

立法會

Legislative Council

LC Paper No. CB(4)147/14-15

Ref.: CB4/SS/1/14

Paper for the House Committee meeting on 14 November 2014

Report of the Subcommittee on Overseas Lawyers (Qualification for Admission) (Amendment) Rules 2014 (Commencement) Notice

Purpose

This paper reports on the deliberations of the Subcommittee on Overseas Lawyers (Qualification for Admission) (Amendment) Rules 2014 (Commencement) Notice ("the Commencement Notice").

Background

2. The Overseas Lawyers Qualification Examination, administered by the The Law Society of Hong Kong ("The Law Society"), offers an overseas qualified lawyer a means to gain admission as a Hong Kong solicitor. The Examination is conducted on the basis of and is governed by the Overseas Lawyers (Qualification for Admission) Rules (Cap. 159Q) ("OLQE Rules").

3. According to The Law Society, the Overseas Lawyers Qualification Examination is held generally in October, November and December each year. The Examination comprises four written Heads, i.e. Head I on Conveyancing, Head II on Civil and Criminal Procedure, Head III on Commercial and Company Law and Head IV on Accounts and Professional Conduct. For candidates qualified in non-common law jurisdictions, they also have to pass an oral examination, Head V on Principles of Common Law.

4. A candidate is taken to have passed the Examination if he/she has passed all the Heads of Examination that he/she is required to sit. A candidate may apply for exemption from sitting all or part of the Overseas Lawyers Qualification Examination. There is a pre-requisite of five years' experience in

the practice of law before an applicant can apply for exemption from sitting a written Head of Examination.

5. The Overseas Lawyers (Qualification for Admission) (Amendment) Rules 2014 ("the Amendment Rules"), gazetted on 25 April 2014 and laid before the Legislative Council on 30 April 2014, were made by the Council of The Law Society under section 73 of the Legal Practitioners Ordinance (Cap. 159) with the prior approval of the Chief Justice to amend the OLQE Rules to provide for, amongst others, matters relating to admission of an overseas qualified lawyer as a Hong Kong solicitor as follows:

- (a) adding a definition of "applicant" to the Amendment Rules;
- (b) if an applicant has been admitted in more than one jurisdiction as a lawyer, specifying that the applicant must be of good standing in each jurisdiction in which the applicant has been so admitted;
- (c) amending the qualifications that an applicant must have obtained or the conditions that an applicant must have satisfied in order to be qualified for admission as a solicitor in Hong Kong;
- (d) in relation to any length or duration of professional training, practice or experience that is considered to be relevant under the Amendment Rules, providing the manner in which the period is to be determined;
- (e) adding Hong Kong Constitutional Law as a subject to be assessed by the Examination as specified in the Amendment Rules;
- (f) repealing the transitional provisions; and
- (g) making certain textual amendments.

6. No subcommittee was formed by the House Committee ("HC") to scrutinize the Amendment Rules, and no amendments were made to the Amendment Rules during the negative vetting period which expired on 28 May 2014.

The Commencement Notice

7. The Commencement Notice was made by the President of The Law Society under section 1 of the Amendment Rules to appoint 2 January 2015 as the day on which the Amendment Rules come into operation.

8. According to The Law Society, subject to the coming into operation of the Commencement Notice, the Overseas Lawyers Qualification Examination in 2015 is scheduled to be held in or about November 2015, and it is estimated that applicants for admission as Hong Kong solicitors may lodge their applications to sit for the Examination on or about 1 April 2015.

The Subcommittee

9. At the HC meeting held on 24 October 2014, Members agreed that a subcommittee should be formed to study the Commencement Notice. The membership list of the Subcommittee is in the **Appendix**.

10. Under the chairmanship of Hon Dennis KWOK, the Subcommittee has held one meeting with The Law Society.

11. To allow time for the Subcommittee to complete its work, a motion was moved by Hon Dennis KWOK, on behalf of the Subcommittee, at the Council meeting of 12 November 2014 to extend the scrutiny period of the Commencement Notice from the Council meeting of 19 November 2014 to that of 10 December 2014.

Deliberations of the Subcommittee

Preparation for the Commencement Notice

12. Noting that The Law Society has resolved 2 January 2015 as the commencement date of the Amendment Rules, question was raised about the preparation work for implementing the Amendment Rules.

13. The Law Society has advised that it is establishing a Panel of Examiners for the new written Head of Examination on Hong Kong Constitutional Law introduced by the Amendment Rules. The tasks of this Panel of Examiners are to compile the syllabus, standards and reading list for the written Examination on Hong Kong Constitutional Law. The Law Society will also draw up guidelines governing the granting of exemptions from sitting such Examination. An Examination Information Package incorporating the Amendment Rules is being prepared. In view of the aforesaid, The Law Society has appointed 2 January 2015 as the commencement date of the Amendment Rules to provide sufficient notice to qualified overseas lawyers to prepare for the new written Head of Examination on Hong Kong Constitutional Law, and for The Law Society to complete the necessary preparatory work prior to receiving applications to sit such Examination.

Granting of exemption from sitting the Overseas Lawyers Qualification Examination

14. On the granting of exemptions under the OLQE Rules, The Law Society has advised that an applicant whose jurisdiction of admission is a common law jurisdiction and who has had not less than five years of experience in the practice of the law of any common law jurisdiction would normally be granted exemption from sitting the written Examinations as follows:

- (a) on the Head II Examination on Civil and Criminal Procedure on the basis the applicant has had five years of experience in the practice of law;
- (b) on the Head III Examination on Commercial and Company Law if the applicant can demonstrate he/she has had sufficient experience, knowledge and training relevant to this Head; and
- (c) on the Head IV Examination on Accounts and Professional Conduct if the applicant was qualified in England and Wales or Australia or other jurisdictions where the applicant had taken the professional qualification examination on solicitors' accounts and ethics.

The Law Society has however not granted any applicant exemption from sitting the Head I Examination on Conveyancing due to the uniqueness of the law on conveyancing in Hong Kong. In respect of an applicant whose jurisdiction of admission is a non-common law jurisdiction, the applicant must have no less than five years of experience in the practice of the law in order to apply to sit the Overseas Lawyers Qualifying Examination. The Law Society would not normally grant exemption for such applicant, except for exempting from sitting the Head V oral examination on the Principles of Common Law if the applicant has obtained a Master Degree in Common Law or similar qualification offered by local institutions.

15. As to the question on whether an applicant who has completed a bachelor's degree in law in Hong Kong and who does not have five years of experience in the practice of law in a common law jurisdiction would be granted exemption from sitting part of the Overseas Lawyers Qualification Examination, The Law Society has replied in the negative as academic qualification of the applicant is not treated as experience in the practice of law.

16. On the length of an applicant's experience in the practice of the law of the applicant's jurisdiction of admission for taking the Overseas Lawyers Qualification Examination, members note that the Amendment Rules stipulate that an applicant's experience in the practice of the law of the applicant's jurisdiction of admission must fall within the 10 years immediately preceding an

application for sitting the Overseas Lawyers Qualification Examination. Members further note that under Rule 8 of the OLQE Rules as amended by Rule 10 of the Amendment Rules, if an applicant has been admitted in more than one jurisdiction, the applicant may elect any one of those jurisdictions as his/her jurisdiction of admission.

17. Noting that the period of pupillage is not recognized as post-admission experience to satisfy the eligibility criteria to sit the Overseas Lawyers Qualification Examination under Rules 4 and 5 of the OLQE Rules as amended by the Amendment Rules, a member has asked why this is the case. The Law Society has explained that pupillage does not count as training leading to the applicant's admission as a solicitor in jurisdictions where there is a split legal profession, not to mention that training for articled clerk or trainee solicitor on its own does not count as post-admission experience in the practice of law of the applicant. In jurisdictions where there is a fused profession, pupillage would be counted as experience in the practice of law.

Checks and balances for admitting overseas lawyers as Hong Kong solicitors

18. Whilst Hong Kong welcomes and encourages overseas law talents to practise law in Hong Kong, Hon Dennis KWOK urges that there should be sufficient checks and balances in place for admitting overseas lawyers as Hong Kong solicitors in order to ensure fairness and uphold the high quality and integrity of the practice of law in Hong Kong.

Advice sought

19. Members are invited to note the deliberations of the Subcommittee.

**Subcommittee on
Overseas Lawyers (Qualification for Admission) (Amendment)
Rules 2014 (Commencement) Notice**

Membership list

Chairman Hon Dennis KWOK

Members Hon James TO Kun-sun
Hon Abraham SHEK Lai-him, GBS, JP
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon Paul TSE Wai-chun, JP

(Total : 5 Members)

Clerk Mary SO

Legal adviser Carrie WONG