

## **Annex D**

# Legal Profession (Amendment) Bill

Bill No. /2014

*Read the first time on .*

A BILL

*intituled*

An Act to amend the Legal Profession Act (Chapter 161 of the 2009 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 2014 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

### 5 New Part IVB

2. The Legal Profession Act (referred to in this Act as the principal Act) is amended by inserting, immediately before Part V, the following Part:

#### “PART IVB

#### 10 FOREIGN REPRESENTATION IN SINGAPORE INTERNATIONAL COMMERCIAL COURT

#### Interpretation of this Part

36O. In this Part, unless the context otherwise requires —

15 “complaints committee” means a complaints committee appointed under section 36Q(5);

“relevant appeal” means such appeal, from any judgment given or order made by the Singapore International Commercial Court, as may be prescribed for the purposes of this definition;

20 “relevant proceedings” means such proceedings in the Singapore International Commercial Court as may be prescribed for the purposes of this definition;

“secretary” means the secretary of every complaints committee appointed under section 36Q(7);

25 “SICC registrar” means the registrar of the Singapore International Commercial Court, and includes a deputy registrar and an assistant registrar of the Singapore International Commercial Court;

30 “Singapore International Commercial Court” means the Division of the High Court constituted under

section 18A of the Supreme Court of Judicature Act  
(Cap. 322).

**Registration of foreign lawyer to act in relation to relevant proceedings**

5       **36P.**—(1) Notwithstanding anything to the contrary in this Act, but without prejudice to section 15, a foreign lawyer who is registered under this section may do all or any of the following:

- (a) appear and plead in any relevant proceedings;
- 10       (b) appear and plead in the Court of Appeal in any relevant appeal;
- (c) represent any party to any relevant proceedings or relevant appeal in any matter concerning those proceedings or that appeal (as the case may be);
- 15       (d) give advice, prepare documents and provide any other assistance in relation to or arising out of any relevant proceedings or relevant appeal.

(2) An application for any registration under this section shall be —

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

25       (3) The SICC registrar may register a foreign lawyer under this section subject to such conditions as may be prescribed.

(4) A Judge may, of his own motion or on the application of any party, cancel the registration of a foreign lawyer under this section, if the foreign lawyer fails to comply with any condition referred to in subsection (3).

30       (5) No appeal shall lie from any order made by a Judge under subsection (4).

**Complaints against foreign lawyers registered under section 36P**

5 **36Q.—(1)** Every foreign lawyer who is registered under section 36P shall be subject to the control of the Supreme Court and shall be liable on due cause shown —

- (a) to have his registration under section 36P cancelled or suspended (for such period as the court may think fit);
- (b) to pay a penalty of not more than \$100,000;
- (c) to be censured; or
- 10 (d) to suffer the punishment referred to in paragraph (b) in addition to the punishment referred to in paragraph (a) or (c).

(2) Any complaint of the conduct of a foreign lawyer who is registered under section 36P —

- 15 (a) shall be made to the SICC registrar in writing; and
- (b) subject to subsection (3), shall be supported by such statutory declaration as the SICC registrar may require.

20 (3) No statutory declaration shall be required if the complaint is made by any Judge, Judicial Commissioner or International Judge of the Supreme Court, the Attorney-General, the Council or any public officer.

25 (4) Where any complaint is made to the SICC registrar of the conduct of a foreign lawyer registered under section 36P, the SICC registrar shall —

- (a) furnish the foreign lawyer a copy of the complaint; and
- (b) make a request to the Chief Justice to appoint a complaints committee —
  - 30 (i) to review the complaint; and
  - (ii) if the complaints committee is of the opinion that there is a prima facie case for an

investigation into the complaint, to hear and investigate the complaint.

(5) The Chief Justice may appoint one or more complaints committees, each comprising —

- 5 (a) a chairman, who shall be a person who has at any time held office as a Judge or Judicial Commissioner of the Supreme Court;
- (b) an advocate and solicitor of not less than 12 years' standing; and
- 10 (c) a foreign lawyer of not less than 12 years' standing.

(6) The Chief Justice may at any time —

- (a) revoke the appointment of a complaints committee;
- (b) remove any member of a complaints committee; or
- (c) fill any vacancy in a complaints committee.

15 (7) The Chief Justice shall appoint a solicitor to be the secretary of every complaints committee.

(8) A complaints committee appointed in respect of a complaint of the conduct of a foreign lawyer who is registered under section 36P —

- 20 (a) may, in the course of its review of the complaint, require the complainant or the foreign lawyer to answer any inquiry or to furnish any record that the complaints committee considers relevant for the purposes of the review;
- 25 (b) shall complete its review of the complaint within 4 weeks after the date of its appointment;
- (c) shall, upon completing the review —
  - 30 (i) if it is of the opinion that there is a prima facie case for an investigation into the complaint, proceed to hear and investigate the complaint; or

(ii) 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 foreign lawyer; and

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(d) may, regardless of whether paragraph (c)(i) or (ii) applies, invite the complainant to make a complaint of the conduct of the foreign lawyer to either or both of the following:

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(i) the foreign authority having the function conferred by law of authorising or registering persons to practise law in the state or territory in which the foreign lawyer is duly authorised or registered to practise law;

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(ii) any relevant professional disciplinary body of the state or territory in which the foreign lawyer is duly authorised or registered to practise law.

(9) If a complaints committee proceeds to hear and investigate a complaint of the conduct of a foreign lawyer who is registered under section 36P, it shall give the foreign lawyer a reasonable opportunity to be heard by it, and shall, within 12 weeks after the date of its appointment —

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(a) record its findings in relation to the facts of the case; and

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(b) determine that —

(i) no cause of sufficient gravity for disciplinary action exists against the foreign lawyer;

(ii) while no cause of sufficient gravity for disciplinary action exists against the foreign lawyer, the foreign lawyer should be given a warning, reprimanded or ordered to pay a penalty sufficient and appropriate to the misconduct committed; or

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(iii) cause of sufficient gravity for disciplinary action exists against the foreign lawyer.

(10) The Chief Justice may, on the application of a complaints committee, grant to the complaints committee either or both of the following:

(a) an extension of the period specified in subsection (8)(b) not extending beyond a period of 6 weeks after the date of the appointment of the complaints committee;

(b) an extension of the period specified in subsection (9).

(11) The opinion and determination of a complaints committee under subsection (8)(c)(ii), and the findings and determination of a complaints committee under subsection (9), shall be in the form of a report, of which the secretary shall —

(a) submit a copy to each of the Chief Justice and the SICC registrar; and

(b) supply a copy to each of the complainant and the foreign lawyer concerned.

(12) Where a complaints committee makes a determination under subsection (9)(b)(ii), it may give the foreign lawyer concerned a warning, reprimand him or order him to pay a penalty of not more than \$20,000.

(13) Where a complaints committee makes a determination under subsection (9)(b)(iii) —

(a) except in any case where the complainant is any Judge, Judicial Commissioner or International Judge of the Supreme Court, the complainant shall make an application under section 36S within 3 weeks after the date on which he is supplied under subsection (11)(b) a copy of the report containing the determination;

(b) the Chief Justice may appoint a solicitor to make an application under section 36S, if —



- (i) the complainant is any Judge, Judicial Commissioner or International Judge of the Supreme Court; or
- 5 (ii) the complainant (not being any Judge, Judicial Commissioner or International Judge of the Supreme Court) fails to comply with paragraph (a), and the Chief Justice is satisfied that it is in the public interest for such an application to be made; and
- 10 (c) the complaint shall be deemed to be withdrawn, if —
- (i) the complainant (not being any Judge, Judicial Commissioner or International Judge of the Supreme Court) fails to comply with paragraph (a); and
- 15 (ii) no solicitor is appointed under paragraph (b) within 6 weeks after the date on which a copy of the report containing the determination is submitted to the Chief Justice under subsection (11)(a).
- 20 (14) Where a complaints committee makes a determination under subsection (9)(b)(i), (ii) or (iii), the complaints committee may —
- (a) make an order for the payment of costs by the complainant or the foreign lawyer concerned; and
- 25 (b) in such order, specify the amount of those costs or direct that the amount be taxed by the SICCR registrar.
- (15) All the members of a complaints committee shall be present to constitute a quorum for a meeting of the complaints committee.
- 30 (16) Any questions arising at a meeting of a complaints committee shall be determined by a majority of votes of the members of the complaints committee.
- (17) Any resolution or decision in writing signed by all the members of a complaints committee shall be as valid and

effectual as if it had been made or reached at a meeting of the complaints committee where all of its members were present.

5 (18) A complaints committee may, for the purposes of reviewing a complaint or hearing and investigating a complaint, require the complainant or the foreign lawyer concerned to answer any question or furnish any document that the complaint committee considers relevant.

(19) For the purposes of any complaint heard and investigated by a complaints committee —

- 10 (a) the complaints committee may administer oaths; and  
 (b) the complainant, the foreign lawyer concerned and the secretary may sue out subpoenas to testify or to produce documents.

15 (20) No person shall be compelled under any subpoena referred to in subsection (19)(b) to produce any document which he could not be compelled to produce at the trial of an action.

20 (21) A subpoena referred to in subsection (19)(b) shall be served and may be enforced as if it was a subpoena issued in connection with a civil action in the High Court.

(22) Any person giving evidence before a complaints committee shall be legally bound to tell the truth.

#### **Application for review of decision of complaints committee**

25 **36R.—**(1) Where a complaints committee has made a determination under section 36Q(8)(c)(ii) or (9)(b)(i) or (ii), the complainant or the foreign lawyer concerned may, within 14 days after being supplied under section 36Q(11)(b) a copy of the report containing the determination, apply to a Judge for a review of that determination.

- 30 (2) An application under subsection (1) shall be —  
 (a) made by originating summons; and  
 (b) served on —

- (i) the complainant, if he is not the applicant;
- (ii) the foreign lawyer concerned, if he is not the applicant; and
- (iii) the secretary.

5 (3) Upon receiving the application, the secretary shall file in court the report containing the determination and the record of the hearing and investigation by the complaints committee (if any).

(4) The Judge hearing the application —

10 (a) shall have full power to determine any question necessary to be determined for the purpose of doing justice in the case, including any question as to the correctness, legality or propriety of the determination of the complaints committee, or as to the regularity of  
15 any proceedings of the complaints committee; and

(b) may make such orders as the Judge thinks fit, including —

- (i) an order authorising the complainant to make an application under section 36S;
- 20 (ii) an order setting aside the determination of the complaints committee and directing —
  - (A) the complaints committee to proceed to hear and investigate the complaint, or to rehear and reinvestigate the complaint; or
  - 25 (B) the SICC registrar to make a request to the Chief Justice for the appointment of another complaints committee to review, or to hear and investigate, the complaint; or
- 30 (iii) an order setting aside any warning given by, or any reprimand or order of, the complaints committee under section 36Q(12), or varying

the amount of the penalty payable under any such order of the complaints committee.

(5) If the Judge makes an order authorising the complainant to make an application under section 36S —

- 5           (a) the complainant shall make that application within 3 weeks after the date of the order; and
- (b) the complaint shall be deemed to be withdrawn, if the complainant fails to comply with paragraph (a).

10           (6) There shall be no appeal against a decision of the Judge under subsection (4).

**Application for cancellation of registration under section 36P, etc.**

15           **36S.—**(1) An application for an order that a foreign lawyer who is registered under section 36P suffer any of the following punishments shall be made by originating summons:

- (a) have his registration under section 36P cancelled or suspended (for such period as the court may think fit);
- (b) pay a penalty of not more than \$100,000;
- (c) be censured;
- 20           (d) suffer the punishment referred to in paragraph (b) in addition to the punishment referred to in paragraph (a) or (c).

25           (2) An application under subsection (1) shall be heard by a court of 3 Judges of the Supreme Court, and there shall be no appeal from the decision of that court.

(3) The court of 3 Judges —

- 30           (a) shall have full power to determine any question necessary to be determined for the purpose of doing justice in the case, including any question as to the correctness, legality or propriety of the determination of the complaints committee, or as to the regularity of any proceedings of the complaints committee;

(b) may make an order setting aside the determination of the complaints committee and directing —

(i) the complaints committee to rehear and reinvestigate the complaint; or

(ii) the SICC registrar to make a request to the Chief Justice for the appointment of another complaints committee to review, or to hear and investigate, the complaint; or

(c) may direct the SICC registrar to inform either or both of the following of the decision of the court of 3 Judges:

(i) the foreign authority having the function conferred by law of authorising or registering persons to practise law in the state or territory in which the foreign lawyer is duly authorised or registered to practise law;

(ii) any relevant professional disciplinary body of the state or territory in which the foreign lawyer is duly authorised or registered to practise law.

(4) The Chief Justice or any other Judge of the Supreme Court shall not be a member of the court of 3 Judges when the application under subsection (1) is in respect of a complaint made by him.

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

(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 shall be prohibited from reapplying for such registration until after that date; or

(b) in any other case, the foreign lawyer shall be permanently prohibited from reapplying for registration under section 36P.

### **Restriction of judicial review**

36T.—(1) Except as provided in sections 36R and 36S, there shall be no judicial review in any court of any act done or decision made by a complaints committee.

5 (2) In this section, “judicial review” includes proceedings instituted by way of —

(a) an application for a Mandatory Order, a Prohibiting Order or a Quashing Order; and

10 (b) an application for a declaration or an injunction, or any other suit or action, relating to or arising out of any act done or decision made by the complaints committee.

### **Provisions as to penalties payable under this Part**

15 36U.—(1) Where the court or a complaints committee has ordered a foreign lawyer to pay a penalty under this Part, the foreign lawyer shall pay the penalty to the Registrar of the Supreme Court.

(2) Any penalty payable under subsection (1) which is not paid may be recoverable by the Government as a judgment debt.

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(3) All sums collected by the Registrar of the Supreme Court under subsection (1) or recovered by the Government under subsection (2) shall be paid into the Consolidated Fund.

### **Rules for this Part**

25 36V.—(1) The Rules Committee may make such rules as may be necessary or expedient for the purposes of this Part.

(2) Without prejudice to the generality of subsection (1), the Rules Committee may make rules —

30 (a) to prescribe anything which may be prescribed under this Part;

(b) to prescribe any condition for eligibility to apply for registration under section 36P;

- (c) to prescribe the conditions that a foreign lawyer registered under section 36P must comply with;
- (d) to provide, without prejudice to the generality of section 36P, 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;
- (e) to provide for —
- (i) the payment of fees for any application for or renewal of any registration under section 36P; and
  - (ii) all other matters related thereto;
- (f) to provide for the cancellation or expiration of any registration under section 36P;
- (g) to require the submission of information and particulars relating to any foreign lawyer registered under section 36P;
- (h) to provide for the form and manner in which the register of foreign lawyers registered under section 36P is to be kept;
- (i) to provide for the issuance and amendment of certificates of registration and certified true copies thereof, and for the payment of fees in relation thereto;
- (j) for regulating foreign lawyers registered under section 36P;
- (k) for regulating the professional practice, etiquette and conduct of foreign lawyers registered under section 36P;
- (l) for regulating the review, and the hearing and investigation, of a complaint by a complaints committee; and
- (m) for regulating and prescribing the procedure and practice to be followed in connection with any

application under section 36R or 36S and any proceedings under section 36R or 36S.”.

**New section 83A**

3. The principal Act is amended by inserting, immediately after  
5 section 83, the following section:

**“Power to discipline regulated foreign lawyers**

**83A.—**(1) Every regulated foreign lawyer shall be subject to the control of the Supreme Court and shall be liable on due cause shown —

- 10 (a) to have his registration under section 36B, 36C or 36D cancelled or suspended (for such period as the court may think fit), to have his registration under section 36P (if any) cancelled or suspended (for such period as the court may think fit), or to have his  
15 approval under section 130L(1) revoked or suspended (for such period, not exceeding 5 years, as the court may think fit), as the case may be;
- (b) to pay a penalty of not more than \$100,000;
- (c) to be censured; or
- 20 (d) to suffer the punishment referred to in paragraph (b) in addition to the punishment referred to in paragraph (a) or (c).

(2) Such due cause may be shown by proof that the regulated foreign lawyer —

- 25 (a) has been convicted of a criminal offence, implying a defect of character which makes him unfit for his profession;
- (b) has been guilty of fraudulent or grossly improper conduct in the discharge of his professional duty or  
30 guilty of such a breach of any usage or rule of conduct made under section 130W(2)(u) as amounts to improper conduct or practice as a regulated foreign lawyer;



- (c) has been adjudicated bankrupt and has been guilty of any of the acts or omissions mentioned in section 124(5)(a), (b), (c), (d), (e), (f), (h), (i), (k), (l) or (m) of the Bankruptcy Act (Cap. 20);
- 5 (d) has tendered or given or consented to retention, out of any fee payable to him for his services, of any gratification for having procured the employment in any legal business of himself, of any advocate and solicitor or, in relation only to the practice of
- 10 Singapore law, of any other regulated foreign lawyer;
- (e) has, directly or indirectly, procured or attempted to procure the employment of himself, of any advocate and solicitor or, in relation only to the practice of Singapore law, of any other regulated foreign lawyer
- 15 through or by the instruction of any person to whom any remuneration for obtaining such employment has been given by him or agreed or promised to be so given;
- (f) has accepted employment in any legal business
- 20 through a person who has been proclaimed a tout under any written law relating thereto;
- (g) has been guilty of such misconduct unbefitting a regulated foreign lawyer as a member of an honourable profession;
- 25 (h) carries on by himself or any person in his employment any trade, business or calling that detracts from the profession of law or is in any way incompatible with it, or is employed in any such trade, business or calling;
- 30 (i) has contravened any of the provisions of this Act in relation thereto if such contravention warrants disciplinary action; or
- (j) has been disbarred, struck off, suspended, ordered to pay a penalty, censured or reprimanded in his capacity

as a legal practitioner by whatever name called in any other country.

(3) In any proceedings instituted under this Part against a regulated foreign lawyer, the court may in addition to the facts of the case take into account his past conduct in order to determine what order should be made.

(4) In any proceedings instituted under this Part against a regulated foreign lawyer consequent upon his conviction for a criminal offence, an Inquiry Committee, a Disciplinary Tribunal and a court of 3 Judges of the Supreme Court referred to in section 98 shall accept his conviction as final and conclusive.

(5) Subject to subsection (6), sections 36Q, 36R and 36S shall not apply to a regulated foreign lawyer who is registered under section 36P.

(6) Where any complaint of the conduct of a foreign lawyer who is registered under section 36P is made in accordance with section 36Q(2) before the foreign lawyer becomes a regulated foreign lawyer, then —

- (a) sections 36Q, 36R and 36S shall continue to apply to the foreign lawyer in respect of that complaint;
- (b) this Part shall not apply to the foreign lawyer in respect of that complaint; and
- (c) unless that complaint is withdrawn or deemed to be withdrawn, this Part shall not apply to the foreign lawyer in respect of any other complaint relating to the same subject-matter as that complaint.”.

#### **Amendment of section 85**

4. Section 85 of the principal Act is amended by deleting subsection (3) and substituting the following subsection:

“(3) Any Judge, Judicial Commissioner or International Judge of the Supreme Court, the Attorney-General, the Director of Legal Services or the Institute may at any time refer to the

Society any information touching upon the conduct of a regulated legal practitioner, and the Council shall —

- (a) refer the matter to the Chairman of the Inquiry Panel; or
- 5 (b) where the Judge, Judicial Commissioner or International Judge, the Attorney-General, the Director of Legal Services or the Institute requests that the matter be referred to a Disciplinary Tribunal, apply to the Chief Justice to appoint a Disciplinary Tribunal.”.

#### Amendment of section 98

5. Section 98 of the principal Act is amended —

- (a) by deleting subsection (1) and substituting the following subsection:

15 “(1) Each of the following applications shall be made by originating summons:

- (a) an application for an order that an advocate and solicitor —
  - (i) be struck off the roll;
  - 20 (ii) be suspended from practice for a period not exceeding 5 years;
  - (iii) pay a penalty of not more than \$100,000;
  - (iv) be censured; or
  - 25 (v) suffer the punishment referred to in sub-paragraph (iii) in addition to the punishment referred to in sub-paragraph (ii) or (iv);
- (b) an application for an order that a regulated foreign lawyer —
  - 30 (i) have his registration under section 36B, 36C or 36D cancelled or suspended (for such period as the court may think fit),

have his registration under section 36P (if any) cancelled or suspended (for such period as the court may think fit), or have his approval under section 130L(1) revoked or suspended (for such period, not exceeding 5 years, as the court may think fit), as the case may be;

(ii) pay a penalty of not more than \$100,000;

(iii) be censured; or

(iv) suffer the punishment referred to sub-paragraph (ii) in addition to the punishment referred to in sub-paragraph (i) or (iii);

(c) an application for an order that an advocate and solicitor or a regulated foreign lawyer be required to answer allegations contained in an affidavit.”; and

(b) by inserting, immediately after subsection (9), the following subsection:

“(9A) Where a regulated foreign lawyer’s registration under section 36P has been cancelled pursuant to an order of the court of 3 Judges —

(a) in any case where the order prohibits the regulated foreign lawyer from reapplying for registration under section 36P until after a date specified in the order, the regulated foreign lawyer shall be prohibited from reapplying for such registration until after that date; or

(b) in any other case, the regulated foreign lawyer shall be permanently prohibited from reapplying for registration under section 36P.”.

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### EXPLANATORY STATEMENT

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

[The rest of the Explanatory Statement will be inserted when the Bill has been finalised.]

### EXPENDITURE OF PUBLIC MONEY

This Bill will involve the Government in extra financial expenditure, the exact amount of which cannot at present be ascertained.

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Note 1: LP(A)Bill2014(SICC)-(v010)