

DEFERRAL OF CALL TO THE BAR
Response to the Consultation Paper issued by
the Bar Standards Board

INTRODUCTION

1. By the consultation paper issued on 13 July 2006 (“the Consultation Paper”), the English Bar Standards Board (“the Board”) invited views on the question of whether or not it is in the public interest to defer the stage at which a person is called to the UK Bar, and thereby acquires the title of ‘barrister’, from the end of the vocational stage of training until the person is qualified to practise.
2. Hong Kong Bar Association (“HKBA”) is one of the bodies consulted.
3. In Hong Kong, the system of qualifying a person as a barrister underwent substantial change in 2003 whereby the major change was indeed to defer the call to the Bar until the completion of the first 6 months of pupillage. The change came into operation in March 2003.
4. This paper aims at explaining the Hong Kong experience.

QUALIFYING AS A BARRISTER IN HONG KONG PRIOR TO MARCH 2003

5. Prior to March 2003, the stages at which a student had to go through in order to practise as a barrister in Hong Kong were similar to the current system in the UK.
6. A student had to obtain a law degree as well as a postgraduate qualification known as the Postgraduate Certificate in Laws (“P.C.LL.”) from one of the 2 universities in Hong Kong which offer law courses. Before commencing pupillage, the student had to be called to the Bar.
7. Unless exempted, pupillage was for a period of not less than 12 months after call. After satisfactory completion of the first 6 months of pupillage, a pupil might carry on practice to a limited extent subject to his or her pupil master’s supervision.

8. Upon satisfactory completion of not less than 12 months of pupillage, the pupil would be qualified to commence full practice as a barrister.

DEFERRING THE CALL TO THE BAR IN HONG KONG

9. Prior to the change, a person might apply to be called to the Bar but never undertook pupillage. Nonetheless such a person could hold himself out as a barrister. The HK Bar believed that it would be in the public interest to tie in the title of a barrister with his professional qualification to practise as such (though to a limited extent at the beginning). Possible abuse of the title and professional qualification could also be stemmed.
10. The major change introduced in 2003 was deferring a person's call to the Bar until after his satisfactory completion of the first 6 months of pupillage. To be considered as having satisfactorily completed any period of pupillage, a pupil has to submit his pupillage log book (which should record his work and his pupil master(s)' comment) as well as his pupil master(s)' certificate(s) to the effect that the pupil has served his period of pupillage with the master(s) diligently and that he is fit and suitable to practise as a barrister. It is upon his admission when the pupil is also eligible to apply to commence his limited practice.

Effect of the deferral of call on the number of entrants

11. In the Consultation Paper, the Board explained the concern about the effect of the deferral of call on the number of entrants to the UK Bar.
12. The Board pointed out that there is currently a substantial disparity between the number of students who complete the vocational stage of training and the number of pupillage (and even more so, tenancy) offers in the UK. The majority of students who complete the BVC probably would not be able to secure pupillages. The loss of the entitlement to be called upon completion of the BVC and the deferment of the same until after the completion of part of the pupillage may become a curbing stone to those who consider taking the BVC in the first place.
13. In the case of Hong Kong, since the implementation of the deferral of call in 2003, the HKBA actually witnessed a steady increase in the number of entrants to the Bar. However this is not to say that such increase in the number of entrants had any causative link with the deferral of call.

14. One should not lose sight of the different circumstances surrounding the UK Bar and the Hong Kong Bar. In Hong Kong, pupillage offers and tenancy in the chambers are not necessarily connected. While there is indeed difficulty in securing tenancy here due to the limited availability, students basically manage to line up pupil masters to supervise them during the pupillage period. The deferral of call to the Bar was never expected to cause any concern about the chance of call to the Bar as a result of any uncertain chance of securing pupillage. This is also the reality since the implementation of the change.

Effect of the deferral of call on the number of overseas students

15. In the Consultation Paper, the Board explained the concern about the possible loss of the UK Bar's appeal to overseas students to undertake the BVC if the passing of it does not entitle them to the title of a barrister. It was suggested that the likely deflection of foreign students away from the UK would be detrimental to the economic interests of the UK and the international influence of English law.
16. Prior to the change in 2003, Hong Kong, like other jurisdictions such as Malaysia and Gibraltar (also referred to by the Board), accepted qualification of a UK barrister as an alternative to obtaining the P.C.L.L. in Hong Kong. Therefore a HK resident who had been admitted as a UK barrister was eligible for admission to the HK Bar.
17. Under the new rules, qualification in another jurisdiction as a barrister or advocate is not anymore an alternative to completing the local vocational course. To be eligible for admission to the Hong Kong Bar, lawyers admitted in other jurisdictions must have had practised for not less than 3 years in his jurisdiction and must undertake qualification examinations set by the HKBA unless exempted. The reality is that with very few exceptions, local students nowadays would join the Bar by completing the local postgraduate course instead of taking the BVC.
18. As to the suggested detriments to the economic interests of the UK as a result of the likely deflection of foreign students away from the BVC, the HKBA is not in position to provide helpful comment. However, there is no sign of lesser regard to the contribution of the English jurisprudence to the local case law as a result of the change here.

THE STATUS OF PUPILS

19. In Hong Kong, the titles ‘pupil’ and ‘pupil barrister’ are used interchangeably both before and after the change in the local system in 2003. A Pupil’s List is now included in the Bar List of the HKBA specifying the commencement dates of pupillages of all the pupils. Pupils who have been admitted and are in their limited practice will also be listed as a practising member in the Bar List.

20. At this stage, the HKBA sees no need to abandon the title of ‘pupil’ and ‘pupillage’. Nor does the HKBA see the need to create a distinct title for law graduates who are qualified but choose not to serve pupillage or pupils who are in their first 6 months of pupillage prior to admission. A law graduate who has obtained the P.C.L.L. may publish such as his qualification even if he chooses not to serve pupillage. The Pupil’s List in the Bar List of the HKBA enables the public to identify the exact stage of pupillage which the pupils have reached. It is believed that this suffices to enable the public to identify whether a particular pupil is in his first or second 6 months of pupillage. If necessary, solicitors may make enquiry, either with the HKBA or the pupil concerned, to confirm the status of the pupil in the event that the pupil should be in his limited practice but his name is yet to be included in the list of practising barristers in the Bar List.

21. The transition of the pupil’s status may warrant some consideration. Realistically, a pupil’s status will not change overnight upon his completion of the first 6 months of his pupillage. A pupil has to apply for admission and, upon admission, for the commencement his practice under supervision (or to a limited extent as in the case of Hong Kong). The administration inevitably takes time and eats into the beginning of the second 6 months of the pupil’s pupillage. The actual period of limited practice will not commence on the first day of the second 6 months of pupillage and the period of limited practice will effectively become less than 6 months. This is the experience in Hong Kong and both pupils and their pupil masters have sounded out their discontent about the undesirable cut down of the pupil’s period of obtaining hands-on experience from actual practice. In response to that, the HKBA had to carry out a series of administrative changes and to move for legislative amendment in order to speed up the application for admission as well as the commencement of limited practice. If call to the UK Bar is to be deferred, it is believed that appropriate mechanism needs to be in place to ensure efficient transition of the status of the pupil.

TIMETABLE

22. The HKBA has no particular view on the aspect of timing of the implementation of the proposal.

RECENT DEVELOPMENT IN HONG KONG

23. With effect from 2005, law graduates in pursuing the P.C.LL. are required to choose to join the CPC Stream (for those who want to become solicitors) or the Litigation Stream (for those who want to join the Bar). Therefore, though students aiming to join either branches of the legal profession must obtain the same P.C.LL. qualification, the emphasis and training in the course are now different depending on which Stream the students choose.
24. Currently, the HKBA is also considering whether and, if yes, how the pupillage system may undergo an overall reform with a view to, among other things, enhancing the quality of pupillage and thus that of the barristers who commence practice. The experience so far obtained from implementing the deferral of call to the Bar here is expected to be a relevant consideration.

Enclosure:

Legal Practitioners Ordinance, Cap.159, Laws of Hong Kong, section 27

Barristers (Qualifications for Admission and Pupillage) Rules, Cap.159AC