial changes to section 36P(1) and (2).

Clause 11 inserts a new section 36PA to provide for the registration of a law expert to appear in relevant proceedings in the Singapore International Commercial Court and relevant appeals in the Court of Appeal.

Clause 12 amends section 36S to provide for complaints against a law expert registered under the new section 36PA (to be inserted by clause 11).

Clause 13 amends section 36T to provide for an application for a review of the decision of a complaints committee on a complaint against a law expert.

Clause 14 amends section 36U to provide for an application to cancel or suspend the registration of a law expert under the new section 36PA, or to impose any other punishment on the law expert.

Clause 15 amends section 36W(1) to provide for the payment of penalties by law experts.

Clause 16 amends section 36Y(2) to provide for the making of rules relating to law experts.

Clause 17 amends section 50(2) to provide for penalties under that section (for failing to vote in the election of members of the Council of the Society (the Council)) to be paid to the Society instead of being credited to the Compensation Fund established under section 75.

Clause 18 inserts a new Part VB relating to the Unclaimed Money Fund.

The new section 70I provides for the interpretation of the new Part VB, by inserting definitions of “claimant”, “Fund”, “transfer date”, “transferred unclaimed client money”, “transferred unclaimed intervention money” and “trust account”.

The new section 70J provides for the establishment and administration of the Unclaimed Money Fund (the Fund) by the Society. Transferred unclaimed client money and transferred unclaimed intervention money paid into the Fund under the

new section 70K and paragraph 11(3) of the First Schedule (respectively) vest in the Society and belong to the Society absolutely. Interest, dividends and other accretions of capital arising from the investment of moneys forming part of the Fund may be used to fund pro bono services provided by the Society or by any wholly-owned subsidiary of the Society, and to pay the costs, charges and expenses of establishing, maintaining, administering and applying the Fund, as well as administering the new Part VB. Rules will be made under the new section 70N to prescribe what the transferred unclaimed client money, transferred unclaimed intervention money and any other money in the Fund may be used for.

The new section 70K provides for the payment of transferred unclaimed client money into the Fund, with the approval of the Society, if requirements prescribed by rules made under the new section 70N are satisfied. No action to recover the transferred unclaimed client money may be brought, on or after the transfer date of that money, against the Society or a wholly-owned subsidiary of the Society to which that money is transferred. Any action to recover that money brought against the solicitor or Singapore law practice (as the case may be) that paid that money into the Fund, or held that money for or on account of a client at any time before that money was paid into the Fund, is barred after the expiry of 6 years after the transfer date for that money. The limitation of actions under the new section 70K does not affect any other limitation of actions that may apply earlier.

The new section 70L provides for any application to recover the whole or part of the amount of any transferred unclaimed client money from the Fund, despite the limitation of actions under the new section 70K. The Society must pay the relevant amount, as stated in a court order or a statutory declaration (by a solicitor, or by a solicitor on behalf of a Singapore law practice, that paid the money into the Fund or held the money at any time before it was paid into the Fund) to the claimant, free of interest, if the requirements prescribed by rules made under the new section 70N are satisfied. Payment of the relevant amount to a claimant discharges the Society, and any solicitor or Singapore law practice that paid the money into the Fund or held the money at any time before it was paid into the Fund, from liability to the claimant for the amount of the payment. If an application is made for the payment of any amount of the transferred unclaimed client money after the expiry of 6 years after the transfer date, the Society may make an *ex gratia* payment from the Fund.

The new section 70M(1) provides that the operation of the new Part VB and paragraph 11 of the First Schedule (in respect of transferred unclaimed client money and transferred unclaimed intervention money respectively) overrides the rules made under section 73D of the Conveyancing and Law of Property Act (Cap. 61). The new section 70M(2) displaces liability for breach of trust and other legal liability arising by virtue only of the payment of transferred unclaimed client money or transferred unclaimed intervention money into the Fund, or the investment or use of money that forms part of the Fund, in accordance with the new Part VB or paragraph 11 of the First Schedule. The new Part VB and paragraph 11 of the First Schedule do not affect the Government's right to such money under the

law on *bona vacantia*, if the right has accrued to the Government before the transfer date of the money.

The new section 70N(1) and (2) provides for rules to be made by the Council, with the approval of the Minister, for the purposes of the new Part VB. The new section 70N(3) and (4) provides, respectively, that disciplinary proceedings may be taken against a solicitor, and regulatory measures may be taken against a Singapore law practice, for contravening the rules. The new section 70N(5) provides for the new Part VB to apply to any regulated foreign lawyer, Joint Law Venture or its constituent foreign law practice, Qualifying Foreign Law Practice or licensed foreign law practice, with such modifications as the Minister may prescribe in rules made under the new section 70N(6).

Clause 19 replaces section 75(10) to allow interest, dividends and other accretions of capital arising from the Compensation Fund to be transferred to other funds of the Society, or to any wholly-owned subsidiary of the Society, for purposes specified by the Minister by notification in the *Gazette*, in addition to being transferred to a fund for the purpose of purchasing or maintaining a library for the use of the members of the Society (as provided presently).

Clause 20 inserts a new section 75E —

- (a) to require a solicitor to make a declaration in writing under the section, if the solicitor belongs to a prescribed class of solicitors and practises, or intends to practise, in a prescribed area of the law;
- (b) to empower the Council to exempt any solicitor or class of solicitors from making the declaration; and
- (c) to empower the Council, after consulting the Minister and the Chief Justice, to make rules concerning declarations under the section.

Clause 21 amends the section heading of section 78 to clarify that the section applies to certain persons who are employed or remunerated by a solicitor, regardless of the capacity in which those persons are employed or remunerated.

Clauses 22, 23, 24 and 26 to 29 relate to amendments to expand the range of measures that may be imposed in disciplinary proceedings to include remedial measures.

Clause 22 amends section 86(7) to empower the Inquiry Committee, where it is of the view that no formal investigation by the Disciplinary Tribunal is required, to recommend that the regulated legal practitioner should be ordered to comply with one or more remedial measures.

Clause 23 amends section 87(1) to empower the Council to make a determination that, while no cause of sufficient gravity exists for a formal investigation, the regulated legal practitioner should be ordered to comply with one or more remedial measures.

Clause 24 amends section 88 to provide for the orders to be made by the Council where it determines that, while no cause of sufficient gravity exists for a formal investigation, the regulated legal practitioner should be ordered to comply with one or more remedial measures.

Clause 25 amends section 90(1) to clarify that a Senior Judge of the Supreme Court (appointed under Article 95(4)(b) of the Constitution of the Republic of Singapore) may be appointed as the president of a Disciplinary Tribunal.

Clause 26 amends section 93 to empower the Disciplinary Tribunal to determine that, while no cause of sufficient gravity for disciplinary action exists under section 83 or 83A, the regulated legal practitioner should be ordered to comply with one or more remedial measures.

Clause 27 amends section 94 —

- (a) to insert new subsections (3A) and (3B) to provide for the orders that the Council must make if the Council agrees with a Disciplinary Tribunal's determination under section 93(1)(b) that a regulated legal practitioner should be ordered to comply with one or more remedial measures; and
- (b) to make other consequential or editorial amendments.

Clause 28 inserts a new section 97A to empower the Council, with the approval of the Minister, to make rules to prescribe —

- (a) the remedial measures to address any issue concerning the professional practice, etiquette, conduct or discipline of a regulated legal practitioner; and
- (b) any requirements that the Council may specify for compliance with an order of the Council under the new section 88(1A) (to be inserted by clause 24) or the new section 94(3A) (to be inserted by clause 27).

Clause 29 amends section 101 by inserting a new subsection (3) to provide that an order to comply with one or more remedial measures (whether or not in addition to an order to pay a penalty, a reprimand or a warning) need not be entered on the roll.

Clause 30 inserts in Part IXA a new Division 5 (relating to group practices) consisting of new sections 184A and 184B. The new section 184A provides for applications by Singapore law practices to practise as a Singapore group practice, and applications by foreign law practices to practise as a foreign group practice. The new section 184B provides for rules to be made by the Minister for the purposes of the new Division 5 of Part IXA.

Clause 31 amends paragraph 11(3) of the First Schedule to provide for the Society to pay into the Fund money, in the special account mentioned in the existing paragraph 11(1) of that Schedule, that has not been claimed for a period of

6 years. The new sub-paragraphs (4), (5) and (6) of paragraph 11 make provisions similar to those in new sections 70K and 70L relating to limitation of actions and *ex gratia* payments, with appropriate modifications for transferred unclaimed intervention money.

Clause 32 amends the Act to delete all references to “(Cap. 322)” and “(Cap. 322, R 5)” since the meaning of “Rules of Court” in section 2(1) of the Interpretation Act (Cap. 1) applies.

Clause 33 makes related amendments to sections 18M and 80(2A)(g) of the Supreme Court of Judicature Act to facilitate representation in the Singapore International Commercial Court, or in an appeal from that Court, by a law expert.

Clause 34 contains saving and transitional provisions, relating to certain amendments in the Bill. The clause also gives the Minister power to make rules of a saving and transitional nature.

EXPENDITURE OF PUBLIC MONEY

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