



BERMUDA BAR ASSOCIATION

BAR COUNCIL

20 October 2014

Dear Counsel,

Re: Special Practicing Certificates

The Bar Council has reviewed its guidelines on admission of foreign leading counsel and the issuance of Special Practicing Certificates. Under the guidelines, Bar Council review the propriety of the use of foreign leading counsel for each hearing in which a client wishes them to appear before the Bermuda courts and for each application for a work permit from the Department of Immigration. If Bar Council determines that the use of foreign leading counsel is appropriate, then it issues a Special Practicing Certificate to that counsel for that hearing. Under Rule 7(2)(a) of the Bermuda Bar (Practicing Certificate) Rules 1984, “for a hearing before the Commercial Court or any appeal from the Commercial Court, without legal aid”, the fee is \$2000.00 for each such hearing or application to the Department of Immigration, with a further fee of \$350 per application for any additional hearing coming out of the same matter thereafter and which are subject to Bar Council prior approval.

Bar Council

Dated 12 November 1998

Amended 19 September 2012

Amendment 20 October 2014 (relating to per application for further/additional hearing fee of \$350)

ADMISSION OF FOREIGN COUNSEL STATEMENT OF POLICY

Under Section 61(4) of the Immigration and Protection Act 1956, the Minister consults the Bar Council on its views as to whether or not to admit a Queens Counsel. Its role under the Act is to advise the Minister as to inter alia,

“(c) the availability of services already resident in Bermuda and local companies

...

(e) the protection of local interests; and

(f) generally the requirements of the community as a whole.”

This is the policy that has been adopted by Bar Council as to how it will discharge its function in advising the Minister under the Immigration and Protection Act

The Principle

1. As a rule parties before the Bermuda court should be represented by barristers and attorneys who are members of the Association and entitled to practice before the Bermuda courts ("local counsel"). Bar Council considers that it is contrary to the long term interests of the bar in Bermuda for local counsel to act as mere agents for foreign law firms in relation to cases pending before Bermuda courts. Accordingly, Bar Council will not support applications for “teams” of foreign barristers and solicitors in relation to cases pending before Bermuda courts.

2. Section 51(3) of the Supreme Court Act 1905 ("the Act") recognizes that foreign counsel may be admitted to appear in the courts of Bermuda in any particular case or series of cases which involve questions of law or practice of considerable difficulty or public importance. As an exception to the rule, and in rare cases, Bar Council will support an application to admit foreign leading counsel to appear in a particular case provided that the broad criteria set out in Section 51(3) of the Act is satisfied.

The Criteria

3. In considering whether exceptional circumstances exist warranting the admission of foreign leading counsel in a particular case the Bar Council shall be guided by the following criteria in descending order of importance:-

- (i) The legal complexity of the case before the Bermuda courts and/or the general public importance of the case in Bermuda, including the importance of the case to Bermuda's offshore services industry.
- (ii) The availability of local counsel within Bermuda to adequately present the case.

(iii) The impact of the case upon the individual client, for example in criminal, defamation and professional negligence cases.

4. As a general rule the Bar Council will only support an application for the admission of foreign leading counsel to appear at the trial of the action and not in relation to interlocutory applications. It is recognized that exceptions may be made where the criteria set out in Section 51(3) of the Act is satisfied in relation to a particular interlocutory application.

5. Where Bar Council supports an application to admit foreign leading counsel, it will only do so in relation a particular hearing pending before the Bermuda courts and will not support an application for foreign leading counsel to appear in the case generally.

6. Where Bar Council supports an application for leading counsel to appear as an advocate before the Bermuda courts, local counsel must appear as second or junior counsel. Bar Council will not support an application to admit foreign junior counsel to appear before Bermuda courts.

7. If Bar Council approves an application for foreign leading counsel for one party to the proceedings it will normally do so for other parties to the same proceedings.

8. Bar Council expects that in relation to any case pending before the Bermuda courts, the preparation of the trial or other application will be the responsibility of the local firms. Accordingly, Bar Council will not support an application for work permits for foreign solicitors and other attorneys who do not intend to be called to Bermuda Bar but intend to assist otherwise in the preparation of the trial or other application. This rule does not prohibit the attendance in Bermuda of a foreign attorney solely for the purposes of providing instructions in relation to cases pending before the Bermuda courts.

The Application

9. The application for the admission of foreign leading counsel should be made in good time so that Bar Council may consider such an application at its regular monthly meetings. Bar Council will only convene special meetings to consider emergency applications if it is satisfied that there is a good reason why the application could not have been made in good time to be considered at its regular meetings.

10. The application seeking permission to engage foreign leading counsel should be sent to the attorneys acting for other parties in relation to a particular case. Other parties may make representations in writing as to the appropriateness of the application to engage foreign leading counsel in relation to the particular case.

11. The application for admission of foreign leading counsel shall be signed by local counsel who

has the conduct of the matter and who intends to appear with foreign leading counsel. The application should state that in the opinion of the local counsel the application complies with the criteria set out in Section 51(3) of the Act and set out full reasons for taking that view.

Duty of Local Counsel

12. The Bar Council is entitled to rely upon the opinion and representation of local counsel to the effect that the application complies with Section 51(3) of the Act. Accordingly, local counsel should only express that opinion where local counsel, in good faith, is satisfied that the criteria set out in section 51(3) of the Act is indeed met.

13. In cases where local counsel does not consider that the criteria set out in Section 51(3) of the Act is met, local counsel should advise the client that it is not an appropriate case for the engagement of foreign counsel and should not submit such an application.

Application to the Supreme Court

14 The Notice of Motion seeking to call foreign counsel to the Bermuda bar should be served upon the Executive Secretary of the Association.

Dated 12 November 1998
Amended 19 September 2012
Amended 20 October 2014

FORM 3

(Rule 5)

THE BERMUDA BAR ASSOCIATION
THE BERMUDA BAR ACT 1974
Application for a Special Practising Certificate

To: The Bermuda Bar Council.

I (We) (1) _____ of (2) _____

Hereby apply for the issue to (3) _____

of (4) _____

a (5) _____ of (6) _____

of a special practicing certificate in respect of the matter(s) entitled: _____

I (We) state that the following particulars are true:

1. By a Supreme Court Order made on the (7) _____ day of _____ 200__, the said (8) _____ was specially enrolled as a barrister and attorney in the Courts of Bermuda in respect of the said matter(s).

2. The Minister of Labour and Home Affairs has issued a current and valid work permit entitling the said to act as a barrister and attorney in Bermuda in respect of the said matter(s).

3. I (We) have paid to the Bermuda Bar Council the fee prescribed by The Bermuda Bar (Practising Certificate) Rules 1984.

Dated this _____ day of _____ . _____

Signature of Applicant(s)

- 1 Insert name of Applicant
- 2 Insert name of practice or firm
- 3 Insert name of foreign Counsel
- 4 Insert address of foreign Counsel
- 5 Insert qualification of foreign Counsel i.e. Barrister or Queen's Counsel
- 6 Insert jurisdiction in which foreign Counsel is admitted
- 7 Insert date of Order
- 8 Insert name of foreign Counsel