

For discussion
on 24 June 2002

**LegCo Panel on Administration of Justice and Legal Services
Draft Rules made by the Bar Council under the
Legal Practitioners Ordinance**

I Barristers (Qualification for Admission and Pupillage) Rules
("Qualification Rules")

Background

The Administration introduced amendments to the Legal Practitioners Ordinance ("the Ordinance") through the Legal Practitioners (Amendment) Bill 1999 which was enacted at the end of June 2000 ("the Amendment Ordinance").

2. One of the major amendments involves amendment to section 27 of the Ordinance which provides for the power of the court to admit barristers. The privileges previously accorded to persons who have been called to the Bar in England or Northern Ireland, or who have been admitted as an advocate in Scotland, to be admitted as barristers in Hong Kong were removed. The amendment enables the court to admit any person to be a barrister if he or she is considered to be a fit and proper person and has complied with specified requirements. Pursuant to the Amendment Ordinance, all foreign lawyers who seek admission to practise as barristers in Hong Kong will have to sit and pass examinations to be set by the Bar Association. Such rules should be made by the Bar Association and are subject to the prior approval of the Chief Justice.

3. The relevant provisions will commence on a date to be appointed by the Secretary for Justice.

4. The Bar Association undertook the drafting of the relevant rules. In June 2001, the Bar Association provided the Administration with a set of draft rules.

5. The Administration studied the draft rules and provided its comments to the Bar Association from the public interest angle. The Bar Association

answered our queries on a number of issues and some of our suggestions have been incorporated into the revised draft rules tabled by the Bar Association before the Panel (“draft Rules”).

6. The Administration’s major comments on the draft Rules from the public interest point of view are set out below.

Comments

Reasons for the order or decision

7. Section 13 of the Qualification Rules (at Annex A) specifies the circumstances in which a person may be disqualified from pupillage. Under section 14 (at Annex B), the Bar Council may order the termination or suspension of pupillage under certain circumstances, such as the misconduct of the pupil. There is however no requirement under the Qualification Rules that the Bar Council should notify the pupil of the decision and the reason for disqualification from pupillage under section 13 or to notify the pupil of the order for termination or suspension and the reason for the order made under section 14.

8. It is provided under section 16 of the Qualification Rules (at Annex C) that the Bar Council may exercise the power of variation and revocation of a certificate issued under section 5, 7 or 11 for good cause. However it is not provided that the Bar Council should notify with reason(s) the person affected by the variation or revocation of the certificates.

9. The Administration considered that as a matter of fairness, the Bar Council should be required to give sufficient reasons for its decision to enable the aggrieved party to formulate his grounds of appeal. We suggested to the Bar Association to reconsider the matter.

10. The Bar Association replied to us that it is the practice of the Bar Council to inform the person(s) affected of the reasons for its decision and that such practice will continue in respect of decisions made under the Qualification Rules. However, the Bar Association feels that it is not necessary to specifically provide for this in the Rules.

11. The Administration considers that it would be preferable for pupils to have a right to know the reasons for the Bar Council’s decision, rather than to have to rely on an unenforceable practice of the Bar Council to give reasons.

Examination setting and marking

12. We understand that the Law Society deliberately stands back from the setting and marking process of the Overseas Lawyers Qualification Examination in order to ensure that there can be no suggestion that it seeks to interfere with the results. The Administration made enquiry with the Bar Association as to whether it plans to stand back from the examination setting and marking process like the Law Society.

13. The Bar Association replied that among members of the panels taking charge of the various parts of the Papers in the Barristers Qualification Examination (“the Examination”), apart from members of the Bar, there are legal academics, lawyers from the Department of Justice and a member of the Judiciary. The Bar Association stated that it is conscious not to give any impression that the Examination would be administered unfairly.

14. The Administration considers that it would be desirable for each panel taking charge of the various parts of the Papers in the Examination to include at least one person who is not a member of the Bar Association. An impression of fairness in each examination would not otherwise be created.

II Barristers (Advanced Legal Education Requirement) Rules (“ALE Rules”)

Advanced Legal Education Programme (“ALE programme”)

15. Unlike the case of the continuing professional development programme run by the Law Society, the number of Advanced Legal Education points (“ALE points”) that are required of a pupil for completion of the ALE programme is not specified in the ALE Rules. The Administration considers that this should be provided in the rules so that pupils would know the number of ALE points they need to achieve before they are considered as having completed the ALE programme. In terms of checks and balances, we have suggested to the Bar Association that it is preferable that the number of points be approved by the Chief Justice and subjected to scrutiny by the Legislative Council.

16. In response to our comment, the Bar Association has included a new section 3(3) in the ALE Rules (at Annex D) which provides that the Bar Council would inform pupils of the number of points to be obtained. The Bar Association

confirmed to us that all new pupils would be provided with an Information Package which sets out in detail the number of ALE points required and how they are to be obtained.

17. The Administration's view is that the proposed new section 3(3) is insufficient to satisfy the need for the ALE Rules to provide certainty for the pupils. Though this additional provision provides details regarding the obligations of the Bar Association, a degree of uncertainty arises when the number of points required may be subject to variation from time to time at the discretion of the Bar Council. We therefore consider that it would be preferable for such an important aspect to be specified in the ALE Rules and not to be subject to casual change. Furthermore, it should also be specified in the ALE Rules that ALE points can be accumulated.

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13. Disqualification from pupillage

A person shall not be eligible to become a pupil for the purposes of these Rules if he-

- (1) is an undischarged bankrupt within the meaning of the Bankruptcy Ordinance (Cap.6);
- (2) has been convicted of an offence of such a nature that, in the opinion of the Bar Council, he is unsuitable to be a pupil;
- (3) is engaged in any occupation which, in the opinion of the Bar Council, is incompatible with pupillage; or
- (4) is for any other reason considered by the Bar Council to be unsuitable as a pupil.

14. Termination or suspension of pupillage

- (1) A pupil who, while serving pupillage, is-
 - (a) adjudicated bankrupt within the meaning of the Bankruptcy Ordinance (Cap.6);
 - (b) convicted of an offence; or
 - (c) engaged, employed or enrolled in contravention of any declaration and undertaking given to the Bar Council in connection with an application made under section 10,shall forthwith inform the Bar Council in writing.
- (2) The Bar Council may order the termination or suspension of a pupillage-
 - (a) if it is satisfied that-
 - (i) the pupil is guilty of misconduct; or
 - (ii) the pupil has notified, or fails to notify the Bar Council of the occurrence of any of the matters referred to in subsection (1); or
 - (b) if it has revoked its approval of a pupillage.
- (3) For the purposes of this section, “misconduct” means any conduct which would be regarded as professional misconduct if committed by a practising barrister.

16. Revocation of certificates

The Bar Council may at any time vary or revoke a certificate issued under section 5, 7 or 11 for good cause.

3. Advanced Legal Education Programme

(3) The Bar Council shall inform all persons who serve notice of an intention to serve pupillage of –

- (i) the requirement to complete the Programme;
- (ii) the rules of the Programme in force from time to time, including the total number of points which a pupil must obtain to complete the Programme; and
- (iii) the ALE courses being offered from time to time under the Programme, including the times when such courses are intended to be offered and the number of points accredited to each such course.