

Procedure for making an application under Section 6(6A) of the Legal Practitioners Ordinance

Applications for removal of the conditions or reduction in the two-year period are made by statutory declaration. Applicants are required to make reference to specific dates, rather than general references to months and/or years, and the statutory declaration must contain the following information:

1. **Academic and Legal or Professional Qualifications** – details of all university degrees and other legal or professional qualifications, including the dates of admission and/or the dates of gaining the qualifications;
2. **History of Employment** – commencing from when the applicant first obtained legal or professional qualifications, including details of:
 - a) all periods of employment, whether with solicitors' firms or otherwise, stating:
 - (i) exact dates of commencing and ceasing employment;
 - (ii) the positions held;
 - (iii) whether the positions were full time or part time;
 - (iv) if part-time, the average hours worked per month; and

Applicants are required to exhibit certified copies of letters issued by firms which have employed them since they first obtained their legal or professional qualifications. The letters should provide the information in paragraph 2a) above.

- b) the nature of work in which the applicant engaged during each period of their legal career;
3. The reason for any gap between periods of employment;
4. The reason for requesting a reduction in the two-year period, for example, to accept an offer of a partnership;
5. Applicants must indicate in their declarations the relevant part of the Guidelines (as attached) under which their section 6(6A) applications are based. This will assist applicants to assess the period of reduction likely to be granted and the Committee to adjudicate upon the application;
6. The Consents Committee has a discretion to give greater dispensation to solicitors with more than five years', but less than eight years', substantial experience accordingly to B(ii) and (iii). Such dispensation will be considered on a case-by-case basis; and
7. A non-refundable administration charge of HK\$2,000.00 will be payable in respect of applications made under section 6(6A) of the Legal Practitioners Ordinance.

GUIDELINES FOR APPLICATIONS UNDER SECTION 6(6A) OF THE LEGAL PRACTITIONERS ORDINANCE

(November 2020)

These guidelines set out the general principles that will be followed by the Consents Committee when considering applications. They are not intended to be rigid rules. The Committee has discretion to depart from the guidelines according to the view it forms of each individual application.

Section 6(6) of the Legal Practitioners Ordinance requires the Council to be satisfied that a solicitor has been bona fide employed in the practice of a solicitor in Hong Kong for at least two years prior to his application for a practising certificate not subject to the condition specified in that section. No solicitor can practise on his own account or in partnership until a practising certificate without the condition specified in section 6(6) of the Legal Practitioners Ordinance has been obtained. The Council has received advice from senior counsel that the two-year period must be a **continuous** period of two years, but that this period need not be immediately prior to the application of the condition.

Section 6(6A) of the Ordinance provides that:

“If the Council considers that an applicant has acquired substantial experience in the law either in Hong Kong or elsewhere, the Council may waive the 2 year employment requirement in subsection (6) or it may reduce the period of 2 years to a period it considers appropriate.”

The following guidelines are now applicable to those applicants who seek a waiver under section 6(6A) of the Legal Practitioners Ordinance because they have not completed the two years' bona fide employment in the practice of a solicitor in Hong Kong (i.e. in a Hong Kong firm of solicitors) required under section 6(6) of the Ordinance.

- (A) Solicitors who have acquired substantial experience in the law in Hong Kong, being:
- (i) continuous services as an in-house solicitor in commerce or industry in Hong Kong (subject to the supervision of a solicitor holding a practising certificate without the condition specified in section 6(6) of the Legal Practitioners Ordinance or otherwise entitled to such a certificate); or
 - (ii) continuous experience as a lawyer in the service of the Hong Kong government;
- (a) will be eligible for a reduction in the period of two years required by section 6(6) to a period of one year, if they have three years of such continuous experience; or
- (b) will be eligible for a waiver of the entire period required by section 6(6), if they have five years of such continuous experience.
- (B) Solicitors who were previously overseas lawyers from common law jurisdictions:
- (i)* with five years' substantial experience in Hong Kong will be eligible for a waiver of the entire period required by section 6(6);
 - (ii) with either five years' cumulative substantial experience in the practice of law both in Hong Kong and overseas or five years' substantial experience in the practice of law overseas will be

* Registered foreign lawyers meeting this requirement should apply under this category.

eligible for a reduction in the period of two years required by section 6(6) to a period of one year;

- (iii) with eight years' substantial experience in the practice of law overseas or both in Hong Kong and overseas will be eligible for a waiver of the entire period required by section 6(6).

(C) Solicitors who were previously overseas lawyers from non-common law jurisdictions:

with not less than eight years' substantial experience (whether or not partly in Hong Kong) will be eligible for a reduction in the period of two years required by section 6(6) to a period of one year.

The Court of First Instance has considered the meaning of “substantial experience in the law” under Section 6(6A) of the Legal Practitioners Ordinance and held that it must mean substantial experience in the law as a solicitor, which encompasses both the substantive law and the legal practice as a solicitor. (*Kim Min Ju v. The Law Society of Hong Kong* (HCMP 2290/2019))

When considering whether or not an applicant has “substantial experience in the law” (by which is meant post-qualification experience), the Council will take into account any relevant factors brought to its attention by the applicant including (but not limited to):

- (a) the type of practice as a solicitor, including the breadth and complexity of work undertaken;
- (b) partnership experience;
- (c) experience in the control of, and responsibility for, client’s funds;
- (d) the jurisdictions in which the applicant has practised (including whether or not those jurisdictions were fused professions); and
- (e) whether or not there have been any substantial gaps in employment.