BERMUDA BAR ASSOCIATION

BAR COUNCIL

20 July 2026

Dear Counsel,

Re: Special Practising Certificates

Following consultation with the membership, the Bar Council has reviewed its statement of policy on the admission of foreign leading counsel and the issuance of special practising certificates and the revised policy is set out below. Under the policy, Bar Council reviews the propriety of the use of foreign leading counsel for each hearing in which a client wishes them to appear before the Bermuda courts (in-person or virtually by remote hearing) and for each application for a work permit from the Department of Immigration. If Bar Council determines that the use of foreign leading counsel in a particular matter is appropriate, then, following special admission of that counsel by the Court, the Bar Council issues a special practising certificate to that counsel for that matter and that special practising certificate may be renewed annually.

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)
Amended 20 July 2026

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 foreign leading 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:-

    3.1. 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 international business sector.
    3.2. The availability of local counsel within Bermuda to adequately present the case.

3.3. 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 support an application for the admission of foreign leading counsel to appear at the trial of the action where at least one of the criteria is met.

5. In relation to interlocutory applications, the Bar Council will only support an application for the use of foreign leading counsel where at least one of the criteria is met in relation to that particular interlocutory application, with particular reference to the legal complexity and/or general public importance of that interlocutory application. It is not sufficient only to say that the application raises issues of legal complexity. An explanation of why those issues are complex must be included.

6. Where the Bar Council supports an application to use foreign leading counsel, it will only do so in relation to a <u>particular hearing</u> pending before the Bermuda courts and will not support an application for foreign leading counsel to appear in the case generally. However, in order to avoid the administrative burden of an application having to be made to the Court for foreign leading counsel to be specially admitted for each hearing, the Bar Council will support an application for a special admission order where the substance matter of the dispute meets the criteria, in the following terms:

   "That [*name*] foreign leading counsel be specially admitted and enrolled as a Barrister and Attorney in this Honourable Court for the purpose of appearing on behalf of the Applicant, in the matter proceeding before the court titled [*caption*] at:

   a) the hearing of the application for [*describe, if the initial application for admission relates to an interlocutory hearing*];
   b) the hearing of such other interlocutory hearings as may be approved by the Bar Council or, in the absence of such approval, as otherwise ordered by the Court;
   c) the trial of the action if approved by the Bar Council, or in the absence of such approval, as otherwise ordered by the Court; and
   d) the adjournment of, and any appeal of a decision made at, any of the above hearings."

7. The terms of the order will be included in the special practising certificate meaning that it is not necessary for a special practising certificate to be issued for each hearing. <u>However, prior written approval of the Bar Council for a foreign leading counsel to appear must be sought in relation to each hearing at which they will appear</u>. The special practising certificate should be renewed annually, if a case lasts more than a year.

8. Where Bar Council supports an application for a foreign 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. Whenever a foreign leading counsel is appearing, consideration ought to be given to whether local counsel might present some part of the case (e.g. cross-examining a particular witness or presenting the argument on

a particular point). As part of the application, the law firm seeking a special practising certificate should inform the Bar Council whether junior counsel is going to have a speaking role at the hearing.

9. 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.

10. 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 the 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 in accordance with the Government's Work Permit Policy as amended from time to time.

The Application

11. The application for the admission of foreign leading counsel should be made in good time so that Bar Council may consider such an application well in advance of the hearing date.

12. 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 at the same time as it is sent to the Bar Council. 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 or hearing.

13. The application for the admission of foreign leading counsel must include a statement confirming that, in the opinion of either:

    13.1. the named senior attorney with conduct of the matter; or

    13.2. a named senior attorney at the firm making the application who has knowledge of the matter,

    the application satisfies the criteria set out in section 51(3) of the Act. The application must also include a full explanation of the basis for that opinion.

14. The Notice of Motion for the special admission of foreign leading counsel to the Bermuda Bar should be served upon the Executive Secretary of the Association.

15. If there is a change in foreign leading counsel, a new application for special admission and a special practising certificate will need to be made.

Duty of Local Counsel

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

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

Costs and FPPC

18. Under Rule 7(2)(a) of the Bermuda Bar (Practising Certificate) Rules 1984, the fee for an initial special practising certificate "is $2,000 for a hearing before the Commercial Court or on any appeal from the Commercial Court, without legal aid; and $250 in all other cases".

19. The fee for the application for the approval of foreign leading counsel for each subsequent hearing in the same matter is $350 for each foreign leading counsel.

20. The Bar Office does not bill firms for a foreign leading counsel's attendance at each hearing as it is not practicable for the Bar Office to track all adjournments/postponements of hearings etc. The fees shall be paid in one of the following manners:

    20.1. For each hearing at which foreign leading counsel appears, as they go; or

    20.2. Upon renewal of the special practising certificate, at which time all fees accrued for hearings attended during the preceding year are payable; or

    20.3. When the matter ends, or if the foreign leading counsel ceases to be instructed, and this occurs before the next special practising certificate renewal date, at which time all fees accrued up to that date are payable.

21. All fees should be paid by direct transfer to the Bar Association account.

22. Each foreign leading counsel must obtain a Fit & Proper Person Certificate (FPPC) from the Bar Association and keep this current. The fee for an FPPC is $100 annually, although a new FPPC may need to be issued several times within the year as FPPC's expire after 90 days.

Dated 12 November 1998
Amended 19 September 2012
Amended 20 October 2014
Amended: 20 July 2026

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 practising certificate in respect of the matter(s) entitled:_____

_____ to enable [*name*]

to appear at the hearing in this matter [*in-person or remotely*] on [*date*]

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

1. By a Supreme Court Order made on the (7) _____day of _____ 20__, 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). [strike through if remote hearing]

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 leading Counsel
4 Insert address of foreign leading Counsel
5 Insert qualification of foreign leading Counsel i.e. Barrister or King's Counsel
6 Insert jurisdiction in which foreign leading Counsel is admitted
7 Insert date of Order
8 Insert name of foreign leading Counsel