

**REVIEW OF THE  
OVERSEAS LAWYERS  
QUALIFICATION EXAMINATION**

A Report of the Working Party  
on the Review of the Overseas  
Lawyers Qualification Examination

18 November 2002

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## **1. ESTABLISHMENT OF THE WORKING PARTY**

- 1.1 At its meeting held on 28 March 2001, the Standing Committee on Standards and Development recommended to the Council that a working party be established to review the Overseas Lawyers Qualification Examination (OLQE) with the view to implementing changes for the 2002 Examination.

As the Examination had, at that time, been in place for 6 years, the Standing Committee was of the view that it was timely to consider devising an Examination that might be more relevant to the requirements of the Hong Kong solicitors' profession, taking into account the criticisms that have been levelled against the Examination in recent years.

- 1.2 At the Council meeting held on 3 April 2001, it was resolved that a working party be established and the composition of the working party was approved by the Council on 29 May 2001. (See extracts from the relevant Council minutes at **Appendix 1**.)

## **2. TERMS OF REFERENCE**

The terms of reference of the working party were approved by the Standing Committee on Standards and Development and are as follows:

1. To review the structure and content of the Overseas Lawyers Qualification Examination ("the Examination") including, but not limited to:
  - (i) the Overseas Lawyers (Qualification for Admission) Rules and Overseas Lawyers (Qualification for Admission)(Fees) Rules;
  - (ii) the Overseas Lawyers Qualification Examination Procedures; and
  - (iii) the Guidelines for exemptions from sitting all or part of the Examination; and
2. To make recommendations to the Council for reform of the Examination, including any amendments to the relevant legislation and guidelines.

### **3. EXECUTIVE SUMMARY**

- 3.1 Following its review of all aspects of the OLQE, the working party has found that the current system of the Examination is not as flawed as its critics would suggest. However, there is room for some improvements that can provide an Examination that is more relevant to the role of practitioners in Hong Kong in the 21<sup>st</sup> century and more capable of bringing added value to the profession in Hong Kong by virtue of the overseas lawyers admitted to practice here.
- 3.2 It is acknowledged that Conveyancing appears to many overseas lawyers to be an arcane area of practice, as most, if not all of them, will never practice in this area of law. However, balanced against this is the fact that the Conveyancing system in Hong Kong is unique and the Conveyancing test paper has a history of a relatively high pass rate. It is the working party's view that it does not present an unreasonable barrier to practice, especially for those overseas lawyers who are 5 or more years qualified.
- 3.3 There is also the further consideration that the working party is convinced that it is not practical, because of policing difficulties, to issue restricted practising certificates, or to accept undertakings that allow overseas lawyers to practice in all areas of practice except Conveyancing (or some other particular area of practice).
- 3.4 The working party is, therefore, of the view that, for the time being at least, the requirement that overseas lawyers who seek admission as a solicitor in Hong Kong must sit a Conveyancing examination should be retained.
- 3.5 However, the working party has formed the view that there are reforms that should be made to the Examination immediately, including the introduction of a written test on the Basic Law, measures to deal with the perceived poor level of tuition provided in the preparatory courses and how the Examination is perceived by those required to sit it.
- 3.6 The working party has reviewed the changes made to the Examination by the OLQE Committee following its annual review of the Examination in February 2002. These changes resulted from a comprehensive review of the syllabi, reading lists, test paper setting, marking and preparatory courses. The working party has considered these changes and endorses the approach taken by the Committee.
- 3.7 In September 2002, the working party was requested by the Council to consider representations made to the Council on behalf of a group of overseas qualified lawyers working as paralegals in Hong Kong firms. These lawyers were seeking to have their paralegal experience recognised as "experience in the practice of law" under section 4(1) of the Overseas Lawyers (Qualification for Admission) Rules for the purpose of gaining exemption from the Examination. The working party made recommendations to the Council on 17 September 2002, which were endorsed by the Council.

- 3.8 The OLQE was reviewed in 2000/1 by overseas Consultants as part of the comprehensive review of legal education and training in Hong Kong undertaken by the Steering Committee on the Review of Legal Education and Training. The Consultants endorsed the design and operation of the OLQE.
- 3.9 The main recommendations for reform proposed by the working party are:
- (i) that section 7(1)(a) of the Overseas Lawyers (Qualification for Admission) Rules should be amended to include a written test on the Basic Law;
  - (ii) that in the absence of apparent logic for a statutory exemption under the Overseas Lawyers (Qualification for Admission) Rules from sitting Civil and Criminal Procedure and a lack of awareness of any good policy reason for retaining it, the exemption that is available to applicants from common law jurisdictions with not less than 5 years of experience in the practice of law should be abolished, and section 4(1) of the Overseas Lawyers (Qualification for Admission) Rules should be amended accordingly;
  - (iii) that Head II (Civil and Criminal Procedure) should be placed in the same category as Heads III (Commercial and Company Law) and IV (Accounts and Professional Conduct) for exemption purposes, that is, it should be subject to a discretionary exemption whereby the applicant must demonstrate that he/she has at least 5 years of experience in the practice of law **and** has experience, knowledge and/or training which is relevant to Head II;
  - (iv) that Conveyancing should be retained as an examinable subject in the OLQE for the time being, subject to review at the time that a decision is made to introduce the Land Titles Legislation;
  - (v) that paralegal experience gained by overseas qualified lawyers working in Hong Kong law firms (outside the Paralegal Scheme) does not satisfy the 5 years experience in the practice of law requirement under section 4(1) of the Overseas Lawyers (Qualification for Admission) Rules for the purpose of exemption from sitting the Overseas Lawyers Qualification Examination;
  - (vi) that section 6(2) of the Overseas Lawyers (Qualification for Admission) Rules be amended so that, in addition to post-admission experience in the practice of law of the applicant's jurisdiction of admission, an applicant's successful completion of a period of service under a trainee solicitor contract, articles or pupillage, or any course in lieu thereof, that is required and certified accordingly by the admitting authority for the purpose of admission in the applicant's jurisdiction of admission, be recognised as counting towards the calculation of 5 years experience in the practice of law under that section;

- (vii) that the Society's proposal for the establishment of an Academy of Law should be actively pursued and that, in the meantime, the Society's accreditation of the preparatory courses by external providers should be treated as a stepping stone to the creation of the Academy, which should include in its functions the responsibility for providing the OLQE preparatory courses; and
- (viii) that the Society should take active steps to positively promote the OLQE as a short-cut to admission to practice in Hong Kong so as to encourage overseas qualified lawyers to perceive it as an attractive alternative to undertaking the one-year PCLL and two-year training contract.

## **15. FINDINGS AND RECOMMENDATIONS**

The working party makes the following findings and recommendations:

- 15.1 That the PCLL subjects not tested in the OLQE (Probate, Wills and Estate Law, Advocacy and Revenue Law) are not necessary for inclusion in the OLQE because they are not core areas of practice for the majority of solicitors in Hong Kong.
- 15.2 That, for the time being, overseas lawyers seeking admission in Hong Kong should have some knowledge of Hong Kong Conveyancing.
- 15.3 That retention of Conveyancing as an examinable subject in the OLQE should be reviewed at the time that a decision is made to introduce the Land Titles legislation.
- 15.4 That in the same way that Probate, Wills and Estate Law, Advocacy and Revenue Law are not considered necessary for inclusion in the OLQE, Banking and Finance, Personal Injury and Intellectual Property are not necessary either. However, the matter will be kept under review so as to ensure that the subjects tested reflect contemporary legal practice in Hong Kong.
- 15.5 That section 7(1)(a) of the Overseas Lawyers (Qualification for Admission) Rules should be amended to include a written test on the Basic Law.
- 15.6 That, at this stage, given the available resources, it would not be practicable to radically alter the structure of the OLQE.
- 15.7 That the current structure of the OLQE operates fairly for both senior overseas qualified lawyers (generally required to sit only one head), and less experienced overseas lawyers who are required to sit the 4 written heads.
- 15.8 That the Examination operates as a concession or short-cut to those overseas qualified lawyers who want to practise in Hong Kong by allowing them to qualify without having to go through the process of undertaking the one-year PCLL and the two-year training contract in Hong Kong. The Society should take active steps to promote the OLQE as a short-cut to admission to practice in Hong Kong so as to encourage overseas qualified lawyers to perceive it as an attractive alternative to undertaking the PCLL and training contract.
- 15.9 That given the timeframe of the Examination, the Panels should not set test papers with questions that are too long and too difficult in terms of fact pattern, and that as a rule of thumb, no question should exceed 1½ pages in length.
- 15.10 That the 3½ hour open book format of the Examination which is inclusive of ½ hour non-designated reading time should be retained.

- 15.11 That as the Head V (Principles of Common Law) examination has not been conducted to date, the working party provides no comment on it at this stage.
- 15.12 That it is not appropriate to narrow the syllabi for the Examination as it is difficult to decide the areas of law under each Head with which practitioners do **not** need to be familiar. Moreover, narrowing the syllabi is unrealistic from a practice point of view. The best approach to the challenges presented by the broadness of the syllabi is to focus on improvements to the reading lists determined by the Examiners, the format and standard of questions of the Examination and the preparatory courses.
- 15.13 That the approach taken by the OLQE Committee to rationalise the reading lists for all heads of the Examination and to specify a cut-off date of 31 May in the year in which the Examination is held for testing the law in the Examination is endorsed.
- 15.14 That the scheme of granting discretionary exemptions from sitting all or part of the Examination should not be abolished.
- 15.15 That reciprocity should not be used as a test for the admission of overseas lawyers as solicitors in Hong Kong.
- 15.16 That granting exemptions from sitting the Examination based on the issuing of restricted practising certificates is impractical due to the inability of the Society to police or enforce such practising certificates.
- 15.17 That in the absence of apparent logic for a statutory exemption under the Overseas Lawyers (Qualification for Admission) Rules from sitting Civil and Criminal Procedure and a lack of awareness of any good policy reason for retaining it, the exemption that is available to applicants from common law jurisdictions with not less than 5 years of experience in the practice of law should be abolished, and section 4(1) of the Overseas Lawyers (Qualification for Admission) Rules should be amended accordingly. In the light of the possible impact of abolishing the Head II statutory exemption on overseas lawyers from some common law jurisdictions with more than 5 years experience in the practice of law, and given that these overseas lawyers may feel they have been treated unfairly because of a shift in the hitherto level playing field, the Council is urged to consider carefully the recommendation to abolish the Head II statutory exemption.
- 15.18 That Head II (Civil and Criminal Procedure) should be placed in the same category as Head III (Commercial and Company Law) and Head IV (Accounts and Professional Conduct) for exemption purposes, that is, it should be subject to a discretionary exemption whereby the applicant must demonstrate that he/she has at least 5 years of experience in the practice of law **and** has experience, knowledge and/or training which is relevant to Head II.
- 15.19 That 5 years experience in the practice of law is an appropriate benchmark for granting exemptions from Heads II, III and IV of the Examination and should be maintained.

- 15.20 That paralegal experience gained by overseas qualified lawyers working in Hong Kong law firms (outside the Paralegal Scheme) does not satisfy the 5 years experience in the practice of law requirement under section 4(1) of the Overseas Lawyers (Qualification for Admission) Rules for the purpose of exemption from sitting the Overseas Lawyers Qualification Examination.
- 15.21 That section 6(2) of the Overseas Lawyers (Qualification for Admission) Rules be amended so that, in addition to post-admission experience in the practice of law of the applicant's jurisdiction of admission, an applicant's successful completion of a period of service under a trainee solicitor contract, articles or pupillage, or any course in lieu thereof, that is required and certified accordingly by the admitting authority for the purpose of admission in the applicant's jurisdiction of admission, be recognised as counting towards the calculation of 5 years experience in the practice of law under that section.
- 15.22 That the Examination process should be improved by making the following changes:
- (a) by amending the application form to include a reminder checklist column in the relevant part of the form [Implemented in 2002];
  - (b) by issuing regular circulars reminding/encouraging the early filing of applications by applicants;
  - (c) straight forward cases (to be defined by the Foreign Lawyers Committee) should be dealt with by the Secretariat (Assistant Director, Regulation and Guidance and Director of Standards and Development) pursuant to a checklist approved by the Foreign Lawyers Committee;
  - (d) applications for extension of section 3(2) certificates, refund of fees, etc. should be delegated to the Secretariat (Assistant Director, Regulation and Guidance and Director of the Standards and Development) for decision;
  - (e) the OLQE Committee and the Standing Committee on Standards and Development should continue to review the Information Package each year after the Examination taking into account feedback from candidates and others;
  - (f) in order to minimise the risk of errors occurring in the test papers, one of the members of the Panel for each head who is not directly involved in setting the test paper questions should be appointed to conduct a final proofread [Implemented with success in 2001 and 2002];
  - (g) by issuing reminders to Examiners and Chief Examiners of the deadline for finalising results and the date of the Examination Board meeting throughout the year [Implemented with some success in 2001];



- (h) by including a “provisional” date of 31 January 2003 for release of the examination results in the OLQE Information Package and in the timetable provided to OLQE Panels, Examiners and Chief Examination [Implemented in 2002];
- (i) in relation to the request for more information by some candidates on the Category D discretionary exemption, the exemption guidelines should be amended to advise applicants that, so far, no exemptions have been granted in view of the exceptional nature of the exemption [Implemented in 2002];
- (j) model answers should not be provided for past examination papers, and suggested answers to past test papers are best dealt with as part of the revision courses by the instructors teaching those courses; and
- (k) by implementing a later start of 9:30 am (c/ 9:00 am) for the Examination. [Implemented in 2001 and 2002]

15.23 That given the measures taken in 2002 to rationalise the reading lists, provide guidance to candidates and the preparatory course providers on the Examiners’ expectations and ensure consistency in examination setting and marking, it is not necessary at this stage to provide further independent assessors to scrutinise the test paper setting and marking or to co-opt additional practitioners to the Panels, subject to review of this decision by the OLQE Committee following the 2002 Examination.

15.24 That the OLQE Committee’s measures to address the problem of “linkage” between the Examination and the candidates’ preparation for the Examination, namely:

- (a) to reduce the scope of the reading lists;
- (b) to include in the OLQE Information Package a statement from the 2001 Examiners on where candidates "went wrong" in the 2001 Examination;
- (c) to provide a structured process of liaison between the Examiners and the preparatory course providers/teachers; and
- (d) to require the Examiners to review the course materials for the preparatory courses,

are endorsed, and there should be no change in the policy that the setting and marking of the Examination be segregated from the teaching on the preparatory courses.

15.25 That the Examination should not be held more than once per year at this stage and supplementary examinations should not be introduced.

- 15.26 That it is not practical to alter the timing of the Examination due to factors such as the availability of Examiners to set the Examination, the availability of lecturers to teach on the preparatory courses and avoidance of the typhoon season.
- 15.27 That the strategies implemented in 2001 and 2002 by the OLQE Committee to encourage Examiners and Chief Examiners to meet the deadline for release of the Examination results is endorsed.
- 15.28 That in maintaining the standard of the legal profession in Hong Kong there should be a limit on the number of times a candidate may attempt the OLQE and that four attempts at the Examination is sufficient.
- 15.29 That the policy that candidates affected by illness are not granted a deemed pass in the Examination but, in appropriate cases, may be granted a concession whereby their failure to pass the Examination or a particular head of the Examination is not counted as one of the 4 permitted attempts at the Examination or a particular head, as the case may be, is endorsed.
- 15.30 That the Overseas Lawyers (Qualification for Admission) Rules should be amended to formalise the administrative provision that, unless the Society otherwise determines, any certificate of exemption granted is valid for 12 months from the date of issue.
- 15.31 That there is no merit in reinstating the Paralegal Scheme.
- 15.32 That section 5(2)(b) of the Overseas Lawyers (Qualification for Admission) Rules should be amended to provide consistency with section 7 of the Trainee Solicitors Rules.
- 15.33 That in the short term, until an Academy of Law is established as proposed by the Society to carry out all the training that is required for solicitors following the LLB, the preparatory courses for the OLQE should continue to be offered by one or more commercial providers and not the Society.
- 15.34 That the decision of the OLQE Committee that it should continue to entertain the possibility of accrediting more than one provider of the OLQE preparatory courses is endorsed.
- 15.35 That the decision of the OLQE Committee to implement a process whereby the Examiners for each Panel review the providers' preparatory course materials to ensure that they adequately cover the syllabi and that they are up to standard is endorsed.
- 15.36 That the decision by the OLQE Committee to exercise more stringent vetting in the tender process, in particular, with respect to ensuring that the course providers do not put forward lecturers with consistently poor performance reviews is endorsed.

- 15.37 That the decision of the OLQE Committee that monitoring of the courses will be carried out by random audits conducted by the Society is endorsed.
- 15.38 That the decision of the OLQE Committee not to change the previous policy decision that model answers and marking guidelines should not be provided to candidates or course providers is endorsed.
- 15.39 That the decision of the OLQE Committee that course providers should not be provided with access to the Examination questions for the current Examination is endorsed.
- 15.40 That the decisions of the OLQE Committee to extend the duration of the preparatory courses by encouraging providers to commence the courses earlier in June and to establish a cut-off date of 31 May in the year in which the Examination is held for testing the law in the Examination are endorsed.
- 15.41 That the decision of the OLQE Committee that the preparatory courses should not be mandatory at this stage is endorsed.
- 15.42 That the Society's proposal for the establishment of an Academy of Law should be actively pursued and that, in the meantime, the Society's accreditation of the preparatory courses by external providers should be treated as a stepping stone to the creation of the Academy, which should include in its functions the responsibility for providing the OLQE preparatory courses.
- 15.43 That the recommendations of the Consultants who conducted the Review of Legal Education and Training in Hong Kong in relation to the OLQE are noted and the action taken by the OLQE Committee in the light of those recommendations is endorsed.

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