

Higher Rights of Audience – Frequently Asked Questions

1. Who can acquire higher rights of audience (“HRA”)?

Under new section 39I of the Legal Practitioners Ordinance which came into operation on 22 June 2012, solicitors who, during the period of 7 years immediately before the date of application:

- have at least 5 years' post-qualification practice,
- of which at least 2 years must have been in Hong Kong, and
- have satisfied further eligibility requirements under the Higher Rights of Audience Rules,

may apply to the Higher Rights Assessment Board (“the Assessment Board”) for HRA before the High Court, the Court of Appeal and the Court of Final Appeal in civil proceedings, criminal proceedings, or both.

Under new section 39L of the Legal Practitioners Ordinance, the Board has to be satisfied that the applicant:

- has acquired sufficient litigation experience within the period of 3 years immediately before the date of the application, and
- is in all other respects a suitable person.

2. How does the Assessment Board assess the professional competence of an applicant?

Eligibility requirements are threshold requirements only. An applicant should also satisfy other conditions such as:

- experience and competence in litigation and advocacy, whether written or oral.
- Being able to demonstrate to the Assessment Board that he or she possesses the necessary professional competence to exercise HRA. Such competence is to be demonstrated by the applicant sitting and passing a full assessment of professional competence at the time and place directed by the Assessment Board.

The assessment consists of examinations on the matters required by the competency standards.

(See rule 4 of Higher Rights of Audience Rules for details.)

3. What are the standards of professional competence under which an applicant is assessed?

There are different parts of an assessment, which constitute one “advocacy assessment”.

All parts must be passed in order to successfully complete an assessment.

There will be one assessment mark, either a “pass” or “fail”. The mark will be derived by aggregating the marks of all parts of an assessment with the following weighting:

I	Competency in advocacy generally	40%
II	Competency in civil and/or criminal advocacy	20%
III	Competence in matters of evidence and procedure	25%
IV	Ethics and appropriate court conduct	15%

The pass mark in respect of each part of an assessment, and of the assessment itself, is 50%.

I General Advocacy

Applicants should:

- Demonstrate appropriate techniques for handling witnesses as well as sound skills in legal and factual submissions in a contested, adversarial context;
- Be able to analyze and understand the case, assimilate the facts and apply relevant statute and case law in order to react to unexpected events in court;
- Be able to present legal arguments to the court cogently and accurately; and
- Be able to understand the importance of a clear trial strategy, and make objections and conduct an examination in chief appropriately and effectively.

II Civil and Criminal Advocacy

In the assessment on **civil advocacy**, applicants should demonstrate their ability to:

- Comply with rules of civil procedure throughout the trial process;
- Recognize the costs implications faced at all stages of preparation and during hearings including the trial;
- Apply practice directions where relevant; and
- Appropriately advise the client on alternative dispute resolution procedures.

In the assessment on **criminal advocacy**, applicants should demonstrate their ability to:

- Understand and comply with rules of criminal procedure throughout the trial process;

- Ensure that copies of any law to be argued are prepared for the benefit of the judge and the opposing barrister or solicitor-advocate; and
- Demonstrate understanding of the law and procedure relating to confessions and previous inconsistent statements.

III Evidence and procedure

Applicants should have a sound knowledge of the applicable rules of evidence and procedure, and able to demonstrate their understanding of:

- Burden and standards of proof and the differing roles of judge and jury;
- Disclosure, including issues relating to confidentiality, privilege and public interest immunity;
- Hearsay evidence;
- Documentary hearsay;
- Similar fact and character evidence;
- Opinion and expert evidence; and
- Improperly obtained evidence.

IV Ethics and appropriate court conduct

Applicants should be familiar with the Code of Conduct for Solicitor-Advocates promulgated by the Law Society of Hong Kong, and the Code of Conduct of the Hong Kong Bar.

Applicants should be able to:

- Advise the client on suitable representation at court;
- Resolve issues arising from unintentional or inadvertent disclosure of confidential or privileged information;
- Resolve potential and actual conflicts, including conflicts arising between the solicitor-advocate's duty owed to the client and the court;
- Advise on potential conflicts between acting as a solicitor-advocate for a client and becoming a potential witness for that client;
- Recognize when a solicitor-advocate may become professionally embarrassed and have to withdraw from a case; and
- Advise the client of the solicitor-advocate's need to maintain professional independence and the associated need to draw to the attention of the court any unfavourable law or authorities of which the solicitor-advocate is aware.

A more detailed set of standards can be found in the document “Standards of Professional Competence” issued by the Assessment Board.

4. If applicants can show they can satisfy the standards in I to IV in the lower courts, can they still be granted HRA?

While many of the standards set out above are similar to those required to competently advocate cases in the lower courts (for example, the ability to conduct cross examination of witnesses or to make an oral presentation of legal submissions), the purpose of the assessment is to test the ability of applicants in the context of higher court proceedings in which expectations of competency are more rigorous.

Solicitors applying for HRA must be able to demonstrate they are competent to undertake advocacy in the higher courts of Hong Kong, that competency to be judged according to the same standards of competency expected of a barrister appearing in the higher courts.

(See “Standards of Professional Competence” for details.)

5. What kind of examinations are held to test an applicant’s competence?

The examinations can be written or oral, or a combination of both.

6. If I fail in the assessment, will I be given reasons for the failure?

The Examining Panel must, after it completes a full assessment of professional competence, give to the Assessment Board a report setting out the results of the assessment, which must state the determination of the Panel as to whether the applicant has passed or failed the assessment. If the applicant has failed the assessment, the report will also contain brief reasons for that determination. (See rule 8 of Higher Rights of Audience Rules.)

7. Can an applicant be exempted from some of the requirements when making an application?

The necessary professional competence an applicant has to exercise HRA can be demonstrated by establishing to the Assessment Board that he or she has:

- a. Practised as a Senior Counsel or Queen’s Counsel in Hong Kong or other overseas jurisdictions;

- b. Practised as a barrister or solicitor in Hong Kong, and has acquired substantial experience in the role of an advocate, as a member of a judicial or quasi-judicial tribunal, or as an arbitrator; or
- c. Practised as an advocate in any other common law jurisdiction and has acquired substantial experience before the higher courts, as a member of a judicial or quasi-judicial tribunal, or as an arbitrator in that jurisdiction.

However, if the Assessment Board is not satisfied that the applicant possesses sufficient experience to exercise HRA, it may still require the applicant to sit and pass a specified portion of the full assessment.

(See rules 11-16 of Higher Rights of Audience Rules for details.)

8. Can the decisions of the Assessment Board be reviewed?

The Assessment Board must notify the applicant in writing of its proposed decision, including reasons for the decision.

The applicant may, within a period fixed in the notice given by the Assessment Board, make written representations requesting it to review its decision. The request for review must include a statement of the grounds on which the review is sought

If the Assessment Board refuses the application, it must notify the applicant and the Council of the decision, and must include the reasons for the decision.

If the Assessment Board conducts a review, the Assessment Board may confirm or reverse its decision. The Assessment Board must notify the applicant and the Council of the decision, and must include the reasons for the decision.

The decision of the Assessment Board in respect of a request for review is final.

(See section 39K of Legal Practitioners Ordinance and rules 9 to 10 of Higher Rights of Audience Rules for details.)

9. If I fail, can I apply again?

A person who has failed is not precluded from making another application in the following year and subsequent years. (See rule 23 of Higher Rights of Audience Rules.)

10. Can the Assessment Board make enquiries to the Law Society Council concerning eligibility matters of the applicant?

The Assessment Board can make enquiries to the Council on eligibility matters, but has to meet the following requirements:

- Both the request for and the provision of information shall be made on a confidential basis and in writing;
- The Assessment Board shall inform the applicant when it requested such information from the Council; and
- Any information disclosed by the Council to the Assessment Board must be disclosed to the applicant at the same time.

(See rule 20 of Higher Rights of Audience Rules for details.)

11. Has the Assessment Board published any application forms?

Yes.

(Application Form for Higher Rights of Audience and HRAB Notice “General Information)

The **original** form (not a faxed or email copy) should be returned to:

Higher Rights Assessment Board,
Room 2619, 26/F Wanchai Tower, 12 Harbour Road,
Wanchai
Hong Kong

12. Are there any fees involved in the process of applying for HRA?

Yes, and the fees charged by the Assessment Board are as follows:

Application fee	\$1,950
Fee for sitting full assessment of professional competence	\$8,130
Fee for review of the Assessment Board's proposed decision	\$2,270
Fee for sitting portion of full assessment of professional competence	\$5,110

(See Schedule (Fees) to Higher Rights of Audience Rules)

Payment: By cheque or banker's draft payable to: "The Government of the HKSAR"

13. Are solicitor-advocates who have acquired HRA covered by professional indemnity insurance?

Solicitor-advocates should be covered by the Professional Indemnity Scheme, subject to provisions in the Solicitors (Professional Indemnity) Rules (Cap. 159M).

14. Are there any training courses for applicants?

The Academy of Law and other providers will announce from time to time HRA training courses.

You may find information on such courses from the Academy of Law:

Address: 3/F, Wing On House
71 Des Voeux Road, Central
Tel: 2846 0500
Fax: 2845 0387
Email: enquiry@hklawacademy.org

15. Where can I find more information on HRA?

(a) Additional information can be found in the following documents:

1. Legal Practitioners (Amendment) Ordinance 2010
2. Higher Rights of Audience Rules
3. Standards of Professional Competence (issued by the Assessment Board)
4. Guidelines for Assessors in the Conduct of Assessments (issued by the Assessment Board)

(b) You may also contact the Assessment Board for further information:

Higher Rights Assessment Board

Address: 26th Floor, Wanchai Tower
12 Harbour Road, Hong Kong

Tel: 2582 4198
Fax: 2827 1518
Email: secretary@hrab.org.hk