

LAW SOCIETY OF HONG KONG

Consultation on the feasibility of implementing a common entrance examination in Hong Kong

Executive summary

About this consultation

Duration: From 1st December 2013 to 14th February 2014

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How to respond: Please send your response by 14th February 2014 to: NLS.CEEConsultation@ntu.ac.uk

1 INTRODUCTION

This consultation is carried out on behalf of the Law Society of Hong Kong (HKLS), the regulator for all Hong Kong solicitors. This paper explores the idea of a common entrance examination (CEE), overseen by HKLS, as a means of admitting individuals to practice as solicitors in Hong Kong.

It is not the intention of HKLS to abolish or replace the PCLL.

It is not the intention of HKLS to allow a non-graduate route into qualification as a solicitor in Hong Kong.

The working background to the consultation is set out in more detail in the consultation paper. A variety of examples of qualification models throughout the world is described in the full paper. It should *not* be assumed that any of them, including the Hong Kong model or, for example, the US bar exam model, represent a global norm.

2 THE CONCERNS OVER THE PRESENT SYSTEM EXPRESSED BY DIFFERENT STAKEHOLDERS.

Responses to a statement by the past President of HKLS suggested that concerns included:

- Consistency of assessments and performance standards;
- Differing approaches at the three providers and the admission criteria of the providers;
- The role of HKLS as the regulator (in contrast to the educational providers);
- The number of PCLL places and a suggestion that a CEE could act as an alternative for those unable to access the PCLL;
- Equality with foreign lawyers and international transportability of qualifications (in both directions);
- Whether changes might increase barriers to qualification;
- A suggestion that the OLQE should be aligned to the PCLL;
- Other parts of the system, such as the PCLL and training contract;
- Whether a CEE should test academic knowledge or practical skills, and whether it might take place before or after the training contract.

3 THE PRESENT SYSTEM OF LEGAL EDUCATION AND TRAINING IN HONG KONG

This is set out in more detail in the consultation paper. The three routes to qualification are set out in the appendix to this summary.

4 THE WAY FORWARD?

The remit of the research team is, within the context of a possible CEE, to explore different options for reforming and improving the current system; weighing up the advantages and disadvantages and examining feasibility, probability and implications for Hong Kong. This task can be divided into three elements, each of which informs the others:

- What is the purpose of a CEE?
- When should it be taken and at what level?
- What should it assess, and how should it be assessed?

What is the purpose of a CEE?

If all candidates are required to take the same assessment, the purpose of that assessment may be:

- a) to filter out the bottom 10% who are thought unlikely to be successful in the next stage;
- b) positively to assess "aptitude";
- c) to seek a consistent baseline between candidates entering from different educational backgrounds;
- d) to manage risk by seeking a minimum level of knowledge or performance in key areas only;
- e) to seek to ensure that a level of current legal knowledge is retained at a particular stage;
- f) to seek to ensure a level of actual performance in practice, e.g. to avoid negligence;
- g) additional purposes such as to demonstrate equivalence with the requirements of another profession or jurisdiction.

When should a CEE be taken, and at what level?

- Before the training contract?
- During or after the training contract?

As to level: if it is important to assess whether knowledge of the law is still current at the point of qualification, it may be appropriate for the level of the assessment to be pegged to the LLB/JD or PCLL. If actual performance for practice is to be assessed, then a level higher than that of the PCLL might be expected, to allow for the additional learning in practice that has taken place during the training contract.

What should a CEE assess, and how should it be assessed?

Conventional bar examinations tend to be focused on knowledge, analysis, problem solving, sometimes ethical problems and some elements of drafting.

Knowledge, analysis, problem solving and the like are easier to assess than other practice skills, such as research, advocacy, interviewing and negotiation. Some jurisdictions do, however, invest considerable resource in assessing skills such as advocacy and client interviewing, as well as knowledge.

Assessment design needs validity, reliability, fairness and feasibility. These are balanced by cost and resource of monitoring and quality assurance of the assessment when delivered.

Possible responses or solutions

The research team has been asked specifically to set out some possible responses or solutions in this document. This list of possible approaches is not intended to be exclusive, but to engage participants and to inform discussion and debate. Options are listed below and evaluated in more detail, from the perspective of the regulator, educational institutions, employers and candidates, in the full consultation paper.

- **Retain the status quo**
- **Address the concerns by means other than a CEE**
 - Review the whole of the qualification structure
 - Prescribe demonstration of competences or outcomes instead of a separate CEE
 - Create more PCLL places/accredit additional PCLL providers rather than create a CEE
- **Adapt existing structures**
 - Centralise the assessments of the PCLL
 - Assess the training contract at equivalence with the OLQE instead of a separate CEE
 - Extend the OLQE as a self-standing CEE to all applicants for admission
- **Design fresh CEE structures**
 - Set a new self-standing CEE prior to entry into the training contract in addition to the PCLL

A related approach would involve sharing the assessment load between the PCLL and a CEE. For example, the skills component might be provided by the PCLL assessments, with more knowledge-based components assessed in a separate CEE written examination.

Set a new self-standing CEE at the point of qualification

There are challenges in merging a CEE with the OLQE without also redesigning the OLQE. This is because of the differences between the topics and skills required in the PCLL and the Hong Kong training contract which are not tested in the OLQE.

Finally, a question to be determined in any discussion of assessment is the extent to which a candidate should be permitted to retake it.

APPENDIX THREE ROUTES TO QUALIFICATION

HK visiting student	QLD/as internal	Other degree/qualification (Hong Kong Conversion Course)	recognised (Hong Kong law	Overseas lawyer route (OLQE)
Contract		Subjects must be studied as part of	law	Head V Principles of common law (candidates from non-common law jurisdictions)
Tort		initial recognised	law	
Constitutional law		degree/qualification		
Criminal law				Head I – conveyancing
Land law				
Equity				
Civil Procedure		PCLL Conversion examination if required		Head II – civil and criminal procedure
Criminal Procedure		PCLL Conversion examination if required		
Evidence		PCLL Conversion examination if required		
Business Associations		PCLL Conversion examination if required		Head III – commercial and company law
Commercial law		PCLL Conversion examination if required		
		Hong Kong constitutional law (as top up in PCLL conversion examination)		Proposed: Head VI – Hong Kong Constitutional Law
		Hong Kong land law (as top up in PCLL conversion examination)		Head I – conveyancing
		Hong Kong legal system (as top up in PCLL conversion examination)		
PCLL				
80% skills, 20% substantive law				
• Problem solving				Some elements of problem solving are given as outcomes for specific heads (e.g. Head I, Head IV)
• Applied legal research				
• Communication				Some drafting is stated as an outcome for Head II and Head III
• Fact investigation and analysis				
• Advocacy				
• Litigation management and strategies				Implicit in Head II
• ADR				Head II (not assessed as a skill)
• Negotiation				Head II (not assessed as a skill)
• Legal analysis				Implicit
• Organisation and management of legal work				
• Ethics				Head IV – accounts and professional conduct
Compulsory topics:				
• Property law practice				Head I – conveyancing
• Wills and estate management				
• Criminal litigation practice (including advocacy)				Head II – civil and criminal procedure
• Civil litigation practice (including advocacy)				Head III – commercial and company law
• Commercial and corporate law practice				
Pervasive:				
• Advocacy				
• Professional conduct (including e.g. client care and professional self-development)				Head IV – accounts and professional conduct
• Trust and office accounts and financial management				
• Client care				
• Revenue practice				
Electives including:				
• Advanced litigation				
• Family law				
• Corporate finance				
• China law transactions (in Chinese)				
• Environmental law				
• Administrative/public law				
• Banking				
• Intellectual property				

