

**LEGAL PRACTITIONERS (AMENDMENT)
ORDINANCE 2010**

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HONG KONG SPECIAL ADMINISTRATIVE REGION

ORDINANCE NO. 2 OF 2010

L.S.

Donald TSANG
Chief Executive
28 January 2010

An Ordinance to amend the Legal Practitioners Ordinance.

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Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Legal Practitioners (Amendment) Ordinance 2010.

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—

- (a) a chairperson appointed by the Chief Justice, who must be an eligible person;
 - (b) 9 other members appointed by the Chief Justice, 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; and
 - (iv) one must be a Law Officer or a Principal Government Counsel of the Department of Justice; and
 - (c) one other member selected by the chairperson from among the members of the panel 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 Hong Kong Bar Association; or
 - (c) in the case of an appointment under subsection (3)(b)(iv), the Secretary for Justice.

(5) For the purposes of subsection (3)(c), the Chief Justice may appoint a panel of persons whom the Chief Justice considers suitable for selection 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 or of panel appointed under section 39E(5)

(1) A member of the Assessment Board or of the panel appointed under section 39E(5) holds office for a term not exceeding 3 years, but may be reappointed or reselected.

(2) A member of the Assessment Board or of the panel appointed under section 39E(5) 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 or of the panel appointed under section 39E(5) 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 Hong Kong Bar Association; 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 the chairperson of the Board or a member appointed under section 39E(3)(b)(i);
- (b) one must be a member appointed under section 39E(3)(b)(ii); and
- (c) one must be a member appointed under section 39E(3)(b)(iii).

(2) At a meeting of the Assessment Board—

- (a) subject to paragraph (b), the chairperson of the Board must preside; or
- (b) if the chairperson is not present at the meeting, a member of the Board appointed under section 39E(3)(b)(i) and nominated by the chairperson must preside.

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

(4) 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.

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

(6) 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) For the purposes of subsection (1), if the class of proceedings in respect of which the applicant is applying for higher rights of audience is that specified in section 39H(2)(c), the Assessment Board may grant the application—

- (a) without modifications to the class of proceedings to which the application relates; or
- (b) only in respect of a class of proceedings specified in section 39H(2)(a) or (b).

(3) 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 grants the application under subsection (2)(b) or 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 in respect of which the Board is to grant the application; and
- (c) is in all other respects a suitable person to have the higher rights of audience in respect of which the Board is to grant the application.

- (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 grant the application under section 39K(2)(b) or 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 in respect of which the Board has granted the application; 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 expired.

39P. Higher rights of audience certificate

(1) As soon as practicable after being notified under section 39K(3) of the granting by the Assessment Board of an application in respect of any higher rights of audience, the Council must issue to the person by whom the application has been made 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”.