

Overseas Lawyers (Qualification for Admission) Rules

ARRANGEMENT OF RULES

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1. Interpretation

In these Rules -

applicant (申請人) means a person who seeks admission as a solicitor under section 4(1)(b) of the Ordinance;

Examination (考試) means the Overseas Lawyers Qualification Examination which is an assessment of competence in the subjects specified, assessed in the manner specified, in these Rules;

jurisdiction of admission (獲認許的司法管轄區) means, in relation to an overseas lawyer, the foreign jurisdiction the law of which the overseas lawyer is entitled to practise;

non-common law jurisdiction (非普通法司法管轄區) means a jurisdiction that is not a common law jurisdiction;

overseas lawyer (海外律師) means a person entitled to practise the law of a foreign jurisdiction.

2. General qualifications for admission under section 4(1)(b) of the Ordinance

A person is qualified for admission as a solicitor under section 4(1)(b) of the Ordinance if -

- (a) he is an overseas lawyer;
- (b) he is a person of good standing in each jurisdiction in which he has been admitted; and
- (c) he satisfies the requirements specified in section 4 or 5 of these Rules.

3. Society to issue certificate if applicant appears to be qualified

(1) An applicant must provide to the Society such evidence as the Society may require showing that he is a person who appears to be qualified for admission in accordance with these Rules except as regards any requirement to have passed any part of the Examination.

(2) Subject to subsection (2A), if the Society is satisfied that an applicant appears to be so qualified it must issue a certificate to that effect stating any subjects in the Examination which the applicant is required to pass under these Rules.

(2A) The Society may refuse to issue a certificate under subsection (2) where the applicant -

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- (a) is subject to a prohibition from attempting the Examination under section 10(1)(a) or (1A)(a); or
 - (b) has previously been issued a certificate under subsection (2) and that certificate has been revoked by the Society under section 10(1)(b) or (1A)(b).
- (3) A certificate issued under subsection (2) shall remain current for 12 months from the date of its issue by the Society, unless the Society determines otherwise or the certificate is revoked before the expiry of that period under section 10.
- (4) An applicant who does not hold a current certificate issued under subsection (2) may not take the Examination.
- (5) An application under subsection (3) for extension of the validity period of the certificate issued under subsection (2) shall be accompanied by the prescribed fee.

4. Requirements for applicant from common law jurisdiction

- (1) For the purpose of section 2(c), unless the Society otherwise determines, an applicant whose jurisdiction of admission is a common law jurisdiction and who has had not less than 5 years of experience in the practice of the law of any common law jurisdiction must have -
- (a) completed -
 - (i) a bachelor's degree in law obtained from a common law jurisdiction; or
 - (ii) a course of study leading to a qualification which is substantially equivalent to that granted by a Hong Kong tertiary institution and in addition an examination equivalent to the Common Professional Examination Certificate of the University of Hong Kong; or
 - (iii) a period of not less than 5 years as a trainee solicitor or articled clerk,

in the course of which, or in addition to which, the applicant must have completed courses in, or had practical experience in, Contract, Torts, Property, Criminal Law, Equity and Constitutional and Administrative Law or substantially similar subjects or areas; or
 - (b) substantially completed the requirements specified in paragraph (a), and passed such other examinations as the Society may require in the particular case,

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and must have passed the Examination in the subjects referred to in section 7(1)(a)(i), (iii), (iv) and (v).

- (2) For the purpose of section 2(c), unless the Society otherwise determines, an applicant whose jurisdiction of admission is a common law jurisdiction and who has had less than 5 years of experience in the practice of the law of any common law jurisdiction must have -
- (a) satisfied the requirements specified in subsection (1)(a) (except subparagraph (iii)) or subsection (1)(b);
 - (b) satisfied any one of the following further requirements, that is to say -
 - (i) the applicant has completed service as a trainee solicitor or articled clerk, or a course of practical legal training that the Society accepts in place of that service, as required for admission as a lawyer in the applicant's jurisdiction of admission, the period of which is not less than 2 years;
 - (ii) the applicant has had not less than 2 years of post-admission experience (other than as a pupil) in the practice of the law of the applicant's jurisdiction of admission; or
 - (iii) the applicant -
 - (A) has completed service as a trainee solicitor or articled clerk, or a course of practical legal training that the Society accepts in place of that service, as required for admission as a lawyer in the applicant's jurisdiction of admission, the period of which is less than 2 years; and
 - (B) has had post-admission experience (other than as a pupil) in the practice of the law of the applicant's jurisdiction of admission, the period of which is less than 2 years,and the aggregate of those periods is not less than 2 years; and
 - (c) passed the Examination in all the subjects referred to in section 7(1)(a).
- (3) For the purpose of determining the length of an applicant's experience in the practice of the law of any common law jurisdiction under subsections (1) and (2), if an applicant has, during the 10 years immediately preceding an application for taking the Examination or for exemption from taking the Examination -

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- (a) completed service as a trainee solicitor, articled clerk or pupil, or a course of practical legal training that the Society accepts in place of that service, as required for admission as a lawyer in the applicant's jurisdiction of admission;
- (b) provided legal services to the public in the capacity of a lawyer practising the law of any common law jurisdiction; or
- (c) provided legal services otherwise than to the public, in the capacity of a lawyer practising the law of any common law jurisdiction, the nature of which is regarded by the Society as being similar to those under paragraph (b),

any service or training so completed or any services so provided are to be treated as experience in the practice of the law of any common law jurisdiction.

- (4) For the purpose of determining the length of an applicant's post-admission experience in the practice of the law of the applicant's jurisdiction of admission under subsection (2)(b)(ii) or (iii)(B), if the applicant has, during the 10 years immediately preceding an application for taking the Examination –
 - (a) provided legal services to the public in the capacity of a lawyer practising the law of the applicant's jurisdiction of admission; or
 - (b) provided legal services otherwise than to the public, in the capacity of a lawyer practising the law of the applicant's jurisdiction of admission, the nature of which is regarded by the Society as being similar to those under paragraph (a),

any services so provided are to be treated as post-admission experience in the practice of the law of the applicant's jurisdiction of admission.

5. Requirements for applicant from non-common law jurisdiction

- (1) For the purpose of section 2(c), unless the Society otherwise determines, an applicant whose jurisdiction of admission is a non-common law jurisdiction and who has had not less than 5 years of experience in the practice of the law of any non-common law jurisdiction must have –
 - (a) passed the Examination in all written subjects; and
 - (b) passed the Examination in the oral subject of Principles of Common Law.
- (2) For the purpose of section 2(c), unless the Society otherwise determines, an applicant whose jurisdiction of admission is a non-common law jurisdiction and who has had less than 5 years of experience in the practice of the law of any non-common law jurisdiction must have –

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- (a) completed one year of full-time study in Contract, Torts, Property, Criminal Law, Equity and Constitutional and Administrative Law, or part-time study the nature of which is regarded by the Society as being similar to that full-time study;
 - (b) passed, or received a certificate of completion or certificate of satisfactory completion in –
 - (i) the Postgraduate Certificate in Laws and any other examination or course that the Society may require (whether set by it or approved by it); or
 - (ii) any other examination or course that the Society may require (whether set by it or approved by it); and
 - (c) satisfied any one of the following further requirements, that is to say -
 - (i) the applicant has completed service as a trainee solicitor or articled clerk, or a course of practical legal training that the Society accepts in place of that service, as required for admission as a lawyer in the applicant's jurisdiction of admission, the period of which is not less than 3 years;
 - (ii) the applicant has had not less than 3 years of post-admission experience (other than as a pupil) in the practice of the law of the applicant's jurisdiction of admission; or
 - (iii) the applicant –
 - (A) has completed service as a trainee solicitor or articled clerk, or a course of practical legal training that the Society accepts in place of that service, as required for admission as a lawyer in the applicant's jurisdiction of admission, the period of which is less than 3 years; and
 - (B) has had post-admission experience (other than as a pupil) in the practice of the law of the applicant's jurisdiction of admission, the period of which is less than 3 years,
- and the aggregate of those periods is not less than 3 years.
- (3) For the purpose of determining the length of an applicant's experience in the practice of the law of any non-common law jurisdiction under subsections (1) and (2), if an applicant has, during the 10 years immediately preceding an application for taking the Examination or for exemption from taking the Examination –

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- (a) completed service as a trainee solicitor, articled clerk or pupil, or a course of practical legal training that the Society accepts in place of that service, as required for admission as a lawyer in the applicant's jurisdiction of admission;
- (b) provided legal services to the public in the capacity of a lawyer practising the law of any non-common law jurisdiction; or
- (c) provided legal services otherwise than to the public, in the capacity of a lawyer practising the law of any non-common law jurisdiction, the nature of which is regarded by the Society as being similar to those under paragraph (b),

any service or training so completed or any services so provided are to be treated as experience in the practice of the law of any non-common law jurisdiction.

- (4) For the purpose of determining the length of an applicant's post-admission experience in the practice of the law of the applicant's jurisdiction of admission under subsection (2)(c)(ii) or (iii)(B), if the applicant has, during the 10 years immediately preceding an application for taking the Examination –
 - (a) provided legal services to the public in the capacity of a lawyer practising the law of the applicant's jurisdiction of admission; or
 - (b) provided legal services otherwise than to the public, in the capacity of a lawyer practising the law of the applicant's jurisdiction of admission, the nature of which is regarded by the Society as being similar to those under paragraph (a),

any services so provided are to be treated as post-admission experience in the practice of the law of the applicant's jurisdiction of admission.

6. Matters to be taken into account for purposes of sections 4(1) and 5(1)

For the purposes of sections 4(1) and 5(1), the Society, in determining that an applicant is only required to pass the Examination in some of the subjects referred to in those sections –

- (a) must be satisfied that the applicant has had not less than 5 years of experience in the practice of law as required under section 4(1) or 5(1); and
- (b) must have regard to –
 - (i) the nature and extent of the applicant's practical experience in the law of Hong Kong; and
 - (ii) any academic or other qualifications which the applicant may have.

7. The Examination

- (1) The subjects assessed by the Examination are –
 - (a) by written assessment -
 - (i) Conveyancing;
 - (ii) Civil and Criminal Procedure;
 - (iii) Commercial and Company Law;
 - (iv) Accounts and Professional Conduct;
 - (v) Hong Kong Constitutional Law; and
 - (b) by oral assessment, Principles of Common Law.
- (2) The Examination will be held at such times as the Society may determine.

8. Applicants admitted in more than one jurisdiction

If an applicant is an overseas lawyer in respect of more than one jurisdiction, the applicant may, for the purposes of these Rules, elect any one of those jurisdictions as the applicant's jurisdiction of admission.

9. Appeal Procedure

An applicant seeking the issue of a certificate by the Society under section 3 may -

- (a) within one month of receiving notification from the Society of any decision of the Society under that section, ask for his application to be reviewed upon payment of the prescribed fee; and
- (b) within 3 months of receiving notification from the Society of its decision on a request for review under paragraph (a), apply to the Court of First Instance which may -
 - (i) affirm the decision of the Society; or
 - (ii) make such other order as the Court thinks fit.

10. Unsuitability of prospective solicitor

- (1) If the Society at any time is not satisfied as to the suitability to become a solicitor of an applicant to whom it has issued a certificate under section 3 it may on such terms as it determines, impose any of the following sanctions, that is it may –
 - (a) prohibit an attempt at the Examination; or
 - (b) revoke that certificate; or
 - (c) oppose admission as a solicitor.
- (1A) If the Society at any time becomes aware of any misconduct in relation to an Examination committed by an applicant taking the Examination, it may, on such terms as it determines, impose any of the following sanctions, that is it may -
 - (a) prohibit the applicant from attempting the Examination, either permanently or for such period as the Society thinks fit;
 - (b) revoke the certificate issued to him under section 3;
 - (c) disqualify the applicant from any or all the subjects in the relevant sitting of the Examination and annul the results of any or all subjects taken in that sitting; or
 - (d) oppose his admission as a solicitor.
- (2) If the Society imposes a sanction under subsection (1) or (1A) the applicant may -
 - (a) within one month of receiving notification from the Society of its decision, ask for the matter to be reviewed; and
 - (b) within 3 months of receiving notification from the Society of its decision on an application for review under paragraph (a), apply to the Court of First Instance which may –
 - (i) affirm the decision of the Society; or
 - (ii) make such other order as the Court thinks fit.
- (3) If the Society has imposed a sanction under subsection (1) or (1A) the applicant may -
 - (a) apply to the Society to remove the sanction;

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- (b) within 3 months of receiving notification from the Society of its decision on an application for the removal of a sanction under paragraph (a), apply to the Court of First Instance which may -
 - (i) affirm the decision of the Society; or
 - (ii) make such other order as the Court thinks fit.

11. Forms and fees

- (1) An applicant wishing to take the Examination must give notice to the Society in a form approved by the Society and pay any fee prescribed for such Examination.
- (2) An applicant wishing to make an application or give notice to the Society in accordance with these Rules must do so in a form approved by the Society and pay the prescribed fee.
- (3) In respect of any application made or notice given, the Society may -
 - (a) require the applicant to furnish such further information as it considers necessary;
 - (b) require the application to be supported by such evidence as it considers necessary, and may require facts relevant to any application to be deposed to by statutory declaration, and may require the attendance of the applicant for interview.

12. *(Repealed)*