

LEGISLATIVE COUNCIL BRIEF

- (1) **Barristers (Qualification for Admission and Pupillage) Rules**
- (2) **Legal Practitioners (Fees) (Amendment) Rules**
- (3) **Practising Certificate (Barristers) (Amendment) Rules**

Background

1. The Barristers (Qualification for Admission and Pupillage) Rules, the Legal Practitioners (Fees) (Amendment) Rules and the Practising Certificate (Barristers) (Amendment) Rules are introduced under Section 72AA of the Legal Practitioners Ordinance, Cap.159 (“the Ordinance”), which empowers the Bar Council, *inter alia*, to make rules in respect of the professional practice of barristers; and to regulate the issuing of practicing certificates to barristers.
2. In conjunction with the 3 sets of Rules above, it is understood that the Barristers (Admission) Rules will be introduced under Section 72 of the Ordinance which empowers the Chief Justice to make rules to regulate the manner in which applications for admission as barristers shall be made. See paragraphs 20 to 22 below.
3. These Rules are intended to come into operation at the same time as that appointed for operation of Sections 7, 8(2), 9, 10, 11, 12, 13, 15 and 17 to 31 of the Legal Practitioners (Amendment) Ordinance (No.42 of 2000) under Section 1(3) of that Ordinance. Accordingly, these Rules should be read in conjunction with that Ordinance.

The Barristers (Qualification for Admission and Pupillage) Rules

4. These Rules provide for the qualification required for admission as a barrister under Section 27 of the Legal Practitioners Ordinance (Cap. 159) as amended by Section 7 of the Legal Practitioners (Amendment) Ordinance (No.42 of 2000); the requirements of pupillage and other consequential matters.

Qualification for Admission

5. By virtue of Section 7 of the Legal Practitioners (Amendment) Ordinance (Ord. No.42 of 2000), on a day to be appointed by the Secretary for Justice, the criteria for admission as a barrister in Hong Kong prescribed under the current Section 27 of the Legal Practitioners Ordinance will be replaced by new admission criteria provided under the new Section 27.
6. Under the new Section 27, an applicant for admission will have to comply with the requirements, pass the examinations and pay the fees prescribed by the Bar Council.
7. Section 3 of these Rules set out the new admission requirements. Apart from holders of the PCLL, Hong Kong solicitors who have been in practice for more than 3 years as well as legal officers employed by the Hong Kong Government, all of whom being eligible for admission to the Bar upon completion of the pupillage requirement, overseas lawyers of good standing who have practised for over 3 years in a jurisdiction of admission will also be eligible for admission upon passing the Barristers Qualification Examination (“the BQE”) prescribed by the Bar Council. All applicants for admission will first have to complete 6 months’ pupillage or (in certain cases) a reduced period of pupillage before admission to the Bar.
8. Section 4 describes the BQE. The BQE will be held at least once every year.
9. Any applicant whose jurisdiction of admission is a common law jurisdiction will be exempted under Section 3(5) from having to sit Paper I, unless the Bar Council otherwise determines in any particular case. The definition of common law jurisdiction is adopted from the Overseas Lawyers (Qualification for Admission) Rules governing admission of solicitors. In addition, any applicant who has substantial experience in one or more areas of the law covered by the BQE may seek exemption from sitting one or more examination papers under Section 3(4).
10. Section 6(2) gives an applicant who fails no more than 2 examination papers at any one sitting the opportunity to re-sit those examination papers. Although there is no restriction as to the

number of times the applicants may take the BQE, the applicants are required to pass the whole examination (subject to exemption of any Paper(s)) within a period of 3 years.

Pupillage

11. Sections 8 to 10 set out the requirements of pupillage. Unless a reduction of the period of pupillage is granted by the Chief Judge under Section 15, the required period of pupillage is 1 year.
12. Section 9(4)(c) makes it a condition for all pupils to complete the Advanced Legal Education Programme before their pupillages are regarded as completed.
13. Section 11 sets out the criteria for eligibility to serve pupillage. Section 13 sets out the circumstances which will disqualify a person from becoming a pupil. The disqualifying circumstances are adopted from the current Section 5 of the Barristers (Qualification) Rules.
14. Circumstances for termination and suspension of pupillage are set out in Section 14. Section 14(1) and (2)(a) is adopted from the current Section 7 of the Barristers (Qualification) Rules. Section 14(2)(b) is introduced to provide expressly for situations where termination of pupillage is rendered necessary by reason of the Bar Council's exercise of its power under Section 12(2) to revoke the approval for the pupil master to continue the pupillage, for instance, due to professional misconduct on the part of the pupil master.

Review and Appeal

15. Section 17(1) provides the opportunity for any person aggrieved by any decision of the Bar Council to apply for a review of such decision.
16. Any aggrieved person may further appeal to the Court of Appeal against the decision of the Bar Council. At present, appeals against decisions of the Bar Council under the Barristers (Qualification) Rules lie to the Court of Appeal and not the Court of First Instance. As the Barristers (Qualification) Rules will continue to apply to

those who seek admission under the existing admission regime during the transitional period, it is considered desirable that appeals under both sets of Rules should lie to the same Court. It is also considered sufficient, as is presently the case under the Barristers (Qualification) Rules, to provide for one opportunity for appeal as opposed to two.

Repeal and Consequential Amendments

17. Section 18 makes provision for the Barristers (Qualification) Rules to apply to persons who are admitted under Section 27 or 27A of the Legal Practitioners Ordinance before its amendment. Save for such application, the Barristers (Qualification) Rules are repealed.

Legal Practitioners (Fees) (Amendment) Rules

18. These Rules prescribe the fees payable for practising certificates for “employed barristers” introduced under Section 13 of the Legal Practitioners (Amendment) Ordinance (Ord. No.42 of 2000). These fees are the same as those currently prescribed for practising certificates for practising barristers under the Legal Practitioners (Fees) Rules.

Practising Certificate (Barristers) Amendment) Rules

19. These Rules prescribe the relevant Forms to be used in relation to practising certificates for “employed barristers”.

Barristers (Admission) Rules

20. At present, procedure for admission of barristers is prescribed under Sections 8 to 10 of the Admission and Registration Rules. The same set of Rules provide for admission procedure of barristers as well as solicitors. It is considered desirable that the Rules governing admission of barristers should be separated from those relating to solicitors.

21. These Rules are modelled closely on the current Admission and Registration Rules relating to admission of barristers. Where necessary, modifications are made so as to correspond to the provisions in the Legal Practitioners (Amendment) Ordinance (Ord. No.42 of 2000) and the Barristers (Qualification for Admission and Pupillage) Rules. See Section 2(2)(a) and (3).
22. Section 9 provides for the admission procedure under the existing Admission and Registration Rules to continue to apply to those seeking admission under the existing admission regime during the transitional period.

Consultation with the Chief Justice and the Department of Justice

23. Copies of these Rules have been sent to the Chief Justice as well as to the Department of Justice for comment.
24. Comments previously made by both the Chief Justice and the Department of Justice during the drafting process have been incorporated in the present drafts. However, the Bar Council will be prepared to consider any further comments that the Chief Justice and/or the Department of Justice may have on these present drafts.

Enquiries

25. For any enquiries on this brief and/or the above Rules, please contact Mrs. Gillian Samson of the Secretariat of the Hong Kong Bar Association at 2978 9177.

The Hong Kong Bar Association
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