

F. GUIDELINES FOR EXEMPTION FROM SITTING ALL OR PARTS OF THE OVERSEAS LAWYERS QUALIFICATION EXAMINATION

These Guidelines set out the current general principles that will be followed by the Law Society when considering applications to be exempt from sitting all or part of the Examination, and will be reviewed from time to time.

You are advised to read these Guidelines carefully before you submit your application. It is the responsibility of the applicants to comply with these Guidelines and the deadlines in Section E. Reasons will not be given to the applicants whose applications fail to comply with the guidelines and/or deadlines.

Applicants must satisfy a high standard in order to be granted exemption. If an applicant fails a particular Head, such failure will be taken into account by the Law Society in the event that the applicant subsequently applies for an exemption from sitting that particular Head.

Applicants admitted to practise in common law jurisdictions are not required to sit Head V upon proof to the satisfaction of the Law Society that they have had at least 2 years' experience in the practice of law of such common law jurisdictions.

(a) with 5 or more years of experience in the practice of law

Only those applicants who are able to demonstrate to the Law Society's satisfaction that they have 5 or more years of experience in the practice of law of the common law jurisdictions are eligible to apply for exemption or be exempted from sitting any of the five written Heads of the Examination.

(b) with less than 5 years of experience in the practice of law

Applicants who do not satisfy the 5 year experience requirement will be required to sit the five written Heads of the Examination:

| | |
|----------|-----------------------------------|
| Head I | Conveyancing |
| Head II | Civil and Criminal Procedure |
| Head III | Commercial and Company Law |
| Head IV | Accounts and Professional Conduct |
| Head VI | Hong Kong Constitutional Law |

and are NOT eligible to apply for exemption from any Head.

Applicants admitted to practise in non-common law jurisdictions

(a) with 5 or more years of experience in the practice of the law of their jurisdiction of admission

Applicants are required to sit and pass the five written Heads of the Examination and the Oral Head V, Principles of Common Law, unless otherwise exempted from any of those Heads in accordance with these Guidelines.

(b) with less than 5 years of experience in the practice of law

Applicants should refer to rule 5(2) of the Overseas Lawyers (Qualification for Admission) Rules.

1. Applicants Admitted in *Common Law* Jurisdictions

(a) Category A - applicants admitted to practise as Solicitors, Barristers and Solicitors, Advocates or Attorneys and who have at least 5 years of experience in the practice of law

Applicants who are able to satisfy the Law Society that they have 5 or more years of experience in the practice of law (*see Notes below*):

- are required to sit Head I (Conveyancing), unless otherwise exempted in accordance with the guideline for exemption under Category C or E.
- are required to sit Head VI (Hong Kong Constitutional Law), unless otherwise exempted in accordance with the guideline for exemption under Category D.
- are exempt from sitting Head II (Civil and Criminal Procedure) under rule 4(1) of the Overseas Lawyers (Qualification for Admission) Rules.
- are eligible to apply for exemption from sitting Heads III (Commercial and Company Law) and IV (Accounts and Professional Conduct) of the Examination. Exemption from these Heads may be granted if they are able to demonstrate, to the Law Society's satisfaction, experience, knowledge and/or training which is relevant to these Heads.
- In respect of an application for exemption from sitting Head III (Commercial and Company Law), applicants are referred to paragraph K on pages 32-33 of this Information Package for details of the relevant verification requirements. An Appendix of a non-exhaustive list of practices in Commercial and Company Law for reference is on page 26 of this Information Package. Applicants are required to provide all the details prescribed by paragraph K on pages 32-33 in tabular format and such details must be verified by the employers and submitted to the Law Society for its consideration. The description of the clients can be a generic description without breaching clients' privacy and confidentiality. Failure to do so may result in the application being rejected.

An example of how the information can be set out in tabular format is given below:

| | |
|---|--|
| Types of transactions (including Applicant's role, responsibilities and | |
|---|--|

| | |
|--|--|
| involvement) | |
| Types of Clients | |
| Work undertaken by the Applicant / Experience gained by the Applicant | |
| Period of employment | |

- Demonstration of completion of courses in the subjects covered by the relevant Heads on its own will not be sufficient for the purpose of exemption.
- Exemption from sitting Head IV (Accounts and Professional Conduct) will only be granted where the applicants provide sufficient evidence to demonstrate that they have the experience, knowledge and/or training in relation to the issues covered by this Head.

Tips for presenting prescribed details in tabular format in support of an application for exemption from sitting Head III (Commercial and Company Law)

1. The aim of preparing the tables is to help the Law Society assess the width and depth of knowledge and experience in commercial and company law gained by an applicant in the 10 years immediately preceding the cut-off date.
2. The transactions/cases handled by an applicant and selected to be included in the verification letter should be presented in tabular format. The role taken by the applicant and the specific experience gained by the applicant in each transaction/case should be highlighted.
3. Applicants should avoid using identical or repetitive wordings in the descriptions of the work undertaken and the experience gained in different transactions/cases. If repetitive wordings cannot be avoided due to the similar nature of work undertaken in different transactions/cases, the applicants should provide an explanation as to why all works are in similar nature.
4. The number of transactions/cases in the tables should be proportionate to the years of experience gained by the applicant in commercial and company law. If they are not, applicants should provide an explanation why this is not so.

Notes:

- (1) For the purpose of these Guidelines, the Law Society will regard the following as comprising "*experience in the practice of law*":
- (i) the professional stage of legal education (post-academic and pre-admission), including but not limited to service as a trainee solicitor or articled clerk or a course of practical legal training in lieu of traineeship which satisfies the admission criteria in the applicant's jurisdiction of admission gained in the 10 year period immediately preceding the cut-off date.

Remarks:

- any training period in excess of the statutory training period required for admission is not recognised;
 - if an applicant's statutory training period has been reduced by the regulatory authority as a result of pre-training experience recognised by such regulatory authority as satisfying the admission criteria in the applicant's jurisdiction of admission, the applicant must demonstrate to the satisfaction of the Law Society that such pre-training experience is comparable to the training required for admission and/or is relevant experience in the practice of law and that documentary evidence in addition to the recognition of such pre-training experience by the regulatory authority of the applicant's jurisdiction of admission must be provided;
 - if an applicant has been admitted in more than one jurisdiction and completed articled clerkship or trainee solicitor training or a course of practical legal training in more than one jurisdiction, only the statutory period of articled clerkship or trainee solicitor training or a course of practical legal training required for admission in his jurisdiction of admission as elected by him under rule 8 of the Overseas Lawyers (Qualification for Admission) Rules will count. No double counting of the period of articled clerkship or trainee solicitor training or a course of practical legal training will be recognised; and
 - for example, if there is no statutory requirement for an applicant to complete any trainee solicitor training or the equivalent training in order to be admitted in a jurisdiction, pre-admission experience in that jurisdiction is not recognised.
- (ii) post-admission experience which was:
- (aa) gained in the 10 year period immediately preceding the cut-off date;

- (bb) in the practice of law in the capacity of a practitioner of the law of the jurisdiction in which the applicant was admitted and which the applicant relies on in the application; and
- (cc) properly authorised to do so according to the rules and regulations of the place in which the applicant carried on his practice of law. For instance,
 - If an applicant practises in the PRC based on his non-PRC legal qualification, he has to provide a certified copy of his PRC practising licence or written confirmation issued by the PRC Justice Bureau or other proper authority to verify that he was properly authorised to practise in the PRC as a qualified legal practitioner based on his non-PRC legal qualification.
 - If an applicant practises in Japan based on his non-Japanese legal qualification, he has to provide a certified copy of certificate or written confirmation issued by the Japan Federation of Bar Associations or other proper authority to verify that he was properly authorised to practise in Japan as a qualified legal practitioner based on his non-Japanese legal qualification.

The examples are non-exhaustive.

Remarks:

- In the context of law firms in Hong Kong (whether Hong Kong firms or foreign firms), only experience gained as a registered foreign lawyer will count. Other experience gained by overseas qualified lawyers working in law firms in Hong Kong will not count.
- In order for the in-house experience to be recognised as experience in the practice of law, such experience must be comparable to that of a private practitioner in the practice of the law. The application will be considered on a case-by-case basis.
- The academic qualifications such as LLM cannot be recognised as "experience in the practice of law".
- Part-time experience may not be recognised as "experience in the practice of law".

- Maternity leave taken in respect of employment in Hong Kong in excess of the statutory 14-week maternity leave for each child under the Employment Ordinance Cap. 57 cannot be recognised.
- (2) In order to meet the 5 year experience requirement for exemption from Heads II, III and IV, applicants will have to demonstrate that they have already gained the necessary experience at the cut-off date. Prospective applications will not be accepted.

Procedure for applying for exemption under Category A

To be eligible for exemption from Heads III and IV, applicants must satisfy the Law Society that they have:

- (a) at least 5 years of experience in the practice of law; and
- (b) experience, knowledge and/or training which is relevant to Heads III (Commercial and Company Law) and IV (Accounts and Professional Conduct).

Applicants are required to provide all pertinent details of the nature of their practice and experience. Failure to do so may result in the applications being rejected.

Applicants are required to provide a letter specifying the grounds upon which they seek an exemption from any particular Head of the Examination. The following information must also be provided in support of an application for exemption:

- (1) verification of their service as articled clerks or trainee solicitors or a course of practical legal training in their home jurisdiction, in the form of a letter issued by the firm which employed them;
- (2) verification of any post-academic and pre-admission professional courses undertaken in their home jurisdiction, in the form of a letter or certificate from the institution offering the course;
- (3) verification of periods of post-admission experience in the practice of law, in the form of letter/s issued by the firm/s which have employed them, setting out the precise periods of employment and areas of experience; and
- (4) any other relevant information.

Appendix of non-exhaustive list of practices in Commercial and Company Law for reference:

- | | |
|-----------------------------|--|
| (a) Merger and Acquisition | (i) Trust |
| (b) Initial Public Offering | (j) Partnership |
| (c) Employment | (k) Sale and Purchase of Shares |
| (d) Banking | (l) Shipping, Aviation, International Trade and/or Commodities |
| (e) Securities | (m) Insolvency and Restructuring |
| (f) Intellectual Property | (n) Competition |
| (g) Capital Markets | (o) Construction |
| (h) Insurance | (p) Technology, Media and Telecom |

(b) **Category B - Applicants admitted to practise as Barristers and who have at least 5 years of experience in the practice of law**

Applicants who are able to demonstrate to the Law Society's satisfaction that they have 5 or more years of experience in the practice of law are exempt from sitting Head II under rule 4(1) of the Rules.

Applications by Barristers for exemption from any other Head on the basis of their experience, knowledge and/or training will be considered by the OLQE Eligibility and Exemption Committee on a case-by-case basis.

Procedure for applying for exemption under Category B

Applicants are required to provide a letter specifying the grounds upon which they seek an exemption from any particular Head of the Examination. The information contained in the letter should be supported by original letters of reference addressed to the Law Society from practising lawyers or members of their professional body of at least 5 years' standing, regarding the applicant's experience and any other relevant information. The Law Society may require further information to be provided.

(c) **Category C - Exemption from Head I (Conveyancing)**

Exemption from Head I may be granted where applicants can demonstrate to the Law Society that they have substantial experience in the law and practice of conveyancing in Hong Kong.

Procedure for applying for exemption under Category C

Applicants are required to provide full details of the nature and extent of their conveyancing experience in Hong Kong, supported by a letter of reference from the principal(s) of the firm(s) where they have gained that experience.

(d) **Category D - Exemption from Head VI (Hong Kong Constitutional Law)**

Exemption from Head VI may be granted if applicants completed a course on Hong Kong Constitutional Law provided by the University of Hong Kong, City University of Hong Kong or The Chinese University of Hong Kong. If the course on Hong Kong Constitutional Law was provided by other institutions, applicants are required to provide the syllabus and academic transcript for consideration by the OLQE Eligibility and Exemption Committee and any such application will be determined on a case-by-case basis. The completion of a course on the Constitutional Law of an overseas jurisdiction is not sufficient for exemption purpose.

(e) **Category E - Discretionary exemption in exceptional circumstances**

The Council may in its absolute discretion grant to an applicant from a common law jurisdiction exemption from all or any part of the Examination which the applicant might otherwise be required to sit, if the Council is satisfied that:

- (i) the applicant possesses an expertise not commonly available in Hong Kong; and
- (ii) there will be a benefit to Hong Kong and/or the legal profession in Hong Kong in granting such an exemption.

This exemption will only be granted in exceptional circumstances.

No exemptions have been granted under this Category since it was introduced in 1997.

Applicants should provide full details of the extent of their experience and testimonials in support of their claims as to (i) and (ii) above from senior members of their profession.

2. Applicants Admitted in *Non-Common Law* Jurisdictions

Applicants whose jurisdiction of admission is a non-common law jurisdiction and who have 5 or more years of experience in the practice of the law of their jurisdiction of admission may apply for exemption from any Head of the Examination, which will be considered by the OLQE Eligibility and Exemption Committee on a case-by-case basis.

Exemption may be granted if applicants are able to demonstrate, to the Law Society's satisfaction, experience, knowledge and/or training which is relevant to those Heads.

Demonstration of completion of courses in the subjects covered by the relevant Heads on its own will not be sufficient for the purposes of exemption.

Exemption from sitting Head IV (Accounts and Professional Conduct) will only be granted where the applicants provide sufficient evidence to demonstrate that they have the experience, knowledge and/or training in relation to the issues covered by this Head.

Procedure for making an application for exemption

Applicants are required to provide a letter specifying the grounds upon which they seek a discretionary exemption from any particular Head of the Examination. The information contained in the letter should be supported by original letters of reference addressed to the Law Society from practising lawyers or members of their professional body of at least 5 years' standing, regarding the applicant's experience and any other relevant information. The Law Society may require further information to be provided.