

**立法會**  
**Legislative Council**

LC Paper No. CB(4)248/14-15  
(These minutes have been seen by  
The Law Society of Hong Kong)

Ref : CB4/SS/1/14

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

**Minutes of the first meeting  
held on Tuesday, 4 November 2014, at 2:30 pm  
in Conference Room 1 of the Legislative Council Complex**

**Members present** : Hon Dennis KWOK (Chairman)  
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

**Attendance by invitation** : Agenda item II

Mr Denis BROCK  
Council Member of The Law Society of Hong Kong  
Chairman, Foreign Lawyers Committee

Mr John CHAN  
Member, Foreign Lawyers Committee

Mr Timothy LI  
Member, Foreign Lawyers Committee

Mr Alexander de Nerée tot BABBERICH  
Member, Foreign Lawyers Committee

Ms Heidi CHU  
Secretary General  
The Law Society of Hong Kong

Ms Vivien LEE  
Director of Standards & Development  
The Law Society of Hong Kong

Ms Samantha LEUNG  
Acting Assistant Director, Regulation & Guidance  
The Law Society of Hong Kong

**Clerk in attendance** : Miss Mary SO  
Chief Council Secretary (4)2

**Staff in attendance** : Miss Carrie WONG  
Assistant Legal Adviser 4

Ms Cindy CHAN  
Senior Council Secretary (4)2

Miss Vivian YUEN  
Legislative Assistant (4)2

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## **I. Election of Chairman**

Mr James TO, the member who had the highest precedence among members present at the meeting, presided over the election of the Chairman.

2. Mr James TO invited nominations for the chairmanship of the Subcommittee. Mr Abraham SHEK nominated Mr Dennis KWOK and the nomination was seconded by Dr Priscilla LEUNG. Mr Dennis KWOK accepted the nomination. As there was no other nomination, Mr James TO declared that Mr Dennis KWOK was elected Chairman of the Subcommittee.

## **II. Meeting with The Law Society of Hong Kong ("The Law Society")**

L.N. 122 of 2014 -- Overseas Lawyers  
(Qualification for Admission)  
(Amendment) Rules 2014  
(Commencement) Notice

LC Paper No. CB(4)110/14-15(01) -- Legislative Council ("LegCo")  
Brief on the Overseas Lawyers  
(Qualification for Admission)

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	(Amendment) Rules 2014 (Commencement) Notice
LC Paper No. LS6/14-15	-- Legal Service Division Report
L.N. 57 of 2014	-- Overseas Lawyers (Qualification for Admission) (Amendment) Rules 2014
LC Paper No. LS49/13-14	-- Legal Service Division Report
LC Paper No. CB(4)110/14-15(02)	-- Marked-up of the Overseas Lawyers (Qualification for Admission) (Amendment) rules 2014

3. The Subcommittee deliberated (index of proceedings attached at **Annex**).

Declaration of interest

4. Dr Priscilla LEUNG declared that she taught law at the School of Law of the City University of Hong Kong.

Discussion

*Briefing by The Law Society*

5. Mr Denis BROCK briefed members on the Overseas Lawyers (Qualification for Admission) (Amendment) Rules 2014 (Commencement) Notice ("the Commencement Notice") which was made by the President of the Law Society under section 1 of the Overseas Lawyers (Qualification for Admission) (Amendment) Rules 2014 ("the Amendment Rules") to appoint 2 January 2015 as the day on which the Amendment Rules would come into operation.

*Preparation for the Commencement Notice*

6. In reply to Mr Abraham SHEK's enquiry about the preparation work for implementing the Amendment Rules, Mr John CHAN advised that The Law Society was 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 were to compile the syllabus,

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standards and reading list for the written Examination on Hong Kong Constitutional Law. The Law Society would also draw up guidelines governing the granting of exemptions from sitting such Examination. An Examination Information Package incorporating the Amendment Rules was also being prepared. In view of the aforesaid, The Law Society had 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*

7. In reply to the Chairman's enquiry about the granting of exemptions under the Amendment Rules, Mr Denis BROCK advised that an applicant whose jurisdiction of admission was a common law jurisdiction and who had 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 on the following:

- (a) On the Head II Examination on Civil and Criminal Procedure on the basis the applicant had had five years of experience in the practice of law;
- (b) On the Head III Examination on Commercial and Company Law on the basis the applicant had demonstrated he had 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 had however not granted any applicant exemption from sitting the written Examination on Conveyancing due to the uniqueness of the law on conveyancing in Hong Kong.

8. Mr John CHAN supplemented that in respect of an applicant whose jurisdiction of admission was a non-common law jurisdiction, the applicant must have not less than five years of experience in the practice of the law in order to apply to sit the Examination. The Law Society would not normally grant

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exemption from sitting the Overseas Lawyers Qualification Examination, except for exempting from sitting the Head V oral examination on the Principles of Common Law if the applicant had obtained a Master Degree in Common Law or similar qualification offered by local institutions.

9. Mr Abraham SHEK asked whether an applicant who had completed a bachelor's degree in law in Hong Kong and who did 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. Mr John CHAN replied in the negative, as academic qualification of the applicant was not treated as experience in the practice of law.

10. Mr Abraham SHEK said that he supported The Law Society's proposal of introducing a common entrance examination as an alternative means for persons to become Hong Kong solicitors, as this would devoid the need of those local law graduates, who failed to get admitted to the Postgraduate Certificate in Laws programmes offered by local universities, to go overseas to obtain the necessary qualifications to practise law albeit in overseas jurisdictions. If these overseas lawyers wished to be admitted as Hong Kong solicitors, they had to sit for the Overseas Lawyers Qualification Examination.

11. 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 noted that the Amendment Rules stipulated 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 noted that under Rule 8 of the Overseas Lawyers (Qualification for Admission) Rules ("OLQE Rules") as amended by Rule 10 of the Amendment Rules, if an applicant had been admitted in more than one jurisdiction, the applicant might elect any one of those jurisdictions as his/her jurisdiction of admission.

12. Noting that the period of pupillage was 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, Dr Priscilla LEUNG asked why this was the case.

13. Ms Heidi CHU explained that pupillage did not count as training leading to the applicant's admission as a solicitor in jurisdictions where there was a split profession, not to mention that training for articled clerk or trainee solicitor on its own did not count as post-admission experience in the practice of

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law of an applicant. In jurisdictions where there was 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*

14. Whilst Hong Kong welcomed and encouraged overseas law talents to practise law in Hong Kong, the Chairman urged 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.

*Conclusion*

15. The Chairman concluded that the Subcommittee had no objection to the Commencement Notice.

**II. Any other business**

16. To allow time for the Subcommittee to complete its work, the Chairman suggested that he should, on behalf of the Subcommittee, move a motion at the Council meeting of 12 November 2014 to extend the scrutiny period of the Commencement Notice from 19 November 2014 to 10 December 2014. Members agreed.

17. There being no other business, the meeting ended at 3:10 pm.

Council Business Division 4  
Legislative Council Secretariat  
10 December 2014