

## 2. 釋義

(1) 在本條例中，除文意另有所指外——

**大律師** (barrister) 指在大律師登記冊上登記為大律師，並在關鍵時沒有被暫時吊銷執業資格的人；

**大律師登記冊** (roll of barristers) 指司法常務官按照第29條條文備存的登記冊；

**不合資格人士** (unqualified person) 指並非律師的人；

**公證人** (notary public) 指在公證人註冊紀錄冊上註冊，並在關鍵時沒有被暫時吊銷執業資格的人；

**公證人協會** (Society of Notaries) 指名為香港國際公證人協會的團體，該團體根據在當其時有效的《公司條例》(第32章) 成立為有限責任法團，其所具有的宗旨包括提高公證人的專業水平、規管公證人的執業，以及履行或執行根據本條例賦予該團體的職責或責任；(由1998年第27號第5條增補。由2003年第206號法律公告修訂；由2012年第28號第912及920條修訂)

**公證人協會理事會** (Council of the Society of Notaries) 指按照該協會的組織章程細則的條文委出的執理事會；(由1998年第27號第5條增補)

**公證人註冊紀錄冊** (register of notaries public) 指司法常務官按照第40C條條文備存的註冊紀錄冊；(由1998年第27號第5條修訂)

**司法常務官** (Registrar) 指高等法院司法常務官以及高等法院的任何高級副司法常務官、副司法常務官或助理司法常務官；(由1998年第25號第2條修訂；由2005年第10號第175條修訂)

**外地司法管轄區** (foreign jurisdiction) 指香港以外的司法管轄區；(由1994年第60號第2條增補。由1998年第23號第2條修訂)

**外地法律** (foreign law) 指外地司法管轄區的法律；(由1994年第60號第2條增補。由1998年第23號第2條修訂)

**外地律師** (foreign lawyer) 指根據第III A部註冊為外地律師的人；(由1994年第60號第2條增補。由1998年第23號第2條修訂)

**外地律師行** (foreign firm) 指根據第III A部註冊為外地律師行的律師行或獨營執業者；(由1994年第60號第2條增補。由1998年第23號第2條修訂)

**合資格人士** (qualified person) 指合資格獲認許為律師的人；(由1982年第50號第2條增補)

**合夥** (partnership) 包括第7AA條所界定的有限法律責任合夥；(由2012年第22號第3條增補)

**事務費委員會** (Costs Committee) 指根據第74條委任的事務費委員會；

**法院** (Court) 指原訟法庭；(由1975年第92號第59條修訂；由1998年第25號第2條修訂)

**法學專業證書** (Postgraduate Certificate in Laws) 指香港大學、香港城市大學、香港城市理工學院或香港中文大學所頒授的法學專業證書；(由1992年第1號第2條增補。由1994年第100號第5條修訂；由2008年第10號第34條修訂)

**爭訟事務** (contentious business) 包括由律師(不論作為律師或作為訟辯人)在任何法院辦理的任何事務；(由2008年第178號法律公告修訂)

**非爭訟事務** (non-contentious business) 包括任何與售賣、購買、租賃、按揭及其他物業轉易事宜有關連的事務；

**律師** (solicitor) 指在律師登記冊上登記，並在關鍵時沒有被暫時吊銷執業資格的人；

**律師登記冊** (roll of solicitors) 指司法常務官按照第5條條文備存的登記冊；

**律師會** (Society, Law Society) 指香港律師會；(由1970年第14號第2條代替。由1998年第27號第5條修訂)

**香港律師行** (Hong Kong firm) 指符合以下說明的律師行——

- (a) 律師行的所有合夥人均為律師；或
- (b) 律師行的獨資經營者是律師；(由2000年第42號第2條代替)

**執委會** (Bar Council) 指大律師公會的執行委員會；(由1991年第70號第2條修訂)

**執業證書** (practising certificate) 指——

- (a) 律師會根據第6條發出的證書；(由1998年第27號第5條修訂)

## 2. Interpretation

(1) In this Ordinance, unless the context otherwise requires—

**accountant's report** (會計師報告) means a report delivered in accordance with the provisions of section 8; (Replaced 25 of 1968 s. 2)

**Assessment Board** (評核委員會) means the Higher Rights Assessment Board established by section 39E; (Added 2 of 2010 s. 3)

**Association** (聯營組織) means an Association registered under Part IIIA; (Added 60 of 1994 s. 2)

**Bar Council** (執委會) means the Council of the Hong Kong Bar Association; (Amended 70 of 1991 s. 2)

**barrister** (大律師) means a person who is enrolled as a barrister on the roll of barristers and who, at the material time, is not suspended from practice;

**client** (當事人), except in relation to non-contentious business, includes any person who as principal or on behalf of another person retains or employs, or is about to retain or employ, a solicitor, and any person who is or may be liable to pay a solicitor's costs;

**common law jurisdiction** (普通法司法管轄區) means a jurisdiction in which the law is substantially based on the common law; (Added 2 of 2010 s. 3)

**contentious business** (爭訟事務) includes any business done by a solicitor in any court, whether as a solicitor or as an advocate;

**costs** (訟費、事務費) includes fees, charges, disbursements, expenses and remuneration;

**Costs Committee** (事務費委員會) means the Costs Committee appointed under section 74;

**Council** (理事會) means, in relation to the Law Society, the council of the Society elected in accordance with the provisions of its articles of association; (Added 52 of 1980 s. 2. Amended 27 of 1998 s. 5)

**Council of the Society of Notaries** (公證人協會理事會) means the Council of Management of that society appointed in accordance with the provisions of its articles of association; (Added 27 of 1998 s. 5)

**Court** (法院) means the Court of First Instance; (Amended 92 of 1975 s. 59; 25 of 1998 s. 2)

**employee** (僱員) includes a former employee; (Added 25 of 1968 s. 2)

**foreign firm** (外地律師行) means a law firm or sole practitioner that is registered as a foreign firm under Part IIIA; (Added 60 of 1994 s. 2. Amended 23 of 1998 s. 2)

**foreign jurisdiction** (外地司法管轄區) means a jurisdiction other than Hong Kong; (Added 60 of 1994 s. 2. Amended 23 of 1998 s. 2)

**foreign law** (外地法律) means the law of a foreign jurisdiction; (Added 60 of 1994 s. 2. Amended 23 of 1998 s. 2)

**foreign lawyer** (外地律師) means a person registered as a foreign lawyer under Part IIIA; (Added 60 of 1994 s. 2. Amended 23 of 1998 s. 2)

**higher rights of audience** (較高級法院出庭發言權) has the meaning given by section 39H(3); (Added 2 of 2010 s. 3)

**higher rights of audience certificate** (較高級法院出庭發言權證書) means a certificate issued under section 39P; (Added 2 of 2010 s. 3)

**Hong Kong firm** (香港律師行) means a law firm in which—

- (a) all of the partners are solicitors; or
- (b) the sole practitioner of which is a solicitor; (Added 60 of 1994 s. 2. Amended 42 of 2000 s. 2)

**non-contentious business** (非爭訟事務) includes any business connected with sales, purchases, leases, mortgages and other matters of conveyancing;

**notary public** (公證人) means a person who is registered on the register of notaries public and who, at the material time, is not suspended from practice;

**partnership** (合夥) includes a limited liability partnership as defined by section 7AA; (Added 22 of 2012 s. 3)

**Postgraduate Certificate in Laws** (法學專業證書) means a Postgraduate Certificate in Laws awarded by the University of

(b) 執委會根據第30條發出的證書；及 (由1976年第58號第2條代替。由1991年第70號第2條修訂；由1998年第27號第5條修訂)

(c) 公證人協會根據第40E條發出的證書； (由1998年第27號第5條增補)

**理事會** (Council) 就律師會而言，指按照律師會組織章程細則的條文選出的律師會理事會； (由1980年第52號第2條增補。由1998年第27號第5條修訂)

**訟費、事務費** (costs) 包括費用、收費、代墊付費用、開支及酬金；

**訟辯律師** (solicitor advocate) 指根據第III B部享有較高級法院出庭發言權的人； (由2010年第2號第3條增補)

**普通法司法管轄區** (common law jurisdiction) 指一個司法管轄區，其法律在實質上是普通法為基礎的； (由2010年第2號第3條增補)

**評核委員會** (Assessment Board) 指第39E條所設立的較高級法院出庭發言權評核委員會； (由2010年第2號第3條增補)

**會計師報告** (accountant's report) 指按照第8條條文交付的報告； (由1968年第25號第2條代替)

**當事人** (client) 除與非爭訟事務有關者外，包括作為主事人或代另一人而聘用或僱用律師的任何人，或即將聘用或僱用律師的任何人，以及有法律責任支付或可能有法律責任支付律師訟費的任何人；

**較高級法院出庭發言權** (higher rights of audience) 具有第39H(3)條給予該詞的涵義； (由2010年第2號第3條增補)

**較高級法院出庭發言權證書** (higher rights of audience certificate) 指根據第39P條發出的證書； (由2010年第2號第3條增補)

**僱員** (employee) 包括前僱員； (由1968年第25號第2條增補)

**實習律師合約** (trainee solicitor contract) 指以書面訂立的合約 (不論該合約是在本條例生效日期之前或之後訂立)，而根據該合約，某人是為了獲認許為律師而受僱為見習律師或實習律師的； (由1991年第70號第2條增補)

**聯營組織** (Association) 指根據第III A部註冊的聯營組織。 (由1994年第60號第2條增補)

(由1991年第70號第2條修訂；由1992年第61號第2條修訂)  
(編輯修訂——2019年第2號編輯修訂紀錄)

(1A) 在本條例中，凡提述律政司，就1997年7月1日之前的任何期間而言，須當作提述當時的律政署。 (由1999年第11號第3條增補)

(2) 為免生疑問，現宣布實習律師或律師僱員的任何行為操守，如會被一名具有良好聲譽的律師合理地視為是可耻、不名譽或有損信譽的，則須當作不當行為。 (由1968年第25號第2條增補。由1981年第1號第2條修訂；由1991年第70號第13條修訂)

(3) 除第73(3)條另有規定及除文意另有所指外，任何根據第73(1)(d)或(f)條訂立的規則均適用於合資格人士，一如其適用於律師。 (由1982年第50號第2條增補)

#### 49. 律師不得作為不合資格人士的代理人

- (1) 任何律師不得明知而故意——
- 在任何破產的訴訟或任何破產的事宜上，作為任何不合資格人士的代理人；或
  - 為任何不合資格人士的利益或為任何不合資格人士謀利而容許他的姓名用於任何該等訴訟或事宜中；或
  - (由1994年第60號第38條廢除)
  - 作出任何其他作為，使任何不合資格人士能夠於任何該等訴訟或事宜中在任何方面以律師身分出席，行事或執業。

Hong Kong, the City University of Hong Kong, the City Polytechnic of Hong Kong or The Chinese University of Hong Kong; (Added 1 of 1992 s. 2. Amended 100 of 1994 s. 5; 10 of 2008 s. 34)

**practising certificate** (執業證書) means—

(a) a certificate issued by the Society under section 6; (Amended 27 of 1998 s. 5)

(b) a certificate issued by the Bar Council under section 30; and (Replaced 58 of 1976 s. 2. Amended 70 of 1991 s. 2; 27 of 1998 s. 5)

(c) a certificate issued by the Society of Notaries under section 40E; (Added 27 of 1998 s. 5)

**qualified person** (合資格人士) means a person qualified for admission as a solicitor; (Added 50 of 1982 s. 2)

**register of notaries public** (公證人註冊紀錄冊) means the register kept by the Registrar in accordance with the provisions of section 40C; (Amended 27 of 1998 s. 5)

**Registrar** (司法常務官) means the Registrar of the High Court and any senior deputy registrar, deputy registrar or assistant registrar of the High Court; (Amended 25 of 1998 s. 2; 10 of 2005 s. 175)

**roll of barristers** (大律師登記冊) means the roll kept by the Registrar in accordance with the provisions of section 29;

**roll of solicitors** (律師登記冊) means the roll kept by the Registrar in accordance with the provisions of section 5;

**Society and Law Society** (律師會) mean The Law Society of Hong Kong; (Replaced 14 of 1970 s. 2. Amended 27 of 1998 s. 5)

**Society of Notaries** (公證人協會) means the body known as Hong Kong Society of Notaries incorporated with limited liability under the Companies Ordinance (Cap. 32) as in force at the time and having among its objects the promotion of proper professional standards among notaries public, the regulation of the practice of notaries public and the performance or discharge of such duties or responsibilities as may be conferred on it under this Ordinance; (Added 27 of 1998 s. 5. Amended L.N. 206 of 2003; 28 of 2012 ss. 912 & 920)

**solicitor** (律師) means a person who is enrolled on the roll of solicitors and who, at the material time, is not suspended from practice;

**solicitor advocate** (訟辯律師) means a person who has higher rights of audience under Part III B; (Added 2 of 2010 s. 3)

**trainee solicitor contract** (實習律師合約) means a contract in writing, whether entered into before or after the commencement of this Ordinance, under which a person is employed as an articulated clerk or trainee solicitor for the purpose of being admitted as a solicitor; (Added 70 of 1991 s. 2)

**unqualified person** (不合資格人士) means a person who is not a solicitor.

(Amended 70 of 1991 s. 2; 61 of 1992 s. 2)

(1A) In this Ordinance, a reference to the Department of Justice shall, in relation to any period of time before 1 July 1997, be deemed to be a reference to the then Legal Department. (Added 11 of 1999 s. 3)

(2) For the avoidance of doubt, it is hereby declared that any conduct of a trainee solicitor or employee of a solicitor which would reasonably be regarded as disgraceful, dishonourable or discreditable by a solicitor of good repute shall be deemed misconduct. (Added 25 of 1968 s. 2. Amended 1 of 1981 s. 2; 70 of 1991 s. 13)

(3) Any rules made under section 73(1)(d) or (f) shall, subject to section 73(3) and unless the context otherwise requires, apply to a qualified person as they apply to a solicitor. (Added 50 of 1982 s. 2)

#### 49. Solicitor not to act as agent for unqualified person

- (1) No solicitor shall wilfully and knowingly—
- act as agent in any action or in any matter in bankruptcy for any unqualified person; or
  - permit his name to be made use of in any such action or matter upon the account or for the profit of any unqualified person; or
  - (Repealed 60 of 1994 s. 38)
  - do any other act enabling any unqualified person to appear, act or practise in any respect as a solicitor in any such action or matter.

- (2) 凡律師紀律審裁組或法院覺得任何律師曾違反本條規定而行事，律師紀律審裁組或法院須命令將該律師的姓名從律師登記冊上剔除。(由1992年第61號第6條修訂)
- (3) 凡法院就根據本條所訂罪行而命令將一名律師的姓名從律師登記冊上剔除，可進一步命令將該名因犯罪者的行為操守而能夠以律師身分行事或執業的不合資格人士監禁一段不超過1年的期間。

[比照1957 c. 27 s. 34 U.K.]

**50. 不得就不合資格人士討回訟費**

任何人不得在任何訴訟、起訴或事宜中就不合資格人士以律師身分行事而作出的任何事情追討訟費。

[比照1957 c. 27 s. 23 U.K.]

**51. 對法人團體適用的罰則**

- (1) 如任何作為是由法人團體或其任何董事、高級人員或受僱人所作出，而該等作為的性質或所作出的方式是刻意暗示該法人團體是合資格或獲法律承認為合資格以律師身分行事的，則該法人團體即屬犯罪，一經循簡易程序定罪，可處罰款\$500,000；如作為是由該法人團體的董事、高級人員或受僱人所作出，則該人亦屬犯罪，一經循簡易程序定罪，可處罰款\$500,000。(由1989年第46號第11及13條修訂)
- (2) 為免生疑問，現特此聲明在第45、45A、46、47、48、49、50及50B條中，對不合資格人士或對人的提述包括對法人團體的提述。(由2010年第2號第7條修訂)

(由1994年第60號第40條修訂)

[比照1957 c. 27 s. 22 U.K.]

- (2) Where it appears to a Solicitors Disciplinary Tribunal or to the Court that a solicitor has acted in contravention of this section, the Solicitors Disciplinary Tribunal or the Court shall order his name to be struck off the roll of solicitors. (Amended 61 of 1992 s. 6)
- (3) Where the Court orders the name of a solicitor to be struck off the roll in respect of an offence under this section, it may further order that the unqualified person who was enabled by the conduct of the offender to act or practise as a solicitor shall be imprisoned for any period not exceeding 1 year.

[cf. 1957 c. 27 s. 34 U.K.]

**50. No costs for unqualified person**

No costs in respect of anything done by an unqualified person acting as a solicitor shall be recoverable in any action, suit or matter by any person whomsoever.

[cf. 1957 c. 27 s. 23 U.K.]

**51. Application of penal provisions to body corporate**

- (1) If any act is done by a body corporate, or by any director, officer or servant thereof, of such a nature or in such a manner as to be calculated to imply that the body corporate is qualified or recognized by law as qualified to act as a solicitor, the body corporate shall be guilty of an offence and shall be liable on summary conviction to a fine of \$500,000, and, in the case of an act done by a director, officer or servant of the body corporate, such person shall also be guilty of an offence and shall be liable on summary conviction to a fine of \$500,000. (Amended 46 of 1989 ss. 11 & 13)
- (2) For the avoidance of doubt, it is hereby declared that in sections 45, 45A, 46, 47, 48, 49, 50 and 50B, references to unqualified persons and to persons include references to a body corporate. (Amended 2 of 2010 s. 7)

(Amended 60 of 1994 s. 40)

[cf. 1957 c. 27 s. 22 U.K.]