

HONG KONG BAR ASSOCIATION
ADMISSION OF OVERSEAS LAWYERS



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**I. INFORMATION
PACKAGE 2009**

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I. INFORMATION PACKAGE

1. Introduction

This Information Package explains how lawyers who have qualified otherwise than in accordance with **section 27(1)** of the **Legal Practitioners Ordinance (Cap. 159)** (“**LPO**”) can be called to the Hong Kong Bar. This applies to all overseas lawyers whether from common-law or non-common law jurisdictions.

2. Overseas Lawyers

An “overseas lawyer” is defined in **section 2** of the **Barristers (Qualification for Admission and Pupillage) Rules (“B(QAP)R”)** as ‘*a person who is entitled to practise the law of a foreign jurisdiction*’.

3. Requirements for Admission to the Hong Kong Bar

In order to practise at the Hong Kong Bar, a person must first be admitted by the Court as a barrister of the High Court in Hong Kong. The power of the Court to admit barristers is governed by **section 27** of the **LPO**, (as amended by the **Legal Practitioners (Amendment) Ordinance 2000**), and the **Barristers (Qualification for Admission and Pupillage) Rules**, which particularises the qualifications required for admission as a barrister under **section 27 LPO**.

Section 4 of the **B(QAP)R** sets out the requirements for admission to the Bar. According to **section 4(1)**, there are three criteria under which a person is qualified for admission as a barrister under **section 27(1) LPO**. These are that the person:

- (a) has obtained a Postgraduate Certificate in Laws; or*
- (b) has been admitted as a solicitor in Hong Kong for at least 3 years either immediately or in any case not more than 12 months before the date of his application for admission and during that time he was in practice as a solicitor in Hong Kong or employed in the public service of the Government as a legal officer within the meaning of the Legal Officers Ordinance (Cap. 87); or*
- (c) is an overseas lawyer who satisfies the requirements specified in subsection (2).*

An overseas lawyer is therefore qualified for admission as a barrister under **section 27(1) LPO** if he satisfies the requirements set out in **section 4(2)** that he:

- (a) holds a certificate of admission as a legal practitioner from the appropriate authority in his jurisdiction of admission and such certificate is valid and currently in force;*
- (b) has practised for at least 3 years in his jurisdiction of admission;*
- (c) is a person of good standing in his jurisdiction of admission; and*
- (d) has passed the Examination (excluding any examination paper which such person has been exempted from sitting pursuant to subsections (4) and (5)).*

Normally, both Hong Kong and overseas lawyers will have to complete at least 6 months of the required period of approved pupillage before admission to the Bar. In exceptional circumstances, however, there is provision for a reduction in the period of approved pupillage in **section 16** of the **B(QAP)R**.

4. What is the Barristers Qualification Examination (“The Examination”)?

The Examination will qualify overseas lawyers for pupillage and eventual practice at the Hong Kong Bar. It will be held **once a year** and will consist of five Papers based on the list of subjects in **section 5(2)** of the **B(QAP)R**. All five Papers are compulsory unless an applicant has obtained an exemption¹ from sitting one or more of the Papers.

The language for both written and oral papers will be English. More details on the Examination can be found in the Examination Supplement.

5. Frequency and Venue of the Barristers Qualification Examination

The Examination will be held once every year and information will be provided as to dates and venue as soon as practicable. The next Examination will be held in late October 2009.

6. Deadlines

4th May 2009 Application for Certificate of Eligibility for Admission if a person wishes to sit the Examination in October 2009.

6th July 2009 Application to sit the Examination.

¹ see paragraph 9 below

7. **Application to sit the Barristers Qualification Examination**

To apply to sit the Examination, an applicant should submit the following:

1. an Application Form to sit the Examination (**Annex B**);
2. a Certificate of Eligibility for Admission; and
3. the non-refundable fee prescribed in **Schedule 1** to the **B(QAP)R**,

to the Bar Secretariat, Hong Kong Bar Association, LG2, High Court, 38 Queensway, Hong Kong by the registration dates specified above.

8. **Certificate of Eligibility for Admission**

An overseas lawyer must first apply to the Bar Council for a Certificate of Eligibility for Admission. The Bar Council shall issue the Certificate of Eligibility for Admission upon being satisfied that the overseas lawyer has complied with **section 6** and **Form 1** of the **B(QAP)R**, and upon payment of a non-refundable fee as prescribed in **Schedule 1** to the **B(QAP)R**.

The closing date for receipt of applications for a Certificate of Eligibility is **Monday 4th May 2009**.

A Certificate of Eligibility for Admission is valid for 12 months from its date of issue, unless the Bar Council otherwise determines. Under **sections 6(6)-(7)** of the **B(QAP)R**, a person may apply to the Bar Council in writing for an extension of the validity period of the Certificate upon payment of the non-refundable fee of HK\$250. An application for extension of the validity of a Certificate of Eligibility for Admission must be made not later than 2 months before the expiry of the Certificate. Also see paragraph 12 below.

9. **Application for Exemption**

Form 1 at **Schedule 2** to the **B(QAP)R** makes specific provision for persons applying for a Certificate of Eligibility for Admission to declare whether or not they wish to apply to be exempted from one or more Papers in the Examination.

A person whose jurisdiction of admission is a common law one will be exempted from Paper I, unless the Bar Council determines otherwise in a particular case.

Applicants from common law jurisdictions of admission who wish to be exempted from papers other than Paper I, or applicants from non-common law jurisdictions who wish to be exempted from sitting any Examination Papers,

may apply for exemption when submitting their application for a Certificate of Eligibility for Admission.

Form 1 in Schedule 2 of the **B(QAP)R** requires such applicants to support their applications for exemption with documentary evidence. It is strongly recommended that applicants for exemption provide the Bar Association, amongst other things, with transcripts of all academic and professional qualifications on which they seek to rely in support of their application.

Applicants are advised that in the event there is any doubt over the status or genuineness of documentary evidence which they present, the Bar Association may require such documentary evidence to be verified or accredited at the applicant's own expense, either by the Hong Kong Council for Academic Accreditation or other relevant organisation.

Annex C provides a list of recognised common law jurisdictions. This is not necessarily exhaustive, but if a question arises as to whether a jurisdiction of admission in relation to an overseas lawyer is a common-law jurisdiction, the onus will be on the overseas lawyer to establish that his jurisdiction of admission² is a jurisdiction in which the law is substantially based on the common law³.

Any exemptions granted by the Bar Council to an applicant will be stated on the Certificate of Eligibility issued to him. **Partial exemptions will NOT be granted.**

10. The Application Form to sit the Examination

The Application Form to sit the Examination can be found at **Annex B**. This should be submitted to the Bar Council, together with all the necessary documentation stated in the form, once a Certificate of Eligibility for Admission has been obtained. Applicants will be informed of the result of their application as soon as practicable.

Please note that the Application Form to sit the Examination should be accompanied by the appropriate fee prescribed in **Schedule 1** to the **B(QAP)R**, (which depends on the number of Papers to be taken)

The closing date for registration to sit the Examination in 2009 is **Monday 6th July 2009**.

² the foreign jurisdiction the law of which the overseas lawyer is entitled to practise: s.2, B(QAP)R
³ common law jurisdiction as defined in s.2, B(QAP)R

11. Payment of Fees

Payment of the requisite fees must be made in Hong Kong Dollars by cheque payable to “Hong Kong Bar Association” or by telegraphic transfer to the following account of the Hong Kong Bar Association:

Account Name -	Hong Kong Bar Association
Bank –	HSBC
Bank Code –	004
Account No. -	808-2-000020
Swift Code -	HSBCHKHHHKH
Address -	1 Queen’s Road Central, Hong Kong

If payment is made by telegraphic transfer, the Hong Kong Bar Association must be notified in advance. **Please note that all bank charges for the telegraphic transfer shall be borne by the applicant.**

12. Withdrawal from sitting the Examination

- (a) After the issuance of a Certificate of Eligibility for Admission, **but before registration to sit the Examination**, any applicant who finds that he/she is unable to take the Examination in 2009, may apply in writing for an extension of the validity of the Certificate. However, he/she will be required to demonstrate good reason as to why he/she was unable to sit the examination.

An applicant must have a valid Certificate of Eligibility for Admission to apply to sit the Examination. If an extension to the Certificate is necessary but has not been applied for, an applicant will be required to submit a fresh application for a Certificate of Eligibility for Admission.

- (b) After the issuance of a Certificate of Eligibility for Admission and registration to sit the Examination, an applicant who finds that he/she is unable to take the Examination in 2009, may make a written application no later than 2 months prior to the start of the Examination to withdraw, specifying the reasons therefor.

A candidate may only apply for withdrawal from sitting all papers of the Examination which he/she is required to sit. Withdrawal from sitting selective papers is not allowed.

If a candidate intends to take the next sitting of the Examination, he/she must apply in accordance with paragraph 8 above, for an extension of the validity period of the Certificate of Eligibility for Admission, to enable him/her to take the next sitting.

(c) **Application Fees**

It is the general policy of the Hong Kong Bar Association that all fees paid in relation to the Barristers Qualification Examination are **NON-REFUNDABLE**.

However, the Hong Kong Bar Association may in exceptional and appropriate cases and in its absolute discretion, allow a refund of the application fee after deduction of an administration fee determined by the Bar Council.

If a candidate wishes to apply for a refund of the application fee to sit the Examination, he/she must do so at the time of application for withdrawal, stating the circumstances of his/her case and the specific reasons in support of the application for refund.

13. Examination Papers

The Examination shall consist of five Papers known as Papers I, II, III, IV and V⁴. Further information on the examination procedures and contents of each paper can be found in the Examination Supplement.

Papers I to IV will be tested by way of a written examination and Paper V will be partly written and partly oral.

14. Examination Procedure

Candidates are expected to comply with any instructions in respect of the Examination, which are published by the Bar Council from time to time.

15. Pass Requirements

Subject to paragraph 25 below, all five Papers must be passed at the same sitting. A candidate who has been granted an exemption in one or more of the Papers is required to sit and pass those papers he has not been exempted from.

16. Disqualification

The Bar Council may disqualify any candidate whom it considers has committed an act of misconduct in relation to the Examination.

⁴ s.5, B(QAP)R

17. Plagiarism

The Hong Kong Bar Association takes a very serious view on plagiarism. Thus, whilst all of the Examination Papers are open-book, plagiarism will not be tolerated.

Any candidate who plagiarises in any Paper of the Examination shall be disqualified from the 2009 Examination by the Bar Council.

The Hong Kong Bar Association may take further action against a candidate who plagiarises in the Examination, including (without limitation) possibly by way of refusing any further attempt by that candidate at taking the Examination.

18. Examination Standard

The standard expected is that of a competent junior barrister.

19. Proficiency in the English Language

A candidate who fails to show proficiency in English is unlikely to pass the Examination.

20. Preparation for the Barristers Qualification Examination

The Hong Kong Bar Association is currently not providing study courses for the Papers. Candidates are expected to prepare for the Examination by way of self study and research, using as guidance, the syllabus and reading list for each subject contained in the Examination Supplement, and bearing in mind the expected standards in relation to each paper.

21. Use of the High Court Library

The Bar Association has arranged for candidates for the 2009 Examination to be granted permission to use the High Court Library located at LG4 of the High Court, 38 Queensway, Hong Kong.

Candidates should identify themselves to the library staff on arrival by showing them their Letter of Registration.

22. Examination Materials

The Examination is conducted on an open book basis. Candidates are permitted to bring into the Examination any book, document, or other written material.

However, computers, mobile telephone, pagers, personal digital assistants, and other electronic devices which may be programmed, cannot be brought into the Examination.

23. Marking Procedures

All written Papers will be marked anonymously. Each script will be marked by a first examiner. Every script for which the first examiner has given a mark below 50 or a mark above 65 and a representative selection of other papers will be marked by a second examiner.

The Chief Examiner will review all scripts for each Paper to ensure consistency in marking amongst examiners of the same Paper and will review and make a determination on the final mark for each script:

- (1) Given a mark of 50 or less; and
- (2) Where the examiners were unable to agree upon a final mark.

24. Examination Results

Every effort will be made to have the Examination papers marked and candidates informed of their Examination results as soon as possible.

25. Applications to re-sit the Examination

In order to pass the Examination a candidate must pass all five papers in one sitting or, where any exemptions have been granted, all those papers the candidate has not been exempted from.

A candidate who fails three or more papers will be deemed to have failed the Examination, and will be required to re-sit the entire Examination.

A candidate who fails **not more than two papers in any one sitting**, will not be required to re-sit the entire Examination but will be allowed to re-sit just those papers he has failed.

A candidate must pass the Examination, including any papers which he has failed and subsequently re-taken, but excluding any papers he has been exempted from sitting, **within a period of three years**. Should he fail to do this, he will be required to re-sit the entire Examination.

To re-sit the Examination, candidates are required to submit: a valid Certificate of Eligibility for Admission, a copy of their Certificate(s) of Good Standing from their jurisdiction(s) of admission valid for the year 2009, together with the relevant fees.

26. Applications for review of the Bar Council's decision

Section 18 of the **B(QAP)R** provides that an applicant who is aggrieved by a decision of the Bar Council under the **B(QAP)R**, may, within one month of the date of the decision and upon payment of the fee prescribed in **Schedule 1** to the **B(QAP)R**, apply in writing for the decision to be reviewed by the Bar Council.

An applicant may further appeal to the Court of Appeal against the Bar Council's decision on review, within one month of the date of that decision.

27. Examination Supplement

The Examination Supplement will provide information on:

- procedures for each examination;
- the standards the candidate is expected to meet in the Examination;
- the syllabus for each subject;
- a recommended reading list for each subject;
- recommended materials to bring into the examination; and
- specimen and past examination papers for each subject.

雙語法例資料系統
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Chapter: 159AC Title: BARRISTERS
(QUALIFICATION FOR
ADMISSION AND
PUPILLAGE) RULES Gazette Number: L.N. 92 of 2003

Schedule: 1 Heading: FEES PAYABLE UNDER
BARRISTERS
(QUALIFICATION FOR
ADMISSION AND
PUPILLAGE) RULES Version Date: 28/03/2003

Item	Section	Description	Payee	Fees
1.	5(5)	Application to sit Examination	Hong Kong Bar Association	\$2000 per examination paper
2.	6(1) & (3)	Application for certificate of eligibility for admission	Hong Kong Bar Association	\$3500
3.	6(7)	Extension of validity of certificate of eligibility for admission	Hong Kong Bar Association	\$250
4.	8(1) & (3)	Application for certificate of qualification for admission	Hong Kong Bar Association	\$750
5.	8(6)	Extension of validity of certificate of qualification for admission	Hong Kong Bar Association	\$250
6.	12(1)	Application for certificate of eligibility for pupillage	Hong Kong Bar Association	\$250
7.	12(4)	Extension of validity of certificate of eligibility for pupillage	Hong Kong Bar Association	\$250
8.	18(1)	Application for review	Hong Kong Bar Association	\$3000

[sections 5, 6, 8, 12 &
18 & Schedule 2]

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**APPLICATION TO SIT THE BARRISTERS QUALIFICATION EXAMINATION
IN CALENDAR YEAR 2009**

To: The Council of the Hong Kong Bar Association

1. I, of
[full name in English and, if applicable Chinese]

.....
[current residential address]

the holder of a valid Certificate of Eligibility for Admission dated,
[date]

hereby apply to sit the following papers of the Barristers
Qualification Examination in calendar year:-
[year]

<u>Paper*</u>	<u>Subjects covered</u>
Paper I:	Contract; Tort.
Paper II:	Property Law (including Real and Personal Property); Conveyancing; Equity (including the Law of Trusts).
Paper III:	Criminal Law; Criminal Procedure; Criminal Evidence.
Paper IV:	Hong Kong Legal System; Constitutional and Administrative Law; Company Law.
Paper V:	Civil Procedure; Civil Evidence; Professional Conduct; Advocacy.

(* Delete whichever is inapplicable)

2. I have been exempted from sitting the following paper(s) of the Barristers Qualification Examination:-

.....
.....
.....

[list the paper(s) for which exemption has been granted.]

3. I have previously sat the Barristers Qualification Examination. The date(s) on which I sat the Examination and Paper(s) (if any) which I passed on such sitting are as follows:-

.....
.....
.....

[list all relevant date(s) and paper(s) (if any) passed on each such sitting.]

4. A copy of my Certificate of Eligibility for Admission is attached to this application.

5. Schedule 1 of the Barristers (Qualification for Admission and Pupillage) Rules prescribes a fee of HK\$2,000 for each examination paper which I am applying to sit. As I propose to sit a total of *[number]* examination papers, I also attach to this application a crossed cheque made payable to the Hong Kong Bar Association for the amount of _____ *[HK\$ amount]*, being HK\$2,000 times the number of papers for which I am applying to sit.

Dated this day of 20.....

(Sgd.).....

Applicant's name

Note: The fees prescribed in Schedule 1 of the Barristers (Qualification for Admission and Pupillage) Rules must be paid at the time of submission of this application.

ANNEX C

LIST OF COMMON LAW JURISDICTIONS

Australian States and territories
Bahamas
Bermuda
Canadian provinces (except Quebec)
England and Wales
Fiji
India
Jamaica
Kenya
Malaysia
New Zealand
Northern Ireland
Pakistan
Republic of Ireland
Scotland
Singapore
Republic of South Africa
United States of America (except Louisiana)
Zimbabwe