



5. Under the proposed scheme, solicitors having at least 5 years' post-qualification experience and satisfying further eligibility requirements may apply to a board called the Higher Rights Assessment Board ("the Assessment Board") for higher rights of audience before the High Court and the Court of Final Appeal.

6. Details of the administration of the scheme will be governed by subsidiary legislation to be made by the Assessment Board after the enactment of the Bill.

## **THE BILL**

7. The main provisions of the Bill are set out below.

### **New Part IIIB**

8. Clause 4 adds a new Part IIIB, which consists of the proposed sections 39E to 39R, to the Ordinance.

### **Proposed section 39E**

9. The proposed section 39E provides for the establishment of the Assessment Board together with its functions and membership. The Assessment Board will comprise members appointed by the Chief Justice from serving or former judges, members of the legal profession and officers of the Department of Justice, as well as a lay member also appointed by him.

### **Proposed sections 39H to 39N**

10. The proposed sections 39H to 39N deal with the requirements applicable to applications by solicitors for higher rights of audience, including the eligibility requirements, as well as the determination of the applications by the Assessment Board and the conditions for granting the applications.

11. The proposed section 39H provides that a solicitor satisfying the eligibility requirements may apply to the Assessment Board for higher rights of audience, whether in respect of civil proceedings, criminal proceedings or both civil and criminal proceedings. The proposed section 39I sets out the eligibility requirements. Among other requirements, the applicant has to have at least 5 years' post-qualification experience. Further, the applicant has to comply with requirements (which may include requirements respecting completion of an approved advocacy course and passing of related assessments) to be prescribed by rules to be made by the Assessment Board or, alternatively, apply on the basis of an exemption from those requirements.

12. The proposed section 39J requires the application to be accompanied by the supporting information and a prescribed fee. The proposed section 39K provides for the determination by the Assessment Board of the application, and requires the Assessment Board to notify the applicant and the Council of the Law Society of Hong Kong ("Council") of its decision as soon as practicable after the decision is made.

13. The proposed section 39L sets out further conditions applicable to the determination. It provides that if the applicant has sought exemption from the requirements prescribed by rules to be made by the Assessment Board, the Assessment Board will have to be satisfied that the applicant has complied with the alternative requirements also prescribed by rules to be made by the Assessment Board. In addition, the Assessment Board has to be satisfied that the applicant has acquired recent litigation experience and is in all respects a suitable person to have the higher rights of audience for which the application is made.

### **Proposed section 39O**

14. The proposed section 39O provides that a person who has higher rights of audience ceases to have those rights on being adjudged bankrupt, or on the person's name ceasing to be on the roll of solicitors, or on the person being suspended from practice as a solicitor. The

provision further provides for reacquisition of the rights in specified circumstances.

### **Proposed sections 39P and 39Q**

15. The proposed sections 39P and 39Q set out provisions relating to the issue by the Council of higher rights of audience certificates, and require the Council to keep, and make available for public inspection, a list of all persons who have acquired higher rights of audience, whether or not they have subsequently ceased to have those rights.

### **Proposed section 39R**

16. The proposed section 39R empowers the Council to issue a code of conduct for solicitor advocates, in consultation with the Chief Justice and the Council of the Hong Kong Bar Association.

### **Further provisions**

17. Clause 5 adds the proposed section 45A to the Ordinance. The proposed section 45A provides that where a person who does not have higher rights of audience in respect of certain proceedings under the proposed Part IIIB purports to exercise those rights as a solicitor, the person is guilty of contempt of court and also commits an offence punishable by a fine of \$500,000. Also, any costs in respect of anything done by that person in purported exercise of those rights as a solicitor are not recoverable by any person.

18. Clause 8 amends section 73 of the Ordinance, which provides for the power of the Council to make rules, in order to deal with the issue of and other matters concerning higher rights of audience certificates.

19. Clause 9 adds the proposed sections 73CA and 73CB to the Ordinance. The proposed section 73CA empowers the Assessment Board to make rules to deal with various matters relating to applications for higher rights of audience as well as determination of those applications, and to provide for matters concerning the

Assessment Board and its members. It further provides that the rules may deal with matters relating to any courses or training or assessments or examinations required to be completed or passed by an applicant for higher rights of audience. The proposed section 73CB further empowers the Assessment Board to delegate to its committees its powers and duties in relation to any interview required to be attended by an applicant for higher rights of audience under the proposed section 39M.

### **LEGISLATIVE TIMETABLE**

20. The legislative timetable will be as follows –

Publication in the Gazette	12 June 2009
First Reading and commencement of Second Reading debate	24 June 2009
Resumption of Second Reading debate, committee stage and Third Reading	To be notified

### **IMPLICATIONS OF THE PROPOSAL**

21. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It has no economic, productivity, environmental or sustainability implications.

22. The costs of setting up and operation of the Assessment Board and its secretariat will be recovered fully from the application fees to be received from solicitors applying for higher rights of audience from the Assessment Board.

23. There are financial and civil service implications since the Assessment Board will be assisted by a secretariat to be set up under the Judiciary. On current planning, the secretariat will be staffed by supernumerary posts of a Senior Executive Officer and a clerk for three

years subject to review thereafter. Remuneration may be payable to the chairperson of the Assessment Board under certain circumstances (e.g. in the case of a retired judge), while sufficient financial resources should be provided to enable the Judiciary to engage deputy judges to cover the judicial duties of any serving Judges who would be appointed to the Board so that judicial work would not be adversely affected as a result. Any additional resources requirement arising from the establishment of the Assessment Board and its secretariat will be sought in accordance with the established resources allocation procedures.

24. The Bill will not affect the current binding effect of the Ordinance.

## **PUBLIC CONSULTATION**

25. In May 2006, the Working Party issued a consultation paper setting out the guiding principles which the Working Party considered should underlie any changes to the existing rules on rights of audience of solicitors in the higher courts. The paper also sought the public's views on the various issues which the Working Party had identified as relevant to the question of extending rights of audience of solicitors.

26. The Working Party received some 260 responses to the consultation paper. The responses were mostly from members of the legal profession, but some were from the community at large. An overwhelming majority favoured extending higher rights of audience to suitably qualified solicitors.

27. The Law Society of Hong Kong and the Hong Kong Bar Association expressed support for the Report. The Law Society and the Bar Association have been consulted on drafts of the Bill. Responses from the two professional bodies have been taken into account in the drafting of the Bill.

28. The Legislative Council's Panel on Administration of Justice and Legal Services has been consulted on the legislative proposal at its

meeting on 16 December 2008. It supports the conclusions of the Working Party and does not object to the legislation being introduced.

## **PUBLICITY**

29. A press release is to be issued on 10 June 2009. A spokesman will be available to answer enquiries.

## **ENQUIRY**

30. Any enquiry on this brief can be addressed to Ms Kitty Fung, Senior Government Counsel, Legal Policy Division, Department of Justice, at Tel. No. 2867 4226.

Department of Justice

10 June 2009

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**LEGAL PRACTITIONERS (AMENDMENT) BILL 2009**

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# A BILL

To

Amend the Legal Practitioners Ordinance.

Enacted by the Legislative Council.

## 1. Short title

This Ordinance may be cited as the Legal Practitioners (Amendment) Ordinance 2009.

## 2. Commencement

This Ordinance comes into operation on a day to be appointed by the Secretary for Justice by notice published in the Gazette.

## 3. Interpretation

Section 2(1) of the Legal Practitioners Ordinance (Cap. 159) is amended by adding –

““Assessment Board” (評核委員會) means the Higher Rights Assessment Board established by section 39E;

“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;

“higher rights of audience” (較高級法院出庭發言權) has the meaning given by section 39H(3);

“higher rights of audience certificate” (較高級法院出庭發言權證書) means a certificate issued under section 39P;

“solicitor advocate” (訟辯律師) means a person who has higher rights of audience under Part IIIB;”.

#### 4. Part IIIB added

The following is added immediately after Part IIIA –

### “PART IIIB

#### SOLICITOR ADVOCATES

##### **39E. Higher Rights Assessment Board**

(1) A board to be known as the Higher Rights Assessment Board is established.

(2) The Assessment Board –

(a) has the functions conferred on it by or under this or any other Ordinance; and

(b) has the powers conferred on it by or under this or any other Ordinance, and all other powers necessary to perform its functions.

(3) The Assessment Board consists of the following members appointed by the Chief Justice –

(a) a chairperson, who must be an eligible person; and

(b) 10 other members of whom –

(i) 2 must be eligible persons;

(ii) 3 must be solicitors who engage in litigation work in the course of ordinary practice;

(iii) 3 must be Senior Counsel;

(iv) one must be a Law Officer or a Principal Government Counsel of the Department of Justice; and

(v) one must be a person selected by the chairperson from among the panel of

persons appointed by the Chief Justice under subsection (5).

(4) Before making an appointment under subsection (3)(b)(ii), (iii) or (iv), the Chief Justice must consult –

- (a) in the case of an appointment under subsection (3)(b)(ii), the President of the Society;
- (b) in the case of an appointment under subsection (3)(b)(iii), the Chairman of the Bar Council; or
- (c) in the case of an appointment under subsection (3)(b)(iv), the Secretary for Justice.

(5) For the purposes of subsection (3)(b)(v), the Chief Justice may appoint a panel of persons whom the Chief Justice considers suitable for appointment as members of the Assessment Board and who are not, in the opinion of the Chief Justice, connected in any way with the practice of law.

(6) A person who is appointed as the chairperson of the Assessment Board under subsection (3)(a) may be paid from the general revenue any remuneration that the Chief Executive considers appropriate, but only if the person is an eligible person under that subsection by reason of being –

- (a) a non-permanent Hong Kong judge of the Court of Final Appeal (other than a non-permanent Hong Kong judge of the Court of Final Appeal who is also a Justice of Appeal of the Court of Appeal); or
- (b) a person who was formerly a judge of the High Court (other than a recorder or a deputy judge of the Court of First Instance) but who is not a permanent judge or a non-permanent Hong Kong judge of the Court of Final Appeal.

- (7) In this section, “eligible person” (合資格人士) –
- (a) means –
- (i) a permanent judge or a non-permanent Hong Kong judge of the Court of Final Appeal;
  - (ii) a judge of the High Court (other than a recorder or a deputy judge of the Court of First Instance); or
  - (iii) a person who was formerly a judge of the High Court (other than a recorder or a deputy judge of the Court of First Instance) but who is not a permanent judge or a non-permanent Hong Kong judge of the Court of Final Appeal; and
- (b) for the purposes of subsection (3)(b)(i), includes a judge of the District Court (other than a deputy judge of the District Court).

**39F. Further provisions relating to members of Assessment Board**

(1) A member of the Assessment Board holds office for a term not exceeding 3 years, but may be reappointed.

(2) A member of the Assessment Board may at any time resign from office by giving notice in writing to the Chief Justice.

(3) Subject to subsection (4), the Chief Justice may at any time remove from office any member of the Assessment Board by giving notice in writing to the member.

(4) Before removing from office any member of the Assessment Board appointed under section 39E(3)(b)(ii), (iii) or (iv), the Chief Justice must consult –

- (a) in the case of a member appointed under section 39E(3)(b)(ii), the President of the Society;
- (b) in the case of a member appointed under section 39E(3)(b)(iii), the Chairman of the Bar Council;  
or
- (c) in the case of a member appointed under section 39E(3)(b)(iv), the Secretary for Justice.

**39G. Further provisions relating to proceedings of Assessment Board**

(1) The quorum for a meeting of the Assessment Board is 7 members, of whom –

- (a) one must be a member appointed under section 39E(3)(b)(ii); and
- (b) one must be a member appointed under section 39E(3)(b)(iii).

(2) Each member of the Assessment Board present at a meeting of the Board has one vote.

(3) A decision on any matter at a meeting of the Assessment Board must be supported –

- (a) in the case of a decision to make any rules under section 73CA, by the votes of at least 6 members of the Board present and voting on that matter; or
- (b) in any other case, by a majority of votes of the members of the Board present and voting on that matter.

(4) For the purposes of subsection (3)(b), if on any matter the votes are equally divided, the chairperson of the Assessment Board, in addition to having one vote under subsection (2), has a casting vote.

(5) Subject to the other provisions of this Ordinance, the Assessment Board may regulate its own procedure.

**39H. Application to Assessment Board for higher rights of audience**

(1) A solicitor who satisfies the eligibility requirements under section 39I may apply to the Assessment Board for higher rights of audience.

(2) The applicant must specify in the application one of the following classes of proceedings as the class of proceedings in respect of which the applicant is applying for higher rights of audience –

- (a) civil proceedings;
- (b) criminal proceedings;
- (c) both civil and criminal proceedings.

(3) For the purposes of this Ordinance, “higher rights of audience” (較高級法院出庭發言權) means rights of audience before the High Court and the Court of Final Appeal, whether in civil proceedings, criminal proceedings, or both, but does not include any of those rights that solicitors generally may from time to time have apart from this Ordinance.

**39I. Eligibility requirements**

(1) An applicant under section 39H satisfies the eligibility requirements if the applicant –

- (a) holds a current practising certificate as a solicitor;
- (b) has the requisite experience;
- (c) has complied with the requirements prescribed by rules made under section 73CA(1)(a)(i); and

(d) has not, in the same calendar year in which the application is made, made any other application under section 39H (whether in respect of the same or a different class of proceedings).

(2) For the purposes of subsection (1)(b), the applicant has the requisite experience if, during the period of 7 years immediately before the date of the application, the applicant –

(a) has, for not less than 2 years in the aggregate, done one or more of the following –

- (i) practised as a solicitor in Hong Kong;
- (ii) practised as a barrister in Hong Kong;
- (iii) practised as a legal officer within the meaning of section 2 of the Legal Officers Ordinance (Cap. 87) or held a similar office; and

(b) has, for not less than 3 further years in the aggregate, done one or more of the following –

- (i) practised as a solicitor in Hong Kong;
- (ii) practised as a barrister in Hong Kong;
- (iii) practised as a legal officer within the meaning of section 2 of the Legal Officers Ordinance (Cap. 87) or held a similar office;
- (iv) practised the law of any other common law jurisdiction while being qualified to do so under the law of that jurisdiction, whether or not also under this Ordinance.

(3) Despite subsection (1)(c) –

(a) the applicant may elect to make the application on the basis of exemption from the requirements



referred to in that subsection by stating in the application that the applicant has so elected; and

(b) on the applicant making the election under paragraph (a), that subsection does not apply to the applicant.

(4) In this section, “similar office” (相類職位) means –

(a) an office held by a person by an appointment under section 3(1) of the Legal Aid Ordinance (Cap. 91); or

(b) an office the holder of which is deemed to be a legal officer for the purposes of the Legal Officers Ordinance (Cap. 87) under section 3(3) of the Director of Intellectual Property (Establishment) Ordinance (Cap. 412) or section 75(3) of the Bankruptcy Ordinance (Cap. 6).

**39J. Further requirements concerning application**

(1) An application under section 39H must be –

(a) in the form specified by the Assessment Board;

(b) supported by the information prescribed by rules made under section 73CA(1)(a)(ii);

(c) accompanied by the fee prescribed by rules made under section 73CA(1)(a)(iii); and

(d) made within any of the periods specified under subsection (3).

(2) The fee referred to in subsection (1)(c) is payable to the Government.

(3) The Assessment Board must, in relation to each calendar year, specify, by notice published in any manner that it considers

appropriate, one or more periods during which applications may be made under section 39H.

**39K. Determination of application by Assessment Board**

(1) As soon as practicable after an application is made to it under section 39H, the Assessment Board must consider the application, and decide whether to grant or refuse the application.

(2) As soon as practicable after a decision is made under subsection (1), the Assessment Board must –

- (a) notify the applicant of –
  - (i) the decision; and
  - (ii) if it refuses the application, the reasons for the decision; and
- (b) notify the Council of the decision.

**39L. Conditions for granting application**

(1) Without affecting any other requirements applicable to an application made under section 39H, the Assessment Board may grant the application only if it is satisfied that the applicant –

- (a) if the applicant has elected to make the application on the basis of exemption from the requirements referred to in section 39I(1)(c), has complied with the alternative requirements prescribed by rules made under section 73CA(1)(a)(iv);
- (b) has acquired sufficient experience in litigation work in the course of ordinary practice within the period of 3 years immediately before the date of the application, so as to be a suitable person to have the higher rights of audience for which the application is made; and

(c) is in all other respects a suitable person to have the higher rights of audience for which the application is made.

(2) For the purposes of subsection (1), the Assessment Board –

(a) in considering whether the applicant satisfies the requirement under subsection (1)(b), must accord due weight to the applicant’s experience in advocacy work, whether written or oral; and

(b) in considering whether the applicant satisfies the requirement under subsection (1)(c), may have regard to –

(i) the applicant’s competence in advocacy work, whether written or oral;

(ii) the applicant’s professional conduct and integrity; and

(iii) any other matters that the Board considers relevant.

**39M. Further provisions applicable to determination of application**

(1) In considering an application under section 39H, the Assessment Board may –

(a) for the purpose of ascertaining whether the applicant satisfies the eligibility requirements under section 39I or the further requirements described in section 39L(1)(a), (b) and (c), make any enquiries with the Council that the Board considers appropriate; and

(b) require the applicant to provide it with any further information relating to the application that it

considers appropriate, whether at any interview before it or in any other manner that it considers appropriate.

(2) In considering the application, the Assessment Board may have regard to –

- (a) any matter made available to it under this Part; and
- (b) any other matters that it considers relevant.

(3) If the Assessment Board proposes to refuse the application, it must give the applicant an opportunity to make representations, whether in writing or in any other manner that it considers appropriate.

**39N. Applicant having higher rights of audience on grant of application**

On the granting by the Assessment Board of an application made under section 39H –

- (a) the applicant has the higher rights of audience for which the application has been made; and
- (b) those rights are exercisable by the applicant as a solicitor.

**39O. Loss of higher rights of audience**

(1) A person who has higher rights of audience under this Part ceases to have those rights on –

- (a) the person being adjudged bankrupt under the Bankruptcy Ordinance (Cap. 6);
- (b) the person's name ceasing to be on the roll of solicitors –
  - (i) as a result of an order made under section 10(2)(a);
  - (ii) under section 19(1); or

- (iii) under any other provision of this Ordinance; or
  - (c) the person being suspended from practice as a solicitor –
    - (i) as a result of an order made under section 10(2)(b); or
    - (ii) under any other provision of this Ordinance.
- (2) Despite subsection (1), the person reacquires the higher rights of audience –
  - (a) if the person has been adjudged bankrupt as described in subsection (1)(a), on the person being discharged from bankruptcy under the Bankruptcy Ordinance (Cap. 6);
  - (b) if the person's name has ceased to be on the roll of solicitors as described in subsection (1)(b), on –
    - (i) in the case of subsection (1)(b)(i), the person's name being restored to the roll of solicitors on an appeal against the order referred to in that subsection; or
    - (ii) in the case of subsection (1)(b)(i), (ii) or (iii), the person's name being restored to the roll of solicitors under section 5(3); or
  - (c) if the person has been suspended from practice as a solicitor as described in subsection (1)(c), on –
    - (i) in the case of subsection (1)(c)(i), the person's suspension being set aside on an appeal against the order referred to in that subsection; or

- (ii) in the case of subsection (1)(c)(i) or (ii), the period of the person's suspension having otherwise expired.

**39P. Higher rights of audience certificate**

(1) As soon as practicable after being notified under section 39K(2) of the granting by the Assessment Board of an application for higher rights of audience made by a person under section 39H, the Council must issue to the person a certificate in respect of those rights.

(2) If under section 39O(1) the person ceases to have higher rights of audience (whether or not only for a specified period), any certificate issued to the person under this section in respect of those rights also ceases to have effect.

(3) If, after any certificate issued to the person has ceased to have effect under subsection (2), the person reacquires under section 39O(2) the higher rights of audience covered by the certificate, the certificate is again to have effect on the reacquisition by the person of those rights.

(4) If the Council is required to issue a certificate to any person under subsection (1), and the person also has higher rights of audience under this Part in respect of any class of proceedings other than those to which the certificate relates, the Council may, where it considers appropriate, issue to the person a certificate in respect of all higher rights of audience that the person has under this Part.

(5) If a certificate is issued to a person under subsection (4), any earlier certificate issued in respect of any of the higher rights of audience covered by the certificate ceases to have effect.

(6) A certificate issued under this section must be in a form prescribed by rules made under section 73(1)(*de*).

**39Q. List of persons with higher rights of audience**

(1) The Council must keep a list of all persons who have acquired higher rights of audience under this Part, whether or not they have subsequently ceased to have those rights.

(2) The list must, in relation to those persons, contain –

(a) their respective names and, in relation to any of the persons who have not ceased to have the higher rights of audience, the respective addresses at which they carry on their businesses of practising as a solicitor;

(b) the respective dates from which they have acquired the higher rights of audience and, where applicable, the respective dates from which or during which they have ceased to have those rights; and

(c) the respective classes of proceedings to which the higher rights of audience relate.

(3) As soon as practicable after becoming aware of any matter that would reasonably require the list to be updated, the Council must update the list accordingly.

(4) As soon as practicable after updating the list, the Council must provide a copy of the updated list to the Registrar.

(5) For the purpose of enabling any member of the public to ascertain whether a person has acquired higher rights of audience under this Part and to ascertain the particulars of those rights, the Council must make the list available for public inspection at the office of the Council during office hours without payment.

**39R. Code of conduct for solicitor advocates**

(1) The Council may, in consultation with the Chief Justice and the Bar Council, issue a code of conduct for the purpose of setting out standards of professional conduct to be observed by solicitor advocates.

(2) The Council may, in consultation with the Chief Justice and the Bar Council, from time to time revise the code.

(3) The Council must publish the code and any revision to the code under subsection (2) in any manner that it considers appropriate.”.

**5. Section added**

The following is added –

**“45A. Person not having higher rights of audience in respect of certain class of proceedings not to exercise those rights as solicitor**

If a person who does not have higher rights of audience in respect of a class of proceedings under Part IIIB purports to exercise those rights in respect of proceedings of that class as a solicitor –

- (a) the person is guilty of contempt of the court before which the person purports to exercise those rights as a solicitor;
- (b) any costs in respect of anything done by the person in purported exercise of those rights as a solicitor are not recoverable by any person; and
- (c) the person commits an offence and is liable on conviction to a fine of \$500,000.”.

**6. Recovery of moneys in certain cases**

(1) Section 50A is amended by renumbering it as section 50A(1).

(2) Section 50A(1) is amended –

- (a) by repealing “shall prevent” and substituting “prevents”;



- (b) by repealing “provided that such moneys would have been recoverable if that solicitor had” and substituting “, if those moneys would have been recoverable had the solicitor”.
- (3) Section 50A is amended by adding –
- “(2) Nothing in section 45A(b) prevents the recovery of moneys paid or to be paid by a solicitor on behalf of a client in respect of anything done by the solicitor in purported exercise of any higher rights of audience as a solicitor while not having those rights under Part IIIB, if those moneys would have been recoverable had the solicitor had those rights under that Part.”.

**7. Application of penal provisions to body corporate**

Section 51(2) is amended by adding “45A,” after “45,”.

**8. Power of the Council to make rules**

(1) Section 73(1)(a)(i) is amended by adding “solicitor advocates,” after “solicitors,”.

- (2) Section 73(1) is amended by adding –
- “(de) regulating the issue to solicitor advocates of higher rights of audience certificates and the form of, and other matters relating to, the certificates;”.

**9. Sections added**

The following are added –

**“73CA. Power of Assessment Board to make rules**

- (1) The Assessment Board may make rules –
- (a) in relation to applications for higher rights of audience made under section 39H, to provide for –

- (i) the requirements referred to in section 39I(1)(c), including any requirement regarding possession or acquisition of qualifications, completion of courses or training, or passing of assessments or examinations or exemptions from assessments or examinations, relating to advocacy skills, practice and procedure applicable to courts, ethics or other matters;
- (ii) the information referred to in section 39J(1)(b);
- (iii) the fee referred to in section 39J(1)(c);
- (iv) the alternative requirements referred to in section 39L(1)(a), including any requirement regarding possession or acquisition of advocacy or litigation experience (including experience in relation to tribunal or arbitration proceedings), or judicial or quasi-judicial experience (including experience as a member of any tribunal or as an arbitrator);
- (v) any enquiries made by the Board with the Council under section 39M(1)(a), including the manner in which the Council is to provide information to the Board as a result of the enquiries;
- (vi) any requirements made by the Board in respect of the applicants under section

- 39M(1)(b), including the manner in which the applicants are to comply with the requirements and the procedure at any interview conducted as a result of the requirements; and
- (vii) any other matters relating to the applications or determination of the applications; and
- (b) in relation to the Board and its members, to provide for –
- (i) the procedure of the Board, including the procedure relating to meetings of the Board, and written resolutions adopted as decisions of the Board without a meeting of the Board;
  - (ii) the disclosure of information by members of the Board having actual or potential interest in matters before the Board, and any related matters, including the imposition, despite section 39G, of restrictions on the participation by the members in the performance of any function of the Board (whether by reference to attendance or voting at meetings or approval of written resolutions or otherwise);
  - (iii) the appointment of persons to act in the place of the members referred to in subparagraph (ii) (whether as the

chairperson or other members of the Board);

- (iv) the appointment of members of the Board as members of committees for the purposes of section 73CB, and the resignation or removal of members of the committees, and the procedure of the committees; and
- (v) any other matters relating to the Board and its members.

(2) Without limiting subsection (1), any rules made under subsection (1)(a)(i) that provide for requirements regarding completion of any courses or training, or passing of any assessments or examinations, may provide for –

- (a) the persons or organizations by or on behalf of whom or which the courses or training, or the assessments or examinations, are provided or organized, or the approval of those persons or organizations;
- (b) in relation to the courses or training –
  - (i) the arrangements for the courses or training, including the form, length and content, and the manner of conduct, of the courses or training; and
  - (ii) the approval of the courses or training;
- (c) in relation to the assessments or examinations –
  - (i) the arrangements for the assessments or examinations, including the standards or criteria to be met by individuals in order to pass the assessments or examinations,

- and any arrangements for appeal or review in respect of matters concerning the assessments or examinations; and
- (ii) the qualifications and conditions for appointment of examiners or other persons undertaking assessment of individuals at the assessments or examinations; and
- (d) any other matters relating to the courses or training, or the assessments or examinations.

**73CB. Assessment Board may delegate**

(1) The Assessment Board may delegate to any committee of the Board any of its powers or duties in relation to any interview conducted as a result of a requirement made by the Board under section 39M(1)(b).

(2) For the purposes of subsection (1), the Assessment Board may establish a committee of the Board by appointing as members of the committee at least 3 members of the Board, of whom –

- (a) one must be a member of the Board appointed under section 39E(3)(b)(i);
- (b) one must be a member of the Board appointed under section 39E(3)(b)(ii); and
- (c) one must be a member of the Board appointed under section 39E(3)(b)(iii).

(3) Subject to the other provisions of this Ordinance, a committee established under subsection (2) may regulate its own procedure.

(4) Any delegation under subsection (1) may be made generally or in relation to any particular case (whether in relation to any particular interview or interviews or otherwise).”.

## *Consequential Amendments*

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

#### **10. Interpretation**

(1) Section 1 of the Overseas Lawyers (Qualification for Admission) Rules (Cap. 159 sub. leg. Q) is amended by repealing the definition of “common law jurisdiction”.

(2) Section 1 is amended by adding –

““non-common law jurisdiction” (非普通法司法管轄區) means a jurisdiction that is not a common law jurisdiction;”.

### **Barristers (Qualification for Admission and Pupillage) Rules**

#### **11. Interpretation**

Section 2 of the Barristers (Qualification for Admission and Pupillage) Rules (Cap. 159 sub. leg. AC) is amended by repealing the definition of “common law jurisdiction”.

## **Explanatory Memorandum**

The purpose of this Bill is to amend the Legal Practitioners Ordinance (Cap. 159), in order to implement the scheme proposed by the Working Party on Solicitors’ Rights of Audience, a working party established by the Chief Justice with members appointed by him. Under the proposed scheme, solicitors having at least 5 years’ post-qualification experience and satisfying further eligibility requirements may apply to an assessment board for higher rights of audience before the High Court and the Court of Final Appeal.

### Preliminary provisions

2. Clause 1 sets out the short title of the Bill when enacted, and clause 2 provides for the commencement of the Bill further to its enactment.

3. Clause 3 adds to the principal Ordinance new definitions for expressions to be used in the Bill, including the “Assessment Board” (being the assessment board to be established under the Bill under the name of Higher Rights Assessment Board); “higher rights of audience” (being the higher rights of audience exercisable before the High Court and the Court of Final Appeal); “higher rights of audience certificate” (being a certificate issued to a person having higher rights of audience); and “solicitor advocate” (being a person having higher rights of audience).

### New Part IIIB

4. Clause 4 adds a new Part IIIB, which consists of the proposed sections 39E to 39R, to the principal Ordinance.

5. The proposed section 39E establishes the Assessment Board, and provides for its functions and membership. The Assessment Board is to comprise members appointed by the Chief Justice from serving or former judges (see the definition of “eligible person” in the proposed section 39E), members of the legal profession and officers of the Department of Justice, as well as a lay member also appointed by him. The proposed sections 39F and 39G further provide for the terms of office, and resignation or removal of a member of the Assessment Board, and also for the proceedings of the Assessment Board.

6. The proposed section 39H provides that a solicitor satisfying the eligibility requirements may apply to the Assessment Board for higher rights of audience, whether in respect of civil proceedings, criminal proceedings or both civil and criminal proceedings. The proposed section 39I sets out the eligibility requirements. Among other requirements, the applicant has to have at least 5 years’ post-qualification experience (see the requirements concerning “requisite

experience” in the proposed section 39I). Further, the applicant has to comply with the requirements prescribed by rules to be made by the Assessment Board (“Assessment Board Rules”), or alternatively apply on the basis of an exemption from those requirements.

7. The proposed section 39J sets out further requirements applicable to the application. In particular, the application has to be supported by the information prescribed by the Assessment Board Rules and accompanied by the fee prescribed by those Rules.

8. The proposed section 39K provides for the determination by the Assessment Board of the application, and requires the Assessment Board to notify the applicant and the Council of the Law Society (“Council”) of its decision as soon as practicable after the decision is made. The proposed section 39L sets out further conditions applicable to the determination. It provides that if the applicant has sought exemption from the requirements prescribed by the Assessment Board Rules (as described in paragraph 6 above), the Assessment Board will have to be satisfied that the applicant has complied with the alternative requirements also prescribed by the Assessment Board Rules. In addition, the Assessment Board has to be satisfied that the applicant has acquired recent litigation experience and is in all respects a suitable person to have the higher rights of audience for which the application is made.

9. The proposed section 39M contains further provisions applicable to the determination of the application by the Assessment Board. Among other matters, the provision empowers the Assessment Board to make enquiries with the Council to ascertain whether the applicant satisfies the eligibility requirements under the proposed section 39I and the further requirements described in the proposed section 39L, and also to require the applicant to provide it with further information relating to the application, whether at an interview before it or otherwise.

10. The proposed section 39N makes it clear that on the granting of the application by the Assessment Board, the applicant has the higher rights of



audience sought under the application, and those rights would then be exercisable by the applicant as a solicitor.

11. The proposed section 39O provides that a person who has higher rights of audience ceases to have those rights on the person being adjudged bankrupt, or on the person's name ceasing to be on the roll of solicitors, or on the person being suspended from practice as a solicitor. The provision further provides for reacquisition of the rights in specified circumstances.

12. The proposed sections 39P and 39Q set out provisions relating to the issue by the Council of higher rights of audience certificates, and require the Council to keep, and make available for public inspection, a list of all persons who have acquired higher rights of audience, whether or not they have subsequently ceased to have those rights.

13. The proposed section 39R empowers the Council to issue a code of conduct for solicitor advocates, in consultation with the Chief Justice and the Council of the Hong Kong Bar Association.

#### Further provisions

14. Clause 5 adds the proposed section 45A to the principal Ordinance. The proposed section 45A provides that where a person who does not have higher rights of audience in respect of certain proceedings under the proposed Part IIIB purports to exercise those rights as a solicitor, the person is guilty of contempt of court and also commits an offence punishable by a fine of \$500,000. Also, any costs in respect of anything done by the person in purported exercise of those rights as a solicitor are not recoverable by any person. Further, clause 6 amends section 50A of the principal Ordinance to ensure that moneys paid by a solicitor for a client would not, by reason of the proposed section 45A, become irrecoverable for want of higher rights of audience on the part of the solicitor. In addition, clause 7 amends section 51 of the principal Ordinance to provide that the general penal provision for bodies corporate under that section applies also to the proposed section 45A.

15. Clause 8 amends section 73 of the principal Ordinance, which provides for the power of the Council to make rules, in order to deal with the issue of and other matters concerning higher rights of audience certificates.

16. Clause 9 adds the proposed sections 73CA and 73CB to the principal Ordinance. The proposed section 73CA empowers the Assessment Board to make the Assessment Board Rules. The provision provides that the Assessment Board may make rules to deal with various matters relating to applications for higher rights of audience as well as determination of those applications, and to provide for matters concerning the Assessment Board and its members. It further provides that the rules may deal with matters relating to any courses or training or assessments or examinations required to be completed or passed by an applicant for higher rights of audience. The proposed section 73CB further empowers the Assessment Board to delegate to its committees its powers and duties in relation to any interview required to be attended by an applicant for higher rights of audience under the proposed section 39M.

17. Clauses 10 and 11 contain consequential provisions.

Chapter:	159	LEGAL PRACTITIONERS ORDINANCE	Gazette Number	Version Date
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Section:	2	Interpretation	10 of 2008	09/05/2008
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- (1) In this Ordinance, unless the context otherwise requires-
- "accountant's report" (會計師報告) means a report delivered in accordance with the provisions of section 8; (Replaced 25 of 1968 s. 2)
- "Association" (聯營組織) means an Association registered under Part IIIA; (Added 60 of 1994 s. 2)
- "Bar Council" (執委會) means the Council of the Hong Kong Bar Association; (Amended 70 of 1991 s. 2)
- "barrister" (大律師) means a person who is enrolled as a barrister on the roll of barristers and who, at the material time, is not suspended from practice;
- "client" (當事人), except in relation to non-contentious business, includes any person who as principal or on behalf of another person retains or employs, or is about to retain or employ, a solicitor, and any person who is or may be liable to pay a solicitor's costs;
- "contentious business" (爭訟事務) includes any business done by a solicitor in any court, whether as a solicitor or as an advocate;
- "costs" (訟費、事務費) includes fees, charges, disbursements, expenses and remuneration;
- "Costs Committee" (事務費委員會) means the Costs Committee appointed under section 74;
- "Council" (理事會) means, in relation to the Law Society, the council of the Society elected in accordance with the provisions of its articles of association; (Added 52 of 1980 s. 2. Amended 27 of 1998 s. 5)
- "Council of the Society of Notaries" (公證人協會理事會) means the Council of Management of that society appointed in accordance with the provisions of its articles of association; (Added 27 of 1998 s. 5)
- "Court" (法院) means the Court of First Instance; (Amended 92 of 1975 s. 59; 25 of 1998 s. 2)
- "employee" (僱員) includes a former employee; (Added 25 of 1968 s. 2)
- "foreign firm" (外地律師行) means a law firm or sole practitioner that is registered as a foreign firm under Part IIIA; (Added 60 of 1994 s. 2. Amended 23 of 1998 s. 2)
- "foreign jurisdiction" (外地司法管轄區) means a jurisdiction other than Hong Kong; (Added 60 of 1994 s. 2. Amended 23 of 1998 s. 2)
- "foreign law" (外地法律) means the law of a foreign jurisdiction; (Added 60 of 1994 s. 2. Amended 23 of 1998 s. 2)
- "foreign lawyer" (外地律師) means a person registered as a foreign lawyer under Part IIIA; (Added 60 of 1994 s. 2. Amended 23 of 1998 s. 2)
- "Hong Kong firm" (香港律師行) means a law firm in which-
- (a) all of the partners are solicitors; or
  - (b) the sole practitioner of which is a solicitor; (Added 60 of 1994 s. 2. Amended 42 of 2000 s. 2)
- "non-contentious business" (非爭訟事務) includes any business connected with sales, purchases, leases, mortgages and other matters of conveyancing;
- "notary public" (公證人) means a person who is registered on the register of notaries public and who, at the material time, is not suspended from practice;
- "Postgraduate Certificate in Laws" (法學專業證書) means a Postgraduate Certificate in Laws awarded by the University of Hong Kong, the City University of Hong Kong, the City

Polytechnic of Hong Kong or The Chinese University of Hong Kong; (Added 1 of 1992 s. 2. Amended 100 of 1994 s. 5; 10 of 2008 s. 34)

"practising certificate" (執業證書) means-

- (a) a certificate issued by the Society under section 6; (Amended 27 of 1998 s. 5)
- (b) a certificate issued by the Bar Council under section 30; and (Replaced 58 of 1976 s. 2. Amended 70 of 1991 s. 2; 27 of 1998 s. 5)
- (c) a certificate issued by the Society of Notaries under section 40E; (Added 27 of 1998 s. 5)

"qualified person" (合資格人士) means a person qualified for admission as a solicitor; (Added 50 of 1982 s. 2)

"register of notaries public" (公證人註冊紀錄冊) means the register kept by the Registrar in accordance with the provisions of section 40C; (Amended 27 of 1998 s. 5)

"Registrar" (司法常務官) means the Registrar of the High Court and any senior deputy registrar, deputy registrar or assistant registrar of the High Court; (Amended 25 of 1998 s. 2; 10 of 2005 s. 175)

"roll of barristers" (大律師登記冊) means the roll kept by the Registrar in accordance with the provisions of section 29;

"roll of solicitors" (律師登記冊) means the roll kept by the Registrar in accordance with the provisions of section 5;

"Society" and "Law Society" (律師會) mean The Law Society of Hong Kong; (Replaced 14 of 1970 s. 2. Amended 27 of 1998 s. 5)

"Society of Notaries" (公證人協會) means the body known as Hong Kong Society of Notaries incorporated with limited liability under the Companies Ordinance (Cap 32) and having among its objects the promotion of proper professional standards among notaries public, the regulation of the practice of notaries public and the performance or discharge of such duties or responsibilities as may be conferred on it under this Ordinance; (Added 27 of 1998 s. 5. Amended L.N. 206 of 2003)

"solicitor" (律師) means a person who is enrolled on the roll of solicitors and who, at the material time, is not suspended from practice;

"trainee solicitor contract" (實習律師合約) means a contract in writing, whether entered into before or after the commencement of this Ordinance, under which a person is employed as an articled clerk or trainee solicitor for the purpose of being admitted as a solicitor; (Added 70 of 1991 s. 2)

"unqualified person" (不合資格人士) means a person who is not a solicitor.

(Amended 70 of 1991 s. 2; 61 of 1992 s. 2)

(1A) In this Ordinance, a reference to the Department of Justice shall, in relation to any period of time before 1 July 1997, be deemed to be a reference to the then Legal Department. (Added 11 of 1999 s. 3)

(2) For the avoidance of doubt, it is hereby declared that any conduct of a trainee solicitor or employee of a solicitor which would reasonably be regarded as disgraceful, dishonourable or discreditable by a solicitor of good repute shall be deemed misconduct. (Added 25 of 1968 s. 2. Amended 1 of 1981 s. 2; 70 of 1991 s. 13)

(3) Any rules made under section 73(1)(d) or (f) shall, subject to section 73(3) and unless the context otherwise requires, apply to a qualified person as they apply to a solicitor. (Added 50 of 1982 s. 2)

Section:	50A	Recovery of moneys in certain cases	30/06/1997
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Nothing in section 45(2)(b) or in section 50 shall prevent the recovery of moneys paid or to be

paid by a solicitor on behalf of a client in respect of anything done by the solicitor while acting for the client without holding a practising certificate in force provided that such moneys would have been recoverable if that solicitor had held such a certificate in force when so acting.

(Added 25 of 1968 s. 12. Amended L.N. 162 of 1993)

[cf. 1965 c. 31 s. 7 U.K.]

Chapter:	159	LEGAL PRACTITIONERS ORDINANCE	Gazette Number	Version Date
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Section:	51	Application of penal provisions to body corporate		30/06/1997
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(1) If any act is done by a body corporate, or by any director, officer or servant thereof, of such a nature or in such a manner as to be calculated to imply that the body corporate is qualified or recognized by law as qualified to act as a solicitor, the body corporate shall be guilty of an offence and shall be liable on summary conviction to a fine of \$500000, and, in the case of an act done by a director, officer or servant of the body corporate, such person shall also be guilty of an offence and shall be liable on summary conviction to a fine of \$500000. (Amended 46 of 1989 ss. 11 & 13)

(2) For the avoidance of doubt, it is hereby declared that in sections 45, 46, 47, 48, 49, 50 and 50B, references to unqualified persons and to persons include references to a body corporate.

(Amended 60 of 1994 s. 40)

[cf. 1957 c. 27 s. 22 U.K.]

Chapter:	159	LEGAL PRACTITIONERS ORDINANCE	Gazette Number	Version Date
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Section:	73	Power of the Council to make rules	10 of 2005	08/07/2005
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(1) The Council may make rules-

(a) providing for-

(i) the professional practice, conduct and discipline of solicitors, foreign lawyers, employees of solicitors and foreign lawyers and trainee solicitors; (Replaced 60 of 1994 s. 45)

(ii) the restriction of payment of commission to unqualified persons; and

(iii) for the purpose of harmonizing the relationship of solicitors inter se and, with the prior approval of the Bar Council, governing the relationship of solicitors and barristers; (Amended 70 of 1991 s. 8)

(aa) regulating the issue to solicitors of practising certificates and the fees payable for, the conditions of issue of, the manner of applying for, the period and form of, the publication of the issue and the suspension of such practising certificates and generally in relation thereto; (Added 58 of 1976 s. 13)

(ab) providing for any continuing legal education or training that must be undertaken by solicitors; (Added 70 of 1991 s. 10)

(b) in relation to the keeping by solicitors of accounts, providing for-

(i) the opening and keeping by solicitors of accounts at banks of clients' money;

(ii) the keeping by solicitors of accounts containing particulars and information as to moneys received, held or paid both for or on account of their clients;

(iii) empowering the Council to take such action as may be necessary to enable them to ascertain whether or not such rules are being complied with;

(iv) regulating the manner in which solicitors shall deal with money held by them in a

- fiduciary capacity and the books of accounts to be kept in respect thereof and for the auditing of such accounts;
- (v) the qualifications to be held by an accountant by whom an accountant's report may be given; (Amended 25 of 1968 s. 14)
  - (vi) the nature and extent of the examination to be made by the accountant of the books and accounts of a solicitor or of his firm and of any other relevant documents with a view to the signing of a report to be delivered by the solicitor under section 8; (Amended 25 of 1968 s. 14)
  - (vii) the form of an accountant's report and the information to be contained therein in accordance with section 8(1); (Replaced 25 of 1968 s. 14)
  - (viii) the evidence, if any, which shall satisfy the Council that the delivery of an accountant's report is unnecessary and the cases in which such evidence is or is not required; (Amended 25 of 1968 s. 14; L.N. 162 of 1993)
  - (ix) specifying in such circumstances as may be set forth in the rules a different accounting period from that specified in section 8(2); and
  - (x) regulating any matters of procedure or matters incidental, ancillary or supplemental to the provisions of section 8;
- (c) providing for the conduct of an inquiry and investigations by a Solicitors Disciplinary Tribunal under section 9; (Amended 61 of 1992 s. 26)
  - (caa) providing for the practice and procedure to be followed in connection with the submission of a matter by the Council to the Tribunal Convenor under section 9A(1A); (Added 23 of 2002 s. 111)
  - (cab) providing for the practice and procedure to be followed in connection with the disposal of a matter by the Tribunal Convenor under section 9AB; (Added 23 of 2002 s. 111)
  - (ca) respecting procedures for investigations by an inspector under section 8AA; (Added 60 of 1994 s. 45)
  - (cb) requiring a solicitor, foreign lawyer, trainee solicitor or employee to whom a letter of disapproval is sent by the Council, to pay the Council's costs of investigating the conduct which resulted in the letter of disapproval; (Added 60 of 1994 s. 45)
  - (d) regulating the employment of trainee solicitors and examinations, and in particular, without prejudice to the generality of the foregoing, providing for- (Amended 32 of 1972 s. 4; 1 of 1981 s. 5; 70 of 1991 s. 13)
    - (i) the manner in which any person shall qualify for admission under section 4(1)(a) including, in particular, the period of employment, if any, of a trainee solicitor in any particular case, the examination or examinations to be passed, the courses to be completed and notices and forms to be used in connection therewith; and (Amended 1 of 1981 s. 5; 70 of 1991 ss. 10 & 13; 60 of 1994 s. 45)
    - (ii) (Repealed 60 of 1994 s. 45)
  - (da) respecting the admission of persons under section 4(1)(b), including the qualifications for admission, examinations and the fees to be paid for applications and examinations; (Added 60 of 1994 s. 45)
  - (db) respecting the registration of foreign lawyers, foreign firms and Associations, including applications for registration, qualification for registration, fees for application and registration, period and form of registration, conditions of registration, suspension of registration and cancellation of registration; (Added 60 of 1994 s. 45)
  - (dc) respecting the practice of Hong Kong firms, foreign firms and Associations; (Added 60 of 1994 s. 45)
  - (dd) prohibiting the practice of Hong Kong law by foreign lawyers and for that purpose the Council may define, limit or expand the meaning of the practice of Hong Kong law; (Added 60 of 1994 s. 45)
  - (e) enabling the Council to exempt any person from compliance with the provisions of any such rules and to impose and enforce conditions upon which such exemption may be granted in any particular case; and
  - (f) prescribing any thing which, under this Ordinance, is to be or may be prescribed by the Council. (Amended 52 of 1980 s. 2)

(2) Every rule made by the Council under this section shall be subject to the prior approval of the Chief Justice. (Amended 52 of 1980 s. 2)

(2A) For the avoidance of doubt, it is declared that in subsection (1)(a)(i), "professional practice" (專業執業), in relation to a solicitor, means acting as a solicitor or the business of acting as a solicitor, whether as a partner, sole practitioner, assistant solicitor or consultant in a Hong Kong firm or as an employee of a non-solicitor employer. (Added 10 of 2005 s. 185)

(3) No rule made under subsection (1)(b), (c) or (d) shall apply to a person to whom section 75(1) applies insofar as such person is acting in the course of the employment which gives rise to the application of that section. (Amended 50 of 1982 s. 5; 60 of 1994 s. 45)

Chapter:	159Q	OVERSEAS LAWYERS (QUALIFICATION FOR ADMISSION) RULES	Gazette Number	Version Date
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Section:	1	Interpretation		30/06/1997
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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.

(Enacted 1994)

Chapter:	159AC	BARRISTERS (QUALIFICATION FOR ADMISSION AND PUPILLAGE) RULES	Gazette Number	Version Date
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Section:	2	Interpretation	L.N. 92 of 2003	28/03/2003
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In these Rules, unless the context otherwise requires-

"Advanced Legal Education Programme" (高級法律進修計劃) means the Advanced Legal Education Programme referred to in the Barristers (Advanced Legal Education Requirement) Rules (Cap 159 sub. leg. AB);

"approved pupillage" (認可實習大律師實習) means a pupillage approved in accordance with section 12;

"certificate of eligibility for admission" (符合資格獲認許證明書) means the certificate of eligibility for admission issued to an overseas lawyer under section 6 in respect of his eligibility to be admitted as an overseas lawyer;

"certificate of eligibility for pupillage" (符合資格為實習大律師證明書) means the certificate of eligibility for pupillage issued under section 12;

"certificate of qualification for admission" (具備認許資格證明書) means the certificate of qualification for admission issued to a person seeking to be admitted as a barrister under section 8;

"Code of Conduct" (行為守則) means the Code of Conduct of the Hong Kong Bar Association as in force from time to time;

"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;

"Examination" (考試) means the Barristers Qualification Examination which is an assessment of competence in the subjects specified, assessed in the manner specified, in these Rules;

"jurisdiction of admission" (獲認許所在的司法管轄區), in relation to an overseas lawyer, means the foreign jurisdiction the law of which the overseas lawyer is entitled to practise;

"overseas lawyer" (海外律師) means a person who is entitled to practise the law of a foreign jurisdiction.