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## ***6. Overseas Lawyers (Qualification for Admission) Rules***

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### **ARRANGEMENT OF RULES**

#### **Rule**

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## **1. Interpretation**

In these Rules -

"common law jurisdiction" (普通法司法管轄區) means a jurisdiction in which the law is substantially based on the common law, and "non-common law jurisdiction" (非普通法司法管轄區) shall be construed accordingly;

"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;

"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 his jurisdiction of admission; 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) A person wishing to seek admission as a solicitor pursuant to section 4(1)(b) of the Ordinance ("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-
  - (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  - (b) has previously been issued a certificate under subsection (2) and that certificate has been revoked by the Society under section 10(1)(b) or (1A)(b).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) A person 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, a person whose jurisdiction of admission is a common law jurisdiction and who has had not less than 5 years of experience in the practice of law must have -
  - (a) completed -
    - (i) a bachelor's degree in law; 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 set out in paragraph (a), and passed such other examinations as the Society may require in the particular case,and must have passed the Examination in the subjects referred to in section 7(1)(a)(i), (iii) and (iv).
- (2) For the purpose of section 2(c), unless the Society otherwise determines, a person whose jurisdiction of admission is a common law jurisdiction but who has not had 5 years of experience in the practice of law must have -
  - (a) satisfied the requirements specified in subsection 1(a) or (b); and
  - (b) satisfied any one of the following further requirements, that is to say -
    - (i) he has completed at least 2 years of service as a trainee solicitor or articled clerk in that jurisdiction;
    - (ii) he has had not less than 2 years of post-admission experience in the practice of the law of that jurisdiction; or
    - (iii) he has completed part of the period of service mentioned in subparagraph (i) and had part of the period of experience mentioned in subparagraph (ii), and the aggregate of those periods is not less than 2 years,and must have passed the Examination in all written subjects.

**5. Requirements for applicant from non-common law jurisdiction**

- (1) For the purpose of section 2(c), unless the Society otherwise determines, a person 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 the jurisdiction of his admission 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, a person whose jurisdiction of admission is a non-common law jurisdiction and who has not had 5 years of experience in the practice of the law of the jurisdiction of his admission must have -
  - (a) completed one year of full-time study in Contract, Torts, Property, Criminal Law, Equity and Constitutional and Administrative Law;
  - (b) obtained the Postgraduate Certificate in Laws; and
  - (c) satisfied any one of the following further requirements, that is to say -
    - (i) he has completed the period of service as a trainee solicitor or articulated clerk required for admission as a solicitor in that jurisdiction or in Hong Kong, and where such period is less than 3 years, has had in addition a period of post-admission experience in the practice of the law of that jurisdiction, and the aggregate of those periods is not less than 3 years;
    - (ii) he has had a period of not less than 3 years of post-admission experience in the practice of the law of that jurisdiction; or
    - (iii) he has had part of the period of experience mentioned in subparagraph (ii) and has had a period of service as a trainee solicitor or articulated clerk and the aggregate of those periods is not less than 3 years.

**6. Matters relevant to sections 4 and 5**

- (1) In making a determination under section 4 or 5, the Society shall have regard to the nature and extent of the applicant's practical experience in the law of Hong Kong and any academic or other qualification.
- (2) For the purposes of sections 4 and 5, a person has not had 5 years of experience in the practice of law unless he has since his admission for a period, or for periods in aggregate, of not less than 5 years during the immediately preceding 10 years been engaged in work that would if undertaken in Hong Kong be similar to that usually undertaken by a solicitor in Hong Kong in the course of his practice.

**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; and
  - (b) by oral assessment, Principles of Common Law.
- (2) The Examination will be held at such times as the Society may determine.

**8. Persons admitted in more than one jurisdiction**

Where a person is an overseas lawyer for the purpose of these Rules in respect of more than one jurisdiction, then -

- (a) subject to paragraph (b), the jurisdiction in which he was first admitted shall be his jurisdiction of admission for the purpose of these Rules;
- (b) if the person has had not less than 3 years post-admission experience in the practice of the law of any such jurisdiction, he may elect to treat that jurisdiction as his jurisdiction of admission.

**9. Appeal Procedure**

A person 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 any person 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 a person taking the Examination, it may, on such terms as it determines, impose any of the following sanctions, that is it may -
  - (a) prohibit the person 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 that person 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 unadmitted person 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 unadmitted person may -
  - (a) apply to the Society to remove the sanction;
  - (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) A person 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) A person 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 or the person giving notice 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. Transitional**

- (1) In this section -

"Paralegal Scheme" (法律輔助人員計劃) means the scheme operated by the Society under which an overseas lawyer from a common law jurisdiction may be approved by the Society to be employed as a paralegal, under the supervision of a solicitor or solicitors in a Hong Kong firm, for the purpose of satisfying the requirements specified in the pre-amended section 4(2)(b)(ii) or (iii);
- (2) In relation to any provision mentioned in this section, "pre-amended" shall be construed as referring to that provision in force immediately before 1 January 2000.
- (3) The pre-amended subparagraph (ii) or (iii) of section 4(2)(b) shall continue to apply to a person whose employment as a paralegal in a Hong Kong firm has been first approved by the Society under the Paralegal Scheme before 1 January 2000, as if that subparagraph had not been amended by the Overseas Lawyers (Qualification for Admission) (Amendment) Rules 1999, if the Society is satisfied that the person has satisfied the requirements specified in that pre-amended subparagraph -
  - (a) on or before 31 December 2001; or
  - (b) (in the case where the Society is satisfied that there are exceptional circumstances) before such later date as the Society may approve in any particular case.