

THE LAW SOCIETY OF SINGAPORE

GUIDANCE NOTE 3.1.1

[Formerly GN 2014, para 2]

AD HOC ADMISSIONS UNDER SECTION 15 OF THE LEGAL PROFESSION ACT

1. This Guidance Note will discuss:

- (a) Generally, the factors to be considered for the *ad hoc* admission of Queen's Counsel (or any person holding an appointment of equivalent distinction) under section 15 of the Legal Profession Act (Cap 161, 2009 Rev Ed) ('LPA'); and
- (b) Specifically, the recommended practice in order to properly evidence the "necessity for the services of a foreign senior counsel" and the lack of "availability of any Senior Counsel or other advocate and solicitor with appropriate experience" under paragraphs 3(b) and 3(c) of the Legal Profession (Ad Hoc Admissions) Notification 2012 (S 132/2012) ('Notification').

A. Factors to be Considered for Ad Hoc Admission under Section 15 of the Legal Profession Act

1. Legislation

2. Section 15 of the LPA states:

"(1) Notwithstanding anything to the contrary in this Act, the court may, for the purpose of any one case, admit to practise as an advocate and solicitor any person who –

- (a) *holds –*
 - (i) *Her Majesty's Patent as Queen's Counsel; or*
 - (ii) *any appointment of equivalent distinction of any jurisdiction;*
- (b) *does not ordinarily reside in Singapore or Malaysia, but has come or intends to come to Singapore for the purpose of appearing in the case; and*
- (c) *has special qualifications or experience for the purpose of the case.*

(2) The court shall not admit a person under this section in any case involving any area of legal practice prescribed under section 10 for the purposes of this subsection, unless the court is satisfied that there is a special reason to do so.

(3) Any person who applies to be admitted under this section shall do so by originating summons supported by an affidavit of the applicant, or of the advocate and solicitor instructing him, stating the names of the parties and brief particulars of the case in which the applicant intends to appear.

...

(6A) The Chief Justice may, after consulting the Judges of the Supreme Court, by notification published in the Gazette, specify the matters that the court may consider when deciding whether to admit a person under this section.”

3. Rule 32(1) Legal Profession (Admission) Rules 2011 (S 244/2011) ('LPA') states:

“(1) The following areas of legal practice are prescribed for the purposes of section 15(2) of the Act:

- (a) constitutional and administrative law;*
- (b) criminal law;*
- (c) family law.”*

4. Paragraph 3 of the Notification states:

“For the purposes of section 15(6A) of the Act, the court may consider the following matters, in addition to the matters specified in section 15(1) and (2) of the Act, when deciding whether to admit a person under section 15 of the Act for the purpose of any one case:

- (a) the nature of the factual and legal issues involved in the case;*
- (b) the necessity for the services of a foreign senior counsel;*
- (c) the availability of any Senior Counsel or other advocate and solicitor with appropriate experience; and*
- (d) whether, having regard to the circumstances of the case, it is reasonable to admit a foreign senior counsel for the purpose of the case.*

[collectively, the 'Notification Matters']”

2. Summary of factors

5. For all cases, the factors to be considered are:

- (a) Subject to the formal requirements in sections 15(1)(a) and 15(1)(b) of the LPA, whether the foreign senior counsel has special qualifications or experience for the purpose of the case (section 15(1)(c) of the LPA).
- (b) Nature of factual and legal issues involved in the case (paragraph 3(a) of the Notification).
- (c) The necessity for the services of a foreign senior counsel (paragraph 3(b) of the Notification).
- (d) The availability of any Senior Counsel or other advocate and solicitor with appropriate experience (paragraph 3(c) of the Notification).
- (e) Whether, having regard to the circumstances of the case, it is reasonable to admit a foreign senior counsel for the purpose of the case (paragraph 3(d) of the Notification).

3. Additional factor – Constitutional and administrative law / criminal law / family law cases

6. For cases involving constitutional and administrative law, criminal law or family law, apart from the factors set out in paragraph 5 above, there is an additional factor to be considered. The court has to be satisfied that there is a special reason for the admission (section 15(2) of the LPA).

4. Case-law

7. There is evolving case-law construing the provisions highlighted above.

8. In *Re Beloff Michael Jacob QC* [2014] SGCA 25, the Court of Appeal commented that the architecture of the regime requires the court first to apply its mind to the following mandatory requirements:

- (a) the formal requirements in sections 15(1)(a) and 15(1)(b) of the LPA;
- (b) the requirement under section 15(1)(c) of the LPA that the foreign counsel has special qualifications and experience for the purpose of the case (as specified by the four Notification Matters in the Notice set out at paragraph 4 above); and
- (c) the threshold inquiry, under section 15(2) of the LPA, of whether a special reason must be shown (*ie*, where a case involves constitutional and administrative law, criminal law or family law, as prescribed under rule 32(1) of the LPAR) and if so, whether it has been shown.

9. If these matters are all met, the court must then consider the further matters specified in the Notification, and then exercise its discretion having regard to all the circumstances.

B. Mode of Application for Ad Hoc Admission under Section 15 of the Legal Profession Act

10. An application to be admitted under section 15 of the LPA shall be made by originating summons supported by an affidavit of the applicant or of the advocate and solicitor instructing him (section 15(3) of the LPA).

11. However, an advocate and solicitor should not affirm an affidavit in support of an application under section 15 of the LPA unless the facts and matters deposed to in the affidavit are within the personal knowledge of the advocate and solicitor. Where the facts and circumstances are within the personal knowledge of the party in the underlying suit or case ('Party Concerned'), the affidavit in support of an application under section 15 of the LPA should be affirmed by the Party Concerned.

12. The applicant (*ie*, the foreign senior counsel seeking *ad hoc* admission) should depose to an affidavit setting out his/her qualifications and that he/she thinks that he/she is well-suited to argue the underlying suit or case.

C. Necessity for the Service of a Foreign Senior Counsel and Availability of Senior Counsel or Other Advocate and Solicitor with Appropriate Experience – Guidance

13. In considering the factors under paragraphs 3(b) and 3(c) of the Notification (*ie*, that there was a necessity for the services of a foreign senior counsel and a lack of available Senior Counsel or other advocate and solicitor with appropriate experience to act in the case

(‘Appropriate Local Counsel’)), the following are taken into account (*Re Caplan Jonathan Michael* QC [2013] SGHC 75 at 23):

- (a) The nature of the contact between the party and the local counsel who was approached.
- (b) The mode of contact.
- (c) The date(s) and duration(s) of the call(s) and/or meeting(s).
- (d) The venue(s) of the meeting(s) as well as a summary of the discussion(s) held.
- (e) The date of the local counsel’s refusal to take on the party’s case and the reasons for the refusal.

14. In considering the factors under paragraphs 3(b) and 3(c) of the Notification, the Party Concerned or his/her advocate and solicitor (where the facts are within his/her personal knowledge) (‘Instructing Solicitor’) should state in his/her affidavit accompanying the section 15 LPA application that there was a necessity for the services of a foreign senior counsel and there was a lack of Appropriate Local Counsel who could act for the Party Concerned. To support his/her claim, he/she should, in his/her affidavit, list the law practice(s) and/or Appropriate Local Counsel he/she had unsuccessfully approached to act for the Party Concerned.

15. In order to properly evidence this, the Party Concerned or the Instructing Solicitor (where the facts are within his/her personal knowledge) should write a confirmatory letter to the Appropriate Local Counsel and/or his/her/their law practice(s) who were unsuccessfully approached, and state the following:

- (a) that the Appropriate Local Counsel and/or his/her/their law practice(s) had been approached by the Party Concerned and/or the Instructing Solicitor, but was unable to act for the Party Concerned;
- (b) the date(s) of any meeting or communication between the Party Concerned and/or the Instructing Solicitor and the Appropriate Local Counsel and/or his/her/their law practice(s); and
- (c) any other relevant information (for example, the reasons for the Appropriate Local Counsel and/or his/her/their law practice(s) being unable to act for the Party Concerned and the date of their refusal to act for the Party Concerned).

16. Copies of the letter(s) in this regard, including any replies, should be exhibited in the affidavit in support of the section 15 LPA application.

17. This will go towards ensuring the veracity of the information provided by the Party Concerned on the necessity for the services of a foreign senior counsel and the lack of availability of Appropriate Local Counsel. However, any applicant for such *ad hoc* admission should understand that he/she is ultimately responsible for the contents of the affidavit(s) filed in support, and should be guided by the legal requirements for such affidavit(s), bearing in mind the statutory and case-law framework in place.

Date: 1 June 2018

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE