



SINGAPORE ACADEMY OF LAW

Singapore Academy of Law

Specialist Accreditation Scheme

for Singapore Building and Construction Legal Practitioners

Recommendations
30 September 2016

Specialist Accreditation Scheme Subcommittee

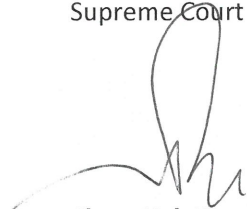
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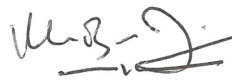
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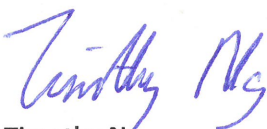
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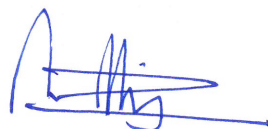
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Definitions

1 For the purposes of this paper:

Building and construction (B&C) legal practice. This is the practice of law relating to all aspects of development, design and construction of public and private projects. It shall encompass, but is not limited to, all advisory and documentation work undertaken for related stakeholders including contractors, developers, consultants, insurers and financial institutions, prior to the commencement of and all dispute-related work arising from such projects.

CPD. Continuing professional development.

Law practice. This refers to any of the following: a Singapore law practice; joint law venture; foreign law practice; qualifying foreign law practice defined in s 2 of the Legal Profession Act (Cap 161).

Legal practitioner. Advocate and Solicitor of the Supreme Court of Singapore.

PQE. Post-qualification experience.

SAL. Singapore Academy of Law.

Scheme. The specialist accreditation scheme for Singapore building and construction legal practitioners.



Executive Summary

Aim of the paper

- 1 This paper sets out proposals for the implementation of a specialist accreditation scheme for Singapore building and construction (B&C) legal practitioners (the “Scheme”). In the chapters that follow, the paper addresses the imperatives for such a scheme and puts forth the proposals for a specialist accreditation framework and the supporting learning and development programme.
- 2 To encourage the drive towards excellence, Chief Justice Sundaresh Menon, at the Opening of the Legal Year (OLY) 2016, proposed the establishment of a scheme to recognise B&C legal practitioners who have achieved mastery in this area of practice. He tasked a subcommittee headed by Justice Quentin Loh to propose a framework for this scheme in Singapore. The subcommittee studied similar initiatives in other jurisdictions and how these can serve as reference points when formulating the framework of the Singapore scheme.
- 3 The recommendations of the subcommittee are geared towards:
 - a. recognising the high level of proficiency of B&C legal practitioners:
 - i. to enhance the capabilities of legal practitioners who specialise in this area of practice by encouraging them to improve upon and maintain a high level of skills and knowledge:
 - A. for candidates to be accredited, they should meet a set of criteria based on their substantial involvement in the specialised area (see paragraphs 2.13ff and 2.28ff)
 - B. they should undertake an examination preparatory course on B&C law and dispute resolution (see paragraphs 2.54ff)
 - ii. to incentivise younger legal practitioners to hone their skills and knowledge in this area of practice:
 - A. the Scheme should allow legal practitioners with more than 5 years’ post-qualification experience (PQE) to apply for accreditation (see paragraphs 2.12 and 2.26)
 - B. the Scheme should encompass a two-tier structure (“Senior Accredited Specialist” and “Accredited Specialist”) to give younger legal practitioners the impetus to aim higher (see paragraph 2.7)
 - C. the Scheme should include an examination for Accredited Specialist candidates (see paragraph 2.17)
 - iii. to provide the general public with a reliable means of identifying and accessing legal practitioners who have proven themselves as possessing the requisite skills and knowledge in this area of practice:



- A. the accreditation body should provide benefits to accredited specialists that would enhance their presence in the market place (see paragraphs 2.69 and 2.70)
- iv. to promote continued development and improvement of standards, quality and delivery of legal services:
 - A. accredited specialists should undergo regular assessment of their continued substantial involvement in the specialised area to ensure that the highest standards are maintained (see paragraphs 2.38ff)
- b. establishing the infrastructure within which the Scheme shall operate:
 - i. the Scheme should be overseen by the Singapore Academy of Law (SAL), with candidates assessed by a selection panel comprising a mix of judges, legal practitioners and industry professionals (see paragraphs 2.71 and 2.75)



Specialist Accreditation Scheme: An Introduction

The construction industry: Key trends and opportunities

- 1 The global, regional and local construction demand is expected to rise exponentially from this decade to 2030. Construction output volume is forecasted to grow by 85% to US\$17.5 trillion worldwide by 2030 with an annual growth rate of 3.9%,¹ with the ASEAN construction market to exceed US\$1 trillion a year by 2030.²
- 2 Closer to home, while the Singapore economy is experiencing a slowdown, growing by 2.1% on a y-o-y basis in Q2 2016, and forecasted to grow by 1.8% for the rest of 2016,³ the construction industry is fairing better: Q2 2016 results showed a moderate expansion of 3.3%, making it the strongest performer of all sectors (see Exhibit 1).⁴ The industry is expected to grow by the same rate for the whole of 2016.⁵ According to the Singapore Building and Construction Authority's (BCA) forecast,⁶ construction demand for 2016 is expected to be

¹ Global Construction Perspectives and Oxford Economics, "Global Construction 2030: A Global Forecast for the Construction Industry to 2030", 10 November 2015, at p 6 <[https://gcp.global/uk/downloadable/download/link/id/MC42NDc0NDAwMCAxNDcxMjUxNDA4OTA5ODk0MjMyODU,/>](https://gcp.global/uk/downloadable/download/link/id/MC42NDc0NDAwMCAxNDcxMjUxNDA4OTA5ODk0MjMyODU,/) (accessed 15 August 2016).

² Global Construction Perspectives and Oxford Economics, "Global Construction 2030: A Global Forecast for the Construction Industry to 2030", 10 November 2015, at p 16 <[https://gcp.global/uk/downloadable/download/link/id/MC42NDc0NDAwMCAxNDcxMjUxNDA4OTA5ODk0MjMyODU,/>](https://gcp.global/uk/downloadable/download/link/id/MC42NDc0NDAwMCAxNDcxMjUxNDA4OTA5ODk0MjMyODU,/) (accessed 15 August 2016).

³ Monetary Authority of Singapore, "Economic Policy Group Survey of Professional Forecasters June 2016" at p 2 <<http://www.mas.gov.sg/~media/MAS/News%20and%20Publications/Surveys/Survey%20of%20Professional%20Forecasters/2016/Survey%20Writeup%20Jun2016%20Web.pdf>> (accessed 29 June 2016).

⁴ Ministry of Trade and Industry, "Economic Survey of Singapore Second Quarter 2016" at chap 1, p 8 <https://www.mti.gov.sg/ResearchRoom/SiteAssets/Pages/Economic-Survey-of-Singapore-Second-Quarter-2016/Ch1_2Q16.pdf> (accessed 30 August 2016).

⁵ Monetary Authority of Singapore, "Economic Policy Group Survey of Professional Forecasters June 2016" at p 2 <<http://www.mas.gov.sg/~media/MAS/News%20and%20Publications/Surveys/Survey%20of%20Professional%20Forecasters/2016/Survey%20Writeup%20Jun2016%20Web.pdf>> (accessed 29 June 2016). The sector expanded by 2.5% for the whole of 2015 (Ministry of Trade and Industry, "Economic Survey of Singapore 2015" at chap 6, p 56 <https://www.mti.gov.sg/ResearchRoom/SiteAssets/Pages/Economic-Survey-of-Singapore-2015/Ch6.2_AES2015.pdf> (accessed 29 June 2016).

⁶ Building and Construction Authority, "Forecast and actual construction demand" <https://www.bca.gov.sg/keyconstructioninfo/others/free_stats.pdf> (accessed 8 June 2016).





Exhibit 1. GDP and sectoral growth rates (Q2 2016) (%)

Source: Ministry of Trade and Industry

between S\$27 billion and S\$34 billion, increasing to S\$37 billion in 2020, led by public sector infrastructure projects and public housing building works.⁷

- 3 The rise in the volume of international construction work is expected to generate a rise in demand for advisory and advocacy work relating to construction matters. For instance, the Global Construction Disputes Report 2016 noted that, with respect to Asia, the average construction dispute amount remains high – US\$85.6m in 2014 and US\$67m in 2015, with the global average being US\$51m – and the average length of disputes has increased markedly over the past 5 years, from 11.4 months in 2011 to 19.5 months in 2015. The Report predicts an increase in the number of disputes in 2016.⁸

Role of legal practitioners in the construction industry

- 4 Legal practitioners play an important role in the construction industry, from front-end drafting and advice to dispute resolution. Clients include governments (and public sector entities), project sponsors, developers, surveyors, architects, engineers, contractors, subcontractors, insurers and investors. B&C legal practitioners are expected to undertake advisory and transactional work involving the drafting of building contracts, warranties and loan documentation for financiers, and dispute resolution relating to claims for defects, payment disputes and breach of contract. The expected upswing in local, regional and global construction activity in the next four to 5 years bodes

⁷ Building and Construction Authority, "Selected projects awarded in March 2016"

<https://www.bca.gov.sg/keyconstructioninfo/others/free_pjt_list.pdf> (accessed 8 June 2016).

⁸ Arcadis, "Global Construction Disputes Report 2016: Don't Get Left Behind" at pp 16–17

<<https://www.arcadis.com/en/united-states/our-perspectives/2016/global-construction-disputes-report-2016don-t-get-left-behind/>> (accessed 13 June 2016).



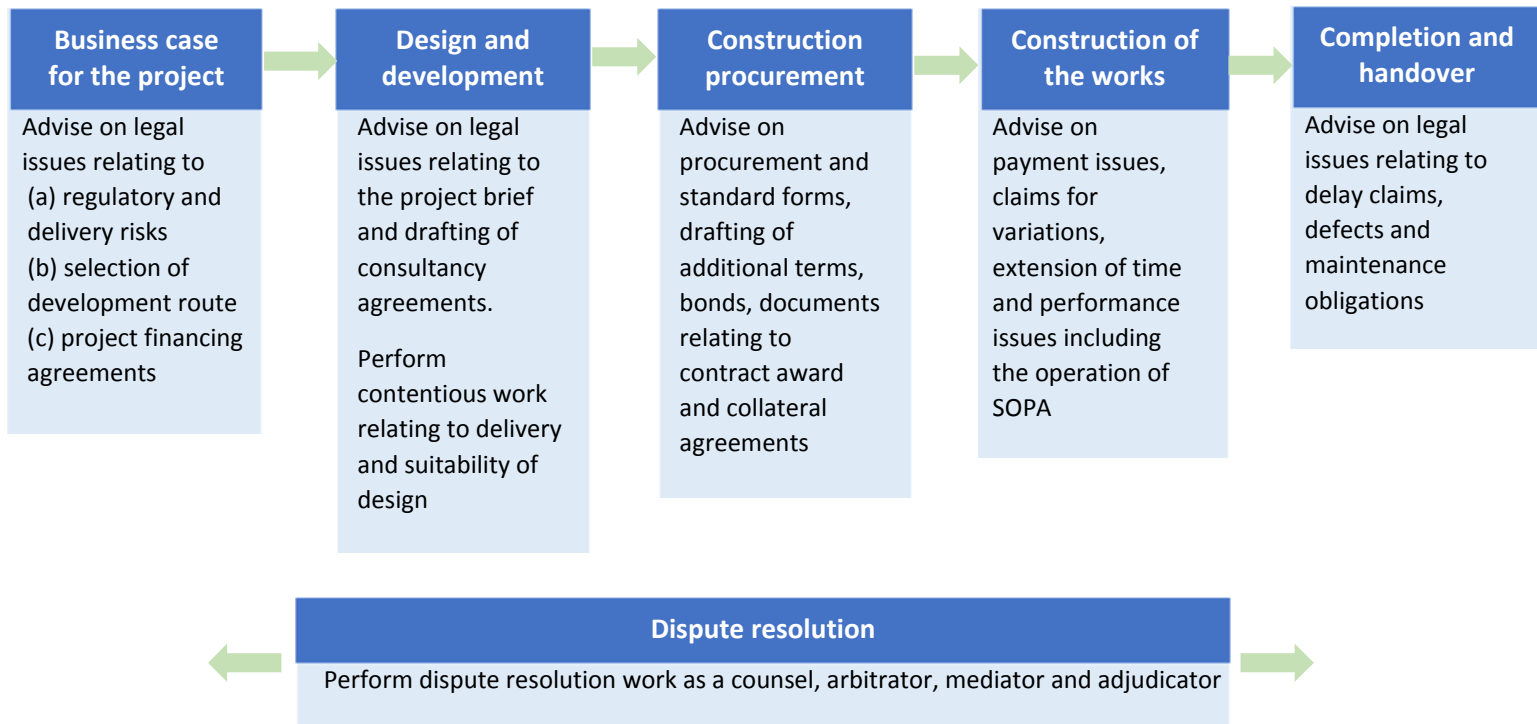


Exhibit 2. Legal practitioner's role in each phase of the construction process

Source: Chow Kok Fong, "Reflections on Construction Disputes in Mega-Projects", lecture delivered at the Kuala Lumpur Regional Centre for Arbitration, 29 January 2016.

well for B&C legal practitioners. This should see an increase in demand for their services in the various phases of the construction process (see Exhibit 2).

Building and construction law: Specialist accreditation scheme's pilot programme

- The concept of professional specialisation is not new. Professions such as medical practitioners, engineers and accountants have professional pathways to greater specialisation or higher qualifications. Professional specialisation is also commonplace in the construction industry: chartered surveyors can be accredited as chartered environmentalists, while civil engineers may specialise as geotechnical engineers. Similarly, in jurisdictions such as the US, the EU, Canada and Australia, legal practitioners, who have attained proficiency in B&C law, may seek recognition for his or her expertise. Some factors may serve as impetus to introduce a similar scheme for B&C legal practitioners in Singapore.

International nature of the practice

- With construction projects involving stakeholders and plant and materials in the chain of construction coming from all corners of the world, legal practitioners are now expected to be familiar with complex issues including



International Standard Forms of Contract especially FIDIC Conditions of Contract.

- 7 Furthermore, a considerable proportion of construction disputes, local and international, are brought before arbitral tribunals and adjudication dispute boards. It is of interest to note that according to the Global Construction Disputes Report 2016,⁹ the top five causes of disputes worldwide in 2015 were:
 - 7.1 “failure to properly administer the contract
 - 7.2 poorly drafted or incomplete and unsubstantiated claims
 - 7.3 errors and/or omissions in the contract document
 - 7.4 incomplete design information or employer requirements (for Design and Build)
 - 7.5 the employer, contractor or subcontractor failing to understand and/or comply with its contractual obligations”
- 8 It is imperative that young legal practitioners develop the expertise and skills necessary to deal with the special issues and processes associated with these matters. There is a group of counsel and legal advisors at the apex of this area of work internationally and Singapore should target to have at least a proportional number of legal practitioners at this level.

Public and private good

- 9 Society has an interest in the competence of legal practitioners, in their ability to serve the public. A prospective client who is able to identify a legal practitioner proficient in a specialisation not only benefits him or her in the knowledge that he or she will receive valuable service, but also the legal practitioner, with special competence in B&C law, to pursue a higher quality and cost-effective practice.

Why building and construction law?

- 10 Building and construction law has been chosen as the pilot programme of the specialist accreditation scheme for two reasons: (1) this area of law is fairly discrete in that it has clearly defined boundaries and (2) the Scheme will benefit the 921 legal practitioners who indicated “Building and Construction Law” as one of their practice areas in their practicing certificate renewal applications this year.¹⁰ This figure accounts for close to 19% of the total number of legal practitioners in Singapore.¹¹

⁹ Arcadis, “Global Construction Disputes Report 2016: Don’t Get Left Behind” at p 12 <<https://www.arcadis.com/en/united-states/our-perspectives/2016/global-construction-disputes-report-2016don-t-get-left-behind/>> (accessed 13 June 2016).

¹⁰ Alex Wong, email communication, 6 May 2016. Of the 921, 174 have between 0 to 7 years’ post-qualification experience (PQE), 53 between 7 and 12 years PQE and 694 more than 12 years PQE. It is not compulsory for applicants to indicate their areas of practice when applying for or renewing their practising certificates.

¹¹ The total number of legal practitioners for the practice year 2016/2017 is 4,887 (Office of Public Affairs, Supreme Court of Singapore, email communication, 14 June 2016).



Industry consultation and feedback

- 11 The subcommittee was cognisant of the concerns that members of the legal profession may have regarding the Scheme. In particular, the subcommittee considered the views of the various stakeholders and, in devising the Scheme, sought to address issues and concerns raised in its consultation with them. These include the potential lack of demand for the Scheme, the possible oligopolistic control of this area of practice, marginalisation of non-accredited legal practitioners, pressures to be accredited and excessive specialisation.

Past considerations

- 12 Whether to introduce a specialist accreditation scheme in Singapore has been considered before. In 2007, the Committee to Develop the Singapore Legal Sector under the Chairmanship of VK Rajah, then Judge of Appeal of the Supreme Court of Singapore, delivered a report to the Ministry of Law reviewing the entire legal services sector in the face of international and regional competition. It made recommendations on the future direction of the legal profession, one of which was “[l]ooking into the establishment of formal accreditation schemes for particular fields of specialisation similar to that in the medical profession ... particularly for those who engage in corporate or non-contentious work, where recognition is currently lacking.”¹² The report’s recommendations were accepted in principle by the Government.¹³
- 13 Specialist accreditation was also discussed at the Singapore Academy of Law (SAL) Strategic Planning Retreat 2010 chaired by Justice Steven Chong. The Final Report of the Main Committee (“Report”) recommended that, to raise the bar for small law practices, a specialist accreditation scheme should be implemented: “Accreditation will serve the dual purpose of acknowledging skilled practitioners within the Bar and assist the public in identifying practitioners whether from big law firms or [small law firms] who are equipped to address their legal problems. In the long run, it is envisaged that a specialist accreditation scheme will improve the standard of the Bar in general, including those practicing in [small law firms].”¹⁴
- 14 The Report noted that specialist accreditation should facilitate access to justice. Currently, pro bono legal practitioners, when asked for recommendations, can only refer parties to Law Society of Singapore’s (“Law

¹² “Report of the Committee to Develop the Singapore Legal Sector”, September 2007, at paras 3.29 – 3.31.

¹³ “Government accepts key recommendations of Justice V K Rajah’s committee on the comprehensive review of legal services sector”, Ministry of Law, press release, 6 December 2007 <<https://www.mlaw.gov.sg/news/press-releases/government-accepts-key-recommendations-of-justice-v-k-rajah-s-committee-on-the-comprehensive-review.html#enclosure> (accessed 30 August 2016) (accessed 30 August 2016).

¹⁴ “The Singapore Academy of Law Strategic Planning Retreat 2010: Final Report of the Main Committee”, 16 November 2010, at para 5.



Society”) directory¹⁵ of law practices running into the hundreds which is of little use to them. As such, these parties obtain recommendations by word of mouth. A specialist accreditation system and thus a directory of accredited specialists, facilitates access to justice as they will have a ready guide to assist them in making an informed choice.¹⁶

- 15 The Report identified six areas of law that were suited for inclusion in the pilot phase of the specialist accreditation scheme as “these areas require specialised technical knowledge and lawyers handling cases involving these areas of law tended to have specialised practices in any event.”¹⁷ Construction law was one of the six areas identified.¹⁸

Subcommittee

Background

- 16 On the Chief Justice’s directive, a subcommittee headed by Justice Quentin Loh was convened to propose a framework for a specialist accreditation scheme for B&C legal practitioners. The subcommittee members comprised B&C practitioners representing small, medium and large local law practices and representatives from the Ministry of Law and the Attorney-General’s Chambers.

Scope of the subcommittee’s work

- 17 The subcommittee’s work spanned from 26 April 2016 to 26 September 2016. The subcommittee set out to consider the framework of the Scheme through which candidates shall be initially and continuously assessed, accredited and reaccredited.
- 18 The subcommittee engaged industry stakeholders including the Law Society and the Society of Construction Law. The subcommittee also studied the work of the legal professional bodies of other jurisdictions that run comparable specialist accreditations schemes for their members, to gain a perspective of how the Scheme could be formulated, an overview of the possible iterations that it could take and their possible involvement before and after the implementation of the Scheme.

Principles guiding the subcommittee’s work

¹⁵ The directory is now maintained by the Ministry of Law under the Legal Services Regulatory Authority (LSRA) E-Services.

¹⁶ “The Singapore Academy of Law Strategic Planning Retreat 2010: Final Report of the Main Committee”, 16 November 2010, at para 76.

¹⁷ “The Singapore Academy of Law Strategic Planning Retreat 2010: Final Report of the Main Committee”, 16 November 2010, at para 81.

¹⁸ The others being shipping, insurance, intellectual property and information technology, tax and conveyancing. Family law and criminal law could be included in the long run.



- 19 The subcommittee identified two principles to guide the development of its recommendations. These are not axioms but are widely shared values and goals:
- a. The Scheme must be inclusive without compromising on quality. While it is imperative that the Scheme is accessible to all in the legal profession, it should maintain a high standard so as to recognise only those who possess requisite knowledge and skills in the area of practice and be trusted by the legal profession and the public.
 - b. The Scheme should be seen as fair and objective. Assessment should avoid biasness. Safeguards must be introduced to avoid any perception of bias or potential conflicts of interest.



CHAPTER 1

Specialist Accreditation Schemes for Building and Construction Legal Practitioners in Other Jurisdictions: A Survey

- 1.1 In order to formulate the framework of the Scheme, the subcommittee studied similar schemes in other jurisdictions. This paper focuses only on those that offer B&C law as an area of practice for specialist accreditation.

General trends

- 1.2 All the schemes studied are run by the bar association or law society of the country, state or region. All have a set of criteria, some more general and flexible than others, that candidates must satisfy in order to be successful in their application. While the specifics differ, they encompass the following broad requirements:
- a. substantial involvement or experience in the area of practice, declared by the candidate on an honour system
 - b. pass an examination
 - c. provision of favourable references attesting to the candidate's practice in the specialisation
 - d. participation in continuing legal education in that area of practice
 - e. a clean disciplinary record

An overview of the criteria can be found in Appendix A.

Australia

*New South Wales (NSW)*¹⁹

- 1.3 The NSW specialist accreditation scheme was instituted in 1992. Specialist accreditation is overseen and awarded by the Law Society of New South Wales and is offered across 14 areas of practice on a biennial basis. While B&C law is not available under the scheme, it was a subspecialty under the Business Law

¹⁹ Information obtained from <http://www.lawsociety.com.au/ForSolicitors/Education/specialists/index.htm> (accessed 2 March 2016). The Sub-committee on Raising the Bar, reporting to the Main Committee of the SAL Strategic Planning Retreat 2010, also studied the NSW scheme.



and Commercial Litigation accreditation schemes in 2013 and 2015 respectively. Candidates are assessed on both the main and subspecialty.

- 1.4 Besides meeting the basic requirements of a minimum PQE and substantial involvement in B&C law practice, candidates are required to pass a take-home assignment and written examination and undergo a peer interview before a panel of assessors. These three components of the assessment determine if the candidates are able to display and perform the requisite knowledge and core skills to be deemed “competent”.
- 1.5 The requisite knowledge for B&C law pertains to contracts for various construction and development transactions, engagement of contractors and subcontractors and dispute immunisation and resolution, finance options, environmental and industrial issues, occupational safety and health legislation, among others. The requisite core skills are performance-based such as eliciting information from a client about a transaction, identifying the key issues, formulating plans by recognising the legal and commercial consequences of the proposed transaction and advising the client accordingly. Such skills are gleaned from the take-home assignment and peer interview.
- 1.6 Successful candidates identify themselves as “Acc. Spec. (Bus)” or “Acc. Spec. (Comm Lit)”.

*Queensland*²⁰

- 1.7 The specialist accreditation scheme was established in 1995 to “recognise Queensland Law Society members who have demonstrated proficiency in areas of practice in which they specialise”.²¹ The accreditation body is the Queensland Law Society which currently offers specialist accreditation for ten areas of practice; not all areas of practice are open for applications every year. Like the specialist accreditation scheme of NSW, the Queensland Law Society’s scheme offers B&C law as a subspecialty under the Commercial Litigation accreditation scheme.
- 1.8 The Queensland Law Society accreditation scheme’s criteria are very similar to that of the Law Society of New South Wales. Besides a minimum PQE and percentage of practice dedicated to the area of practice for which specialist accreditation is sought, candidates must successfully complete a take-home assignment, examination and peer interview in relation to a fact scenario or general legal principles and practice.
- 1.9 To be successful in their applications, candidates must perform at a high standard expected of practitioners wishing to hold themselves out as specialists in the area, and display a similar standard of knowledge of the law and procedure.

²⁰ Information obtained from http://www.qls.com.au/For_the_profession/Professional_development/Specialist_accreditation (accessed 2 March 2016).

²¹ Queensland Law Society, “Specialist Accreditation Scheme 2016 Candidate Handbook”, p 2.



- 1.10 Candidates who select B&C as their chosen subspecialty under the Commercial Litigation accreditation scheme are tested on core areas of knowledge such as B&C contracts, issues relating to site, contract administration, matters pertaining to time, variations, payment claims, defects and relevant legislation.
- 1.11 Successful candidates are then accredited as “Acc. Spec. (Com. Lit.)”.

Canada

*Ontario*²²

- 1.12 The Law Society of Upper Canada (Barreau du Haut-Canada) oversees the Certified Specialist Program that “recognizes lawyers who have met established Standards of experience and knowledge requirements in designated areas of law, and have maintained exemplary Standards of professional practice”. There are currently 15 areas of practice under the scheme, including B&C law.
- 1.13 The Construction Law Certified Specialist Program requires candidates to show that they have “attained broad and varied experience and a mastery of substantive law and procedures in the area” including development contracts, financing matters, tenders and proposals, professional services agreements, procurement and subcontracts, insurance, security of payments and performance and dispute resolution. The requisite experience is task-oriented rather than knowledge-based, for example, represent or advise a tenderer in response to a tender request. Furthermore, they must have also engaged in professional development in B&C law. Candidates are not required to sit for an examination.
- 1.14 Successful candidates are accredited as “Certified Specialist (Construction Law)”.
- 1.15 About 2% of the Society’s membership are accredited which translates to 850 out of a total of 40,000 legal practitioners. Of the 850, 35 are Construction Law accredited specialists.²³

United Kingdom

*Scotland*²⁴

- 1.16 Established in 1990, the Law Society of Scotland specialist accreditation scheme confers specialist status on candidates who have “demonstrate[d]

²² Information obtained from <http://mrc.lsuc.on.ca/jsp/csp/index.jsp> (accessed 2 March 2016).

²³ Emily Viger, coordinator, Certified Specialist Program, The Law Society of Upper Canada, email communication, 31 May 2016.

²⁴ Information obtained from <http://www.lawscot.org.uk/members/membership-and-registrar/accredited-specialists/> (accessed 2 March 2016).



expertise gained from practising in the specialism and can show significant experience in that specialism”. There are currently 28 specialisations including Construction Law.

- 1.17 Candidates are required to show a “high level of knowledge and experience” in their practice, be it in private practice, in-house or public sector. Emphasis is placed on the complexity and novelty of work done and the part in which candidates played in the said work, with more credit given to lead roles. Candidates are not required to sit for an examination although they may be required to appear before a panel for an interview when requested.
- 1.18 The Law Society of Scotland does not stipulate an official designation for successful candidates. Individuals can dictate how they wish to market their accreditation.
- 1.19 There are 589 accredited specialists (5.3%) from a total of 11,096 Scottish solicitors, of which 38 are in Construction Law (6.5% of all specialists or 0.3% of the total). According to the Law Society of Scotland, there is evidence in tender documents for legal services in public sector work specifying the requirement that at least one accredited specialist in the relevant area of practice be involved.²⁵

United States of America

*Florida*²⁶

- 1.20 The certification scheme in Florida, established in 1982, with Construction Law included in 2004, is administered by The Florida Bar’s Board of Legal Specialization and Education. Certification is awarded to candidates who show a high level of “competency and experience within an area of law, and professionalism and ethics in practice”. The Bar offers 26 areas of practice in which applicants can apply for certification.
- 1.21 To meet the minimum standards of the Board Certification in Construction Law, besides having “substantial involvement” in this area of practice and fulfilling continuing legal education requirements, candidates must pass an examination “to demonstrate sufficient knowledge, proficiency, and experience in the practice of law applicable to the design and construction of projects in Florida construction law”. Topics can cover public and private construction contracts, design professional liability, prompt pay procedures, suretyship, insurance, alternative dispute resolution and ethics.
- 1.22 Successful candidates are then designated “Board Certified Construction Lawyer”.

²⁵ Katie Hay, Head of International, The Law Society of Scotland, email communication, 2 June 2016.

²⁶ Information obtained from <http://www.floridabar.org/tfb/TFBMember.nsf/ED6E4BCB92A8FE1B852567090069F3C2/531C6693366E680985256B2F006C6A60?OpenDocument> (accessed 8 March 2016).



- 1.23 More than 5,010 (5%) out of more 101,000 Florida legal practitioners are recognised as certified specialists in one or more of the certification areas of practice.

*Texas*²⁷

- 1.24 In 1974, the State Bar of Texas established the Texas Board of Legal Specialization (TBLS) to run the certification programme to "promote the availability, accessibility and quality of the services of attorneys to the public in particular areas of the law ... and advance the standards of the legal profession." The TBLS certifies legal practitioners in 22 select areas of practice with Construction Law included as the latest specialty area for certification in 2016.

- 1.25 Candidates must demonstrate that they have "substantial knowledge of significant legal concepts and corresponding skills" by having engaged in negotiating, preparing and operating contracts and other documents, advising on construction lending, insurance and suretyship, construction claims and dispute resolution relating to performance bonds, defects, prompt payments, negligence arising from design and construction activities. The role in which they have played in the said work must be at a "primary level of responsibility" or "has had active management and oversight" of the lawyers involved in the said work. Similar to the Florida Bar scheme, candidates must also show their "substantial knowledge" by having attended continuing legal education in the related field and passing an examination.

- 1.26 Successful candidates are conferred the designation "Board Certified (Construction Law)—Texas Board of Legal Specialization".

- 1.27 The TBLS has certified more than 7,225 (8%) out of approximately 90,000 Texas legal practitioners in one or more certification areas of practice.

Europe

- 1.28 Besides the Law Society of Scotland, other legal professional representative bodies in the EU also offer specialist accreditation in B&C law: Belgium, France, Germany and Switzerland.²⁸ Due to the lack of information on such schemes based on desktop research, or where information is available, it is in the native language, paragraph 1.29 gives an overview of the specialist accreditation schemes in these jurisdictions.

²⁷ Information obtained from <http://www.tbbs.org/Default.aspx> (accessed 10 March 2016).

²⁸ Information obtained from http://www.ccbe.eu/fileadmin/user_upload/document/Specialisation/Specialisation_Note_December_2015.pdf (accessed 15 June 2016). Note that B&C specialist accreditation is also available with regional legal professional representative bodies, eg, Ordres des Avocats du Barreau de Bayonne in France and Rechtsanwaltskammern Düsseldorf in Germany.



- 1.29 Candidates must show “extensive knowledge and experience in the field”.²⁹ These can include:
- a. university degrees, continuing legal education, training or practice in a company or institution in the specialist area. In Belgium, candidates must provide such evidence for the prior 5 years.
 - b. a *minimum number of cases* candidates must have represented prior to application. In Germany, the number depends on the area of practice for which specialist accreditation is applied: For labour law, it is a minimum of 100 cases, family law 120 and traffic law 160, plus 120 hours of theoretical training.³⁰
 - c. *specialist training*. In Switzerland, candidates must undergo 120 hours of such training followed by a written exam. They must also complete a one-year course on public and private B&C law conducted by the Institute for Swiss and International Construction Law at the University of Freiburg.
 - d. participation in *activities, academic works or publications* in the specialisation. In France, candidates must show 4 years of participation.

²⁹ This is stipulated by the Ordre des barreaux francophones et germanophone de Belgique.

³⁰ As of 2014, Germany has 49,000 (30%) specialist lawyers out of an approximate 163,000 http://www.ccbe.eu/fileadmin/user_upload/document/Specialisation/Germany_Overview_Specialisation.pdf (accessed 15 June 2016).



CHAPTER 2

Subcommittee's Proposals

2.1 As laid out in paragraph 1.2, the general trends of specialist accreditation schemes for B&C legal practitioners in other jurisdictions require candidates to show substantial involvement in this area of law, pass an examination, provide favourable references, participate in continuing legal education in B&C law and possess a clean disciplinary record. The subcommittee has considered these criteria and proposed recommendations in the context of the Singapore legal profession.

Summary of recommendations

- The Scheme should be open to receive applications once a year for the first 3 years and then once every other year thereafter or when demand dictates.
- It should adopt a two-tier system: a lower tier (Accredited Specialist) for junior legal practitioners and an upper tier (Senior Accredited Specialist) for more experienced legal practitioners. Accredited Specialists are encouraged to aim for the Senior Accredited Specialist accreditation.
- Candidates should be assessed based on their substantial involvement in the practice of B&C law, accumulation of public and private CPD points in this area of practice, examination results (for Accredited Specialist candidates), a selection panel interview, references from fellow legal practitioners and disciplinary record.
- The specialist accreditation should be valid for 2 years, during which time accredited specialists must maintain their accreditation through continued substantial involvement in the area of practice and accumulation of CPD points. They should be reaccredited every 2 years.
- Singapore Academy of Law should set the syllabus and deliver the learning and development activities for the first 2 years of the Scheme, after which external training providers may assume this responsibility.
- Singapore Academy of Law should be the Scheme's accreditation body which should appoint a selection panel to assess candidates for specialist accreditation and reaccreditation and set up a Secretariat to assist the accreditation body and selection panel in discharging their work and responsibilities.



Fundamental principles governing the Scheme

- 2.2 All qualified legal practitioners are invited and encouraged to participate in the Scheme.
- 2.3 Participation in the Scheme is on a voluntary basis. Legal practitioners are not required to be accredited in order to practice B&C law; neither will specialist accreditation limit the right of B&C accredited specialists to engage in other areas of practice.
- 2.4 Specialist accreditation is an individual pursuit and attainment. It is not attributable to the law practice of which the accredited specialist is an associate.³¹

Frequency

- 2.5 The subcommittee expects demand for accreditation to be high for the first 3 years of the Scheme. Thus, it is of the view that the Scheme should be open to receive applications once a year for this initial period and then biennially thereafter or when demand dictates.

Professional pathway

- 2.6 Having studied the B&C specialist accreditation schemes in other jurisdictions and feedback from stakeholders, the subcommittee puts forth the following proposals.

Two-tier system

- 2.7 The subcommittee was of the view that the Scheme should encompass two tiers. The “Senior Accredited Specialist” accreditation shall be open to senior legal practitioners with more than 10 years’ PQE, while the “Accredited Specialist” accreditation shall be aimed at younger practitioners with more than 5 years’ PQE. The objective of a two-tier system is to groom younger practitioners to arrive at the competence level of a Senior Accredited Specialist and to incentivise them to aspire to greater in-depth knowledge and skills in the field. While Accredited Specialists are expected to progress to the *Senior Accredited Specialist* tier, this will not be a compulsory requirement. The subcommittee also cautioned that public perception should not equate the designation “Accredited Specialist” with lower quality, and that efforts should be made to avoid this through effective marketing and communications.

³¹ This recommendation was also made in “The Singapore Academy of Law Strategic Planning Retreat 2010: Final Report of the Main Committee”, 16 November 2010, with the exception of conveyancing “where both the expertise of the practitioner and the excellence of the firm’s processes are crucial” (para 82).



*Specialist accreditation criteria*³²

- 2.8 The basic requirements for all prospective candidates are:
- ❖ they must have been admitted to the Singapore Bar as an Advocate and Solicitor of the Supreme Court of Singapore and
 - ❖ they must hold a currently valid practising certificate.
- 2.9 Candidates should also have sufficient relevant practice experience before applying for specialist accreditation.³³ Entering the legal profession workforce as a specialist could give prospective clients the false impression that they can perform at a level expected of a specialist, when they cannot. Thus a set PQE requirement should be in place to ensure that potential candidates have at least a minimum level of practice experience.
- 2.10 There should be both quantitative and qualitative criteria against which candidates shall be assessed. Some schemes in other jurisdictions provide a yardstick based on the percentage of full-time practice which a candidate should have dedicated his or her practice to the specialisation. However, the subcommittee opined that the percentage should be more specific in terms of billable hours or billable amounts.
- 2.11 Following on from establishing the yardstick, the next question to consider was the kind of work that candidates must have undertaken to be considered as having the relevant experience. There was much debate by the subcommittee as to whether litigation experience was a necessity in order to be accredited. While some members were of the view that the Scheme should not discriminate against non-litigators, others offered that practitioners of B&C law would invariably have litigation or alternative dispute resolution experience. The subcommittee agreed that there should be an avoidance of an end-result where those accredited are from the bigger law practices; the Scheme must reach out to boutique practices and sole proprietors. It was therefore agreed that contentious and non-contentious work would be recognised.

³² Section 43(2) of the Legal Profession (Professional Conduct) Rules 2015 states: For the purposes of paragraph (1)(a) [that any claim to expertise or specialisation can be justified], the following factors may be taken into account in justifying any claim to expertise or specialisation:

- (a) academic qualifications;
- (b) experience;
- (c) proportion of working time involved;
- (d) level of success achieved;
- (e) complexity of law and practice;
- (f) significance of the matters involving the legal practitioner or the law practice of which the legal practitioner is a director, a partner or an employee;
- (g) assessment by peers.

³³ The Main Committee in “The Singapore Academy of Law Strategic Planning Retreat 2010: Final Report of the Main Committee”, 16 November 2010, recommended that there should be “written and practical components with an emphasis on the practical application of knowledge of the law and procedures to avoid accrediting armchair specialists with no real experience in the field” (para 97).



Accredited Specialist

- 2.12 Post-qualification experience. *Accredited Specialist* applications should be open to legal practitioners with more than 5 years' PQE.
- 2.13 Substantial involvement. In the immediate 3 years prior to application, candidates must have been substantially involved in B&C law where a minimum billable amount of S\$200,000 or 450 billable hours³⁴ a year have been dedicated to the practice of this area of law, which in the opinion of the subcommittee is representative of 30% of the full-time practice of a legal practitioner with more than 5 years' PQE.
- 2.14 For the purpose of the Scheme, the practice of B&C law encompasses all aspects of development, design and construction of public and private projects including, but not limited to, all advisory and documentation work undertaken for related stakeholders including contractors, developers, consultants, insurers and financial institutions, prior to the commencement of and all dispute-related work arising from such projects.
- 2.15 As part of their substantial involvement in B&C law, candidates must have, in the immediate 3 years prior to application, been involved in a trial, arbitration or binding adjudication or statutory adjudication at least as second chair and/or performed front-end work which can include but is not limited to detailed review, drafting and preparation of construction contracts and tenders. If candidates have been involved only in front-end work, whether this criterion is met shall depend on the complexity of the work done.
- 2.16 Continuing professional development. In the immediate 3 years prior to application, candidates must have accumulated at least 6 public and/or private CPD points a year in this specialised area. Other than participating in Singapore Institute of Legal Education (SILE)-accredited programmes in B&C law, the CPD criteria can be met by participating in other activities including, but not limited to, teaching or guest lecturing in a B&C law course, authoring, contributing and/or editing publications related to B&C law and graduate or post-graduate degree studies at a reputable institution in this specialised area.
- 2.17 Examination. *Accredited Specialist* candidates should sit for and pass an open-book examination which shall test their knowledge on all aspects of B&C law and processes. These can be found in the section on the learning and development pathway (see paragraphs 2.54ff). The examination may encompass a combination of multiple-choice questions, short-answer questions and mock files. The examination should be set and administered by the accreditation body.
- 2.18 Panel interview. Candidates shall be interviewed by a panel of four assessors, one of whom must be a Supreme Court judge. The other assessors shall be members of the selection panel. The purpose of the interview is to elicit more

³⁴ For *Senior Accredited Specialist* and *Accredited Specialist* substantial involvement criteria, there is no correlation between the billable amounts and billable hours.



information about the candidates' practice as detailed in the application forms and to question him or her on the answers given in the examination (for *Accredited Specialist* candidates). It is the opinion of the subcommittee that the interviews will give a clearer picture of the candidates' requisite substantial involvement and competence.

- 2.19 References. Candidates shall be required to submit two favourable references from B&C legal practitioners who can attest to the candidates' involvement and competence in the specialisation, and character.
- 2.20 Referees must have more than 5 years' PQE and have known the candidates for at least 3 years prior to the application. Referees can also be in-house counsel whose scope of work revolves around B&C law and who have been advised by or worked with the candidates on B&C projects in the 3 years prior to application.
- 2.21 Referees cannot be relatives of the candidates, judges of the Supreme and State Courts of Singapore, members of the same law practice as the candidates including partners, associates, employers, employees and co-workers, members of the accreditation body and selection panel, and other candidates applying for the B&C law specialist accreditation in the same year.
- 2.22 Disciplinary record. Candidates must have a clean disciplinary record. They must declare if, throughout their professional legal career, they have been:
- a. subject to proceedings, due process or sanctions for professional misconduct by Law Society, the Disciplinary or Investigative Tribunal or any authorised disciplinary authority such as a court of law, pursuant to the Legal Profession Act (Cap 161), Legal Profession (Disciplinary Tribunal) Rules (Cap 161, R 2) or Legal Profession (Inadequate Professional Services Complaint Inquiry) Rules, or any proceedings, due process or sanctions for any professional misconduct that may bring the profession and the Scheme into disrepute, or
 - b. charged and convicted for committing or abetting to commit a criminal offence, implying a defect of character which makes him or her unfit for his or her profession.
- 2.23 They must also inform the accreditation body if, at any time during the application process or thereafter, proceedings have been instituted against them for professional misconduct or commission or abetment to commit a criminal offence.
- 2.24 Designation. Successful candidates, that is, those who are deemed by the selection panel to meet all the above criteria, shall be designated the title:
Acc. Spec. (Building & Construction)
Singapore Academy of Law

which they may use in their legal practice's marketing collaterals such as name cards, stationery, email signatures, professional networking sites such as LinkedIn, profile pages on their legal practice's website, and legal directories.



- 2.25 Progression to the Senior Accredited Specialist tier. To incentivise younger legal practitioners to strive for excellence in this field, accredited specialists in this tier should be encouraged apply for the Senior Accredited Specialist accreditation within 5 years of having obtained 10 years' PQE. This will give them sufficient time to accumulate the necessary experience to meet the Senior Accredited Specialist criteria.

*Senior Accredited Specialist*³⁵

- 2.26 Post-qualification experience. Applications for the Senior Accredited Specialist accreditation should be open to legal practitioners with more than 10 years' PQE. In future, this tier should also be open to applications from Accredited Specialists.
- 2.27 The criteria that the Senior Accredited Specialist candidates are required to fulfil are similar to that of the Accredited Specialist tier save for a few specifics set out in the proceeding paragraphs.
- 2.28 Substantial involvement. For the *Senior Accredited Specialist* tier, in the immediate 5 years prior to application, candidates must have been substantially involved in B&C law where a minimum billable amount of S\$500,000 or 600 billable hours a year have been dedicated to the practice of B&C law, which in the opinion of the subcommittee is representative of 40% of the full-time practice of a legal practitioner with more than 10 years' PQE.
- 2.29 Candidates must have, in the immediate 5 years prior to application, been involved in a trial, arbitration or binding adjudication or statutory adjudication as lead counsel, arbitrator or adjudicator; and/or performed front-end work which can include but is not limited to detailed review, drafting and preparation of construction contracts and tenders. If candidates have presided over an arbitration or adjudication, they must include a list of their written awards with their applications for specialist accreditation. *Senior Accredited Specialist* candidates are expected to have undertaken work that deals with more complex issues.
- 2.30 Continuing professional development. In the immediate 5 years prior to application, *Senior Accredited Specialist* candidates are expected to have accumulated at least 6 public and/or CPD points a year in the specialised area.
- 2.31 Examination. *Senior Accredited Specialist* candidates are not required to sit for an examination. The subcommittee was of the opinion that senior legal practitioners should have the necessary skills and knowledge in B&C law, considering they must declare that at least an equivalent of 40% of their

³⁵ The Main Committee in "The Singapore Academy of Law Strategic Planning Retreat 2010: Final Report of the Main Committee", 16 November 2010, recommended that "as a transitory measure, separate criteria should be formulated for practitioners of longstanding experience so as to take into account their years of practice in a specialised field" (at para 97).



practice in terms of billable amounts or billable hours has been dedicated to the practice in this field.³⁶

- 2.32 Panel interview. As per the *Accredited Specialist* criteria.
- 2.33 References. As per the *Accredited Specialist* criteria. Referees must have more than 10 years' PQE if they are legal practitioners and have known the candidates for at least 5 years prior to the application.
- 2.34 Disciplinary record. As per the *Accredited Specialist* criteria.
- 2.35 Designation. Successful candidates, that is, those who are deemed by the selection panel to meet all the above criteria, shall be designated the title:
Snr. Acc. Spec. (Building & Construction)
Singapore Academy of Law
- 2.36 Legal practitioners with more than 10 years' PQE who are unable to meet the substantial involvement criteria may apply for the *Accredited Specialist* accreditation.

Validity

- 2.37 Both the *Senior Accredited Specialist* and *Accredited Specialist* accreditations shall be valid for 2 years. The subcommittee was of the opinion that yearly reaccreditation is an onerous exercise for accredited specialists and as this would require them to submit reaccreditation applications and logs every year to show that they have met the reaccreditation criteria (see paragraphs 2.38ff). Also, a longer validity period of more than 2 years may be difficult for the accreditation body to ensure that accredited specialists are maintaining their substantial involvement in the practice of B&C law.

Reaccreditation

- 2.38 Senior Accredited Specialists and Accredited Specialists must be reaccredited every 2 years.
- 2.39 They should show that, in the prior 2 years, they have maintained substantial involvement and accumulated CPD points in B&C law based on the same criteria as specified above with the exception of references and the examination which are not required, unless changes to B&C law and its practice make examinations necessary or desirable. Senior Accredited Specialists and Accredited Specialists may also be invited to undergo a panel interview. They must also declare their disciplinary record.
- 2.40 To be reaccredited, Senior Accredited Specialists should agree to be mentors to *Accredited Specialist* candidates for the duration of their assessment

³⁶ The Main Committee in "The Singapore Academy of Law Strategic Planning Retreat 2010: Final Report of the Main Committee", 16 November 2010 also recommended a grandfathering process to induce senior lawyers to buy into the accreditation scheme, "to overcome objections ... to being made to take examinations and tests at such a later stage in their career" (at para 96).



process. Senior Accredited Specialists shall continue to be part of a pool of mentors so long as they remain accredited specialists.

- 2.41 The professional pathway and requisite criteria for both tiers are succinctly presented in Exhibit 3.

Exemptions

- 2.42 If candidates and accredited specialists cannot fulfil specific criteria when applying for accreditation or reaccreditation, they may seek exemptions.
- 2.43 Substantial involvement. For *candidates* who cannot meet this criterion due to a leave of absence may apply for an exemption so long as they can demonstrate:
- a. for the *Accredited Specialist* tier, not less than 3 years of substantial involvement in the specialisation within the immediate 5 years prior to application;
 - b. for the *Senior Accredited Specialist* tier, not less than 5 years of substantial involvement in the specialisation within the immediate 7 years prior to application.
- 2.44 For all *accredited specialists* applying for reaccreditation who cannot meet this criterion due to a leave of absence, the accreditation body shall determine the exemption based on the amount of time the accredited specialist has been on leave in the prior 2 years and whether he or she has maintained a connection with the specialisation, for example, fulfilling the CPD criterion.
- 2.45 Continuing Professional Development. *Candidates* must fulfil the CPD requirement even if they have been on a leave of absence within the 3 (*Accredited Specialist*) or 5 (*Senior Accredited Specialist*) years prior to application, unless they were physically unable to do so as a result of illness or accident, in which case the candidates' CPD activities in the immediate 5 or 7 years respectively prior to application shall be assessed.
- 2.46 All *accredited specialists* must fulfil the CPD requirement even if they have been on a leave of absence, unless they are physically unable to do so as a result of illness or accident, in which case they may be given an extension of time to accumulate the requisite number of CPD points to be reaccredited.
- 2.47 Examination. *Candidates* MAY be exempted from sitting the examination if in the immediate 3 years prior to application, they successfully completed full-time post-graduate studies, for example, an LLM, in B&C law. The accreditation body shall consider the educational institution from which the post-graduate qualification was conferred, the syllabus if the post-graduate studies was a taught course, theses or dissertations written in conjunction with the post-graduate studies and academic transcripts.



Exhibit 3.

Professional pathway for B&C legal practitioners

Senior Accredited Specialist



Post-accreditation

- designation: Snr. Acc. Spec. (Building & Construction) Singapore Academy of Law
- valid for 2 years

Biennial reaccreditation criteria:

- substantial involvement in the specialisation (minimum billable amount of S\$500,000 or 600 billable hours a year)
- 6 CPD points in the specialisation a year
- panel interview where necessary
- clean disciplinary record

Fulfil all criteria



≥ 10 years PQE

Pre-accreditation

- Advocate and Solicitor of the Supreme Court of Singapore
- validly currently valid practising certificate

Five years prior to application:

- substantial involvement in the specialisation (minimum billable amount of S\$500,000 or 600 billable hours a year)
- 6 CPD points in the specialisation a year
- panel interview
- 2 references from peers
- clean disciplinary record

Progression from Accredited Specialist to Senior Accredited Specialist



Post-accreditation

- designation: Acc. Spec. (Building & Construction) Singapore Academy of Law
- valid for 2 years

Biennial reaccreditation criteria:

- substantial involvement in the specialisation (minimum billable amount of \$200,000 or 450 billable hours a year)
- 6 CPD points in the specialisation a year
- panel interview where necessary
- clean disciplinary record

Fulfil all criteria

Accredited Specialist



≥ 5 years PQE

Pre-accreditation

- Advocate and Solicitor of the Supreme Court of Singapore
- currently valid practising certificate

Three years prior to application:

- substantial involvement in the specialisation (minimum billable amount of S\$200,000 or 450 billable hours a year)
- 6 CPD points in the specialisation a year
- passing grade in an examination
- panel interview
- 2 references from peers
- clean disciplinary record



- 2.48 Candidates may also be exempted if, in the immediate 3 years prior to application, they have received the certificate of participation for having attended the examination preparatory course (paragraphs 2.55 and 2.56) and passed the said examination.
- 2.49 The selection panel will have the discretion to approve or reject applications for accreditation, reaccreditation and exemption. All decisions will be final.

Suspension, cancellation and reinstatement of accreditation

- 2.50 If an Accredited Specialist or a Senior Accredited Specialist becomes subject to proceedings or due process for professional misconduct by the Disciplinary or Investigative Tribunal or any authorised disciplinary authority or for the commission or abetment of a criminal offence, his or her accreditation shall be suspended. The suspension shall be lifted only when no cause for sanctions has been found by the said Tribunal or authorised disciplinary authority and the case dismissed. Suspension shall also take place when the accredited specialist's practising certificate has been suspended under s 27B of the Legal Profession Act (Cap 161).
- 2.51 An Accredited Specialist or a Senior Accredited Specialist shall have his or her accreditation cancelled if the following circumstances arise:
- a. non-payment of the reaccreditation fee
 - b. failure to satisfy all reaccreditation criteria, save for the exemptions (see paragraphs 2.42ff)
 - c. non-possession of a currently valid practising certificate (see paragraph 2.8)
 - d. prolonged leave of absence from the Scheme for more than 2 years
 - e. disqualification for or cancellation of practising certificate
 - f. sanctions have been imposed for professional misconduct by the Disciplinary or Investigative Tribunal or any authorised disciplinary authority or for the commission or abetment of a criminal offence.
- 2.52 Where an Accredited Specialist or a Senior Accredited Specialist has his or her accreditation suspended or cancelled, he or she shall not be permitted to hold him or herself out as such and he or she will no longer appear on the register of accredited specialists.
- 2.53 He or she may apply for reinstatement to the Scheme if he or she can show that:

For points a to e in paragraph 2.51, he or she:

- a. holds a currently valid practising certificate
- b. has paid the reaccreditation fee
- c. has satisfied the reaccreditation criteria for his or her tier



Learning and development pathway

2.54 The general consensus of the subcommittee was that the standard of knowledge and skills of B&C legal practitioners can be better. For legal practitioners in this field, a handful would have studied B&C law as an elective in the local law schools and only amass experience in the course of their practice.

Accredited Specialist

2.55 The objective of the examination for *Accredited Specialist* candidates is to get them up to speed with the law. To assist them in passing the examination, the subcommittee has proposed that they undergo an exam preparatory course.

Proposed course syllabus

2.56 The course is envisaged to comprise 21 contact hours of classroom instruction. The training will assume that candidates have the knowledge expected of a 5-year PQE B&C legal practitioner:

Module 1: Introduction

- a. Structure of the industry – owners, consultants, contractors and subcontractors
- b. The development and construction process and the regulatory regime
- c. Characteristics of construction contracts
- d. Procurement Models: traditional build only, design and build, construction fee
- e. Overview of the major Standard Forms: SIA Form, PSSCOC, REDAS and FIDIC
- f. Contract formation modes: bidding and negotiation
- g. Award or placement of contract
- h. Financing of projects and development

Module 2: Contract Documents and Risk Management

- a. Risks register and mitigation – legal and contractual
- b. Role of the designer, contract administrator and certifier
- c. Components of contract documents: the role and issues relating to each component and interpretation
- d. Risks relating to contractor's design, site and ground conditions
- e. Security deposits and insurances

Module 3: Time for Completion

- a. Concept of act of prevention and legal principles
- b. General terms for expediting progress of works and management of acceleration claim
- c. Problems relating to site possession and work commencement
- d. Accounting for timely delivery: Liquidated damages and loss and expense
- e. Managing extensions of time and related risks



Module 4: Managing Variations

- a. Concept of variations
- b. Extent of the power to vary
- c. Variation situations – ground conditions, regulatory changes, changes in quality and quantity, construction sequence
- d. Operation of variation provisions in the major standard forms
- e. Hierarchy of valuation rules
- f. Measurement and records

Module 5: Subcontracting Model

- a. Sub-contracting model: Contractor's and employer's rights and obligations with respect to nominated and direct subcontractors/suppliers
- b. General principles of "back-to-back" and "pass-down" risk allocations and Exceptions
- c. Nominated subcontractors and nominated suppliers

Module 6: Payment Regime

- a. Principles relating to the progress payment process
- b. Certification of payments
- c. Final payments
- d. Risks relating to delay in certification
- e. Case studies in late progress payment and late responses

Module 7: Security of Payment Act

- a. Objectives of the legislation
- b. Structure of the regime and the timelines
- c. Payment claim and payment response
- d. Operation of section 15(3) and the Adjudication Notice
- e. Adjudication application and adjudication response
- f. Adjudication conference
- g. Enforcing the adjudication determination

Module 8: Termination

- a. Termination for breach and termination under the contract
- b. Common grounds of termination
- c. Termination on insolvency of a party
- d. Repossession of site
- e. The completion contract
- f. Final accounts

Module 9: Handover and Post-Completion Issues

- a. Concept of substantial completion and final completion
- b. Final accounts
- c. Maintenance period (or defects liability period)
- d. Liability for defects under contract and tort
- e. Statutory obligations of professionals

Module 10: Dispute Resolution

- a. Characteristics of construction disputes
 - b. Arbitration
 - c. Statutory adjudication
 - d. Mediation
 - e. Neutral evaluation
- 2.57 While attendance shall not be compulsory, *Accredited Specialist* candidates will be highly encouraged to attend and benefit from the course.
- 2.58 The course and examination shall also be open to those who do not meet any of the accreditation criteria. Successful completion of both shall earn them a certificate of participation from SAL. However, due to limited places, priority will be given to candidates of the *Accredited Specialist* tier who will be required to sit for the examination.
- 2.59 Besides the course, as was mentioned in paragraph 2.39, part of the *Accredited Specialist* learning and development journey shall include accumulation of a minimum of 6 public and/or public CPD points in B&C law a year to maintain accreditation.

Senior Accredited Specialist

- 2.60 While Senior Accredited Specialist candidates are not required to sit for the examination, they are invited to attend the exam preparatory course as a refresher.
- 2.61 As with Accredited Specialists, Senior Accredited Specialists are also required to accumulate a minimum of 6 public and/or public CPD points in B&C law a year to maintain accreditation.

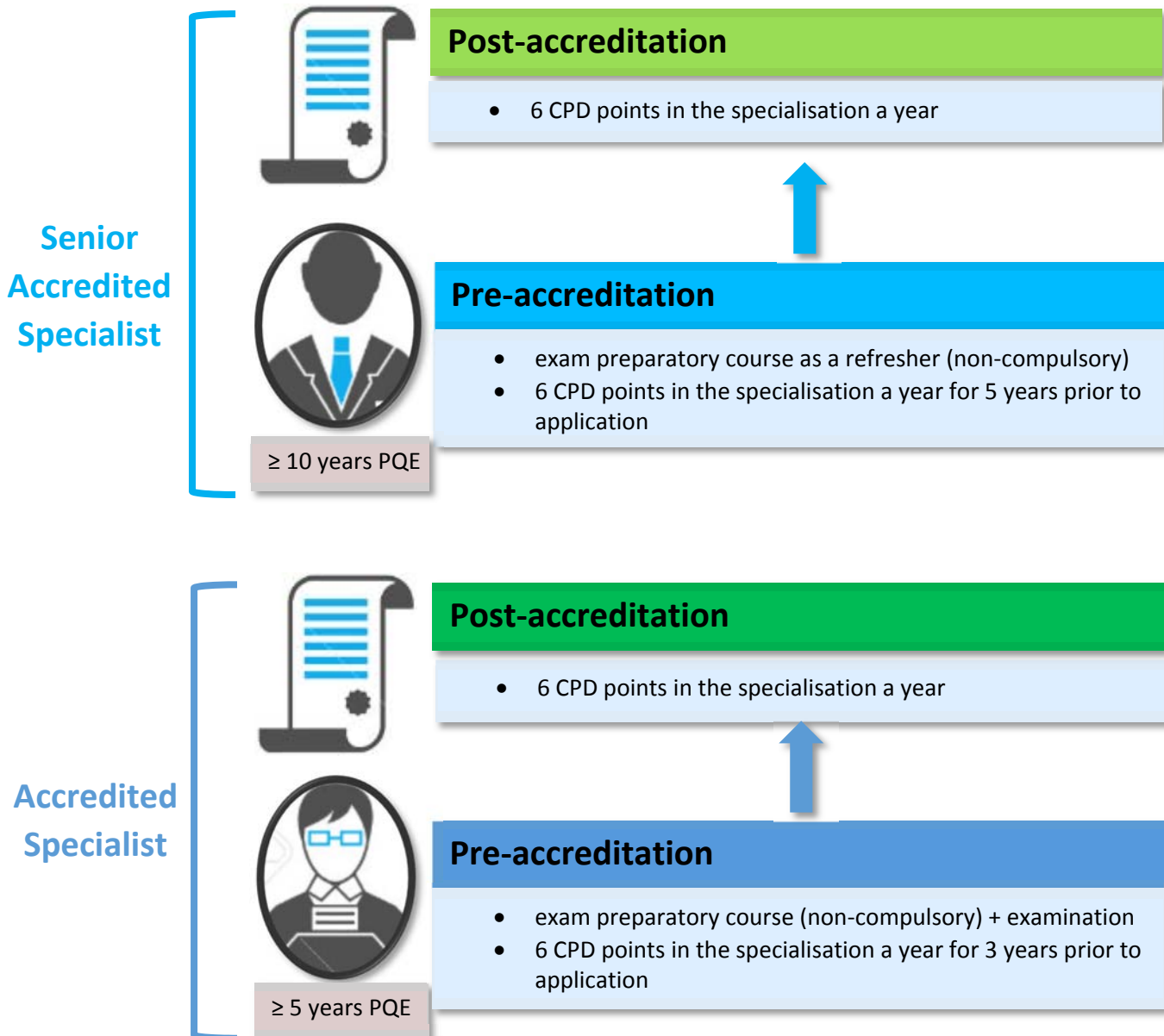
Training providers

- 2.62 For the first 2 years of the Scheme, the subcommittee was in consensus that the accreditation body should oversee the formulation of the syllabus in consultation with the subcommittee and the running of the course with some of the subcommittee members taking up the mantle of course tutors. This should provide sufficient time for the accreditation body and the course tutors to make the necessary refinements to deliver the best possible course to meet the needs of candidates, before opening up the course to be delivered by other training providers.
- 2.63 It is SAL's objective to work with the various SILE-accredited construction-related organisations (legal or otherwise) to devise and deliver programmes that would cater to the CPD needs and be at the level that would be reasonably expected of future candidates or accredited specialists.
- 2.64 The learning and development pathway for both tiers is succinctly presented in Exhibit 4.



Exhibit 4.

Learning and development pathway for B&C legal practitioners



Benefits

- 2.65 The Scheme should look into the possibility of establishing support services for candidates as they embark on their journey towards and after accreditation.
- 2.66 Mentorship. The subcommittee suggested a mentorship programme for *Accredited Specialist* candidates on a voluntary basis, with Senior Accredited Specialists serving as mentors. As part of the reaccreditation requirements (see paragraph 2.38ff), Senior Accredited Specialists must agree to be part of the mentorship programme for *Accredited Specialist* candidates. These mentors shall provide references regarding their mentees to the accreditation body at the end of the mentorship. These references shall be in addition to those that are required for application (see paragraphs 2.19 and 2.20).
- 2.67 This programme can only be implemented for the second *Accredited Specialist* intake in 2018 as there will be no Senior Accredited Specialists to act as mentors for the first intake.
- 2.68 Information evening. This event shall be held before application closes. It is aimed at those who have expressed interest in applying for accreditation – prospective candidates – to provide them with information on the application and assessment process, and a chance to meet the other interested peers and accredited specialists.
- 2.69 Networking events. All new and existing accredited specialists should have the opportunity to network with in-house counsel and construction practitioners to give them the opportunity to market themselves to the construction industry players.
- 2.70 Directory of accredited specialists. The accreditation body should maintain an up-to-date directory so that law practices and the general public can identify accredited specialists easily.³⁷

Accreditation body

- 2.71 The body that shall oversee the administration and regulation of the Scheme is the Singapore Academy of Law (SAL).
- 2.72 Purpose and objectives. The accreditation body shall award or deny accreditation and reaccreditation of B&C legal practitioners. It shall promote the Scheme to legal practitioners and the availability and quality of accredited specialists to the legal industry and the general public.
- 2.73 Jurisdiction, powers and duties. The accreditation body shall:
- a. appoint and supervise members of the selection panel and exercise discretion in relation to the advice and recommendations of the selection panel

³⁷ This recommendation was also made in “The Singapore Academy of Law Strategic Planning Retreat 2010: Final Report of the Main Committee”, 16 November 2010, at para 85.



- b. formulate, review and revise the rules, policies and procedures governing the administration of the Scheme
- c. determine the areas of practice for which specialist accreditation may be granted or withdrawn
- d. establish, publish, review and revise rules and procedures relating to the assessment and accreditation of candidates, reaccreditation, and suspension, cancellation and reinstatement of accreditations
- e. establish, publish, review and revise non-arbitrary criteria concerning knowledge and skills that candidates must possess to be accredited and reaccredited
- f. set the schedule of fees pertaining to the Scheme
- g. promote the Scheme to the public, profession and potential candidates
- h. assist accredited specialists in marketing their accreditation
- i. encourage and collaborate with legal institutions and government bodies, such as the law schools, Law Society, Society of Construction Law (Singapore chapter) and related organisations to develop and deliver a programme of continuing legal education in the area of B&C law for candidates and accredited specialists, as part of their learning and development pathway, to be updated on the latest developments in the field and to assist them in meeting the criteria prescribed by the Scheme
- j. provide Secretariat and financial support in the running of the Scheme and assisting the selection panel in fulfilling its duties

2.74 Subject to the above, the accreditation body may establish its own practice and regulate its own procedure.

Selection panel

2.75 The accreditation body shall establish a selection panel to assist it in carrying out its “purpose and objectives”.

2.76 Purpose and objectives. The selection panel shall adopt a dual role of advising and assisting the accreditation body in carrying out its duties in the administration and regulation of the Scheme, and assessing candidates and accredited specialists for accreditation and reaccreditation.

2.77 Jurisdiction, powers and duties. The selection panel shall:

- a. advise the accreditation body on the administration and advancement of the Scheme
- b. advise the accreditation body on accreditation and reaccreditation procedures
- c. advise the accreditation body on assessment procedures, including but not limited to examinations and panel interviews, deemed necessary for accreditation or reaccreditation
- d. advise the accreditation body on the criteria which candidates and accredited specialists must fulfil to be accredited or reaccredited
- e. advise the accreditation body on the exemptions of the said criteria
- f. assess whether candidates and accredited specialists meet the criteria and thus are eligible for accreditation or reaccreditation



- g. assess whether applications for exemptions should be granted
 - h. assess whether accreditations should be suspended or revoked
 - i. keep confidential the identity, personal information, contents of applications and performance of candidates and accredited specialists for the purpose of the assessment process
- 2.78 Composition. The accreditation body shall appoint between eight to ten members to sit on the selection panel. The selection panel shall be chaired by a judge of the Supreme Court of Singapore. The subcommittee agreed that, while most members of the selection panel should be Senior Accredited Specialists, two members need not be from the legal profession but the construction industry, for example, a professional building consultants, for example, architects, engineers and quantity surveyors, or an academic.
- 2.79 Senior Accredited Specialists may apply to become members of the selection panel so long as they meet such other requirements as may be promulgated by the accreditation body including but not limited to more than 10 years' PQE, be in good standing with the Law Society and have contributed to the advancement of B&C law in practice or continuing legal education and possess a clean disciplinary record.
- 2.80 Term. Members shall serve a term of 2 years with the possibility of extension.
- 2.81 Quorum. For the purpose of discussing and deliberating on the administration of the Scheme, there shall be at least five members present at any given meeting.
- 2.82 For the purpose of assessing applications for accreditation and reaccreditation, there shall be at least five members present per session, one of whom must be the Chair.
- 2.83 For the purpose of panel interviews, there shall be at least four members present per interview. All members shall conduct at least one panel interview for each cycle of applications and/or reaccreditations (if panel interviews are required).
- 2.84 Panel members must declare to the Chair any existing or past relationships, professional or otherwise, with any of the candidates that would give rise to a potential conflict of interest on the part of the panel members. The Chair will have discretion as to whether the panel members in question may assess the said candidates.
- 2.85 Subject to the above, the accreditation body may establish its own practice and regulate its own procedure.

Pro tempore committee

- 2.86 The accreditation body will set up a four-member *pro tempore* committee comprising Supreme Court judges and industry experts to assess the first



intake of *Senior Accredited Specialist* and *Accredited Specialist* candidates in 2017. The inaugural selection panel shall be selected from the first cohort of successful *Senior Accredited Specialist* candidates, who shall then assess the second intake of *Senior Accredited Specialist* and *Accredited Specialist* candidates in 2018 and thereafter.



CHAPTER 3

Implementation of the Scheme

Summary of recommendations

- The Scheme shall be launched at the OLY 2017.
- The first cohort of Senior Accredited Specialists and Accredited Specialists shall be introduced at OLY 2018.

SAL Regulations

- 3.1 Notwithstanding any other provision, the SAL may, by regulations, provide that an accredited specialist, who in the prescribed manner, satisfies the SAL of having specialist knowledge in a prescribed area of law or practice, may be permitted by the SAL to be designated, whether in an advertisement or otherwise, as having specialist knowledge in that area.

Fee schedule

- 3.2 In determining the fees for the Singapore scheme, the subcommittee studied the cost of running and maintaining the Scheme, which may include:
- a. Secretariat labour costs
 - b. Secretariat operational expenses such as office rental and overheads for two cubicles, stationery, photocopying and printing costs
 - c. venue hire and catering for learning and development courses
 - d. venue hire and catering for information evenings
 - e. venue hire and catering to assess applications
 - f. venue hire for panel interviews
 - g. venue hire and catering for Secretariat and accreditation panel meetings
 - h. venue hire and invigilation services for the examination
 - i. disseminating information about the Scheme and promoting accredited specialists including:
 - i. enhancement of existing SAL website to host content relating to the Scheme and a directory of accredited specialists
 - ii. advertising on Law Society's and SCL points of contact (website, Gazette)
 - iii. logo design and trademark registration
 - iv. venue hire and catering for events to host candidates, accredited specialists and stakeholders
- 3.3 Taking the above into consideration and referring to schemes from other jurisdictions as a guide, Exhibit 5 shows the proposed fees (excluding GST) for 2017-2018.



- 3.4 Refunds should be available to those who wish to withdraw their applications. The practice for specialist accreditation schemes in other jurisdictions varies. Those with higher application fees offer refunds, the percentage of which is based on the point at which the withdrawal is made. For ease of administration, the Scheme should refund S\$700 or S\$300 of the application fee to *Senior Accredited Specialist* or *Accredited Specialist* applicants respectively if withdrawal is made before candidature is confirmed or if candidature is rejected. Similarly, if reaccreditation is rejected, a refund of S\$350 and S\$150 of the reaccreditation fee should be made to the Senior Accredited Specialists and Accredited Specialists respectively.

Exhibit 5. The Scheme's proposed fee schedule (S\$) excluding GST

Service	<i>Senior Accredited Specialist</i>	<i>Accredited Specialist</i>
Application	1,000	400
Course (optional)	-	2,400
Examination	-	400
Reaccreditation (biennially)	500	200

Timeline

- 3.5 The accreditation body aims to launch the Scheme for both tiers at OLY 2017 with applications to open thereafter.
- 3.6 In the run up to the implementation of the Scheme in 2017, the subcommittee proposes a timeline and respective milestones for the accreditation body to achieve and the timetable for the Scheme's application process (Exhibit 6).

Exhibit 6. The Scheme's milestones and tentative timetable

Deadline	Milestone/Event
2016	
Q4	Approval given to implement Scheme
	<i>Pro tempore</i> committee finalised
	Information guides and application forms finalised
2017 (Year 1)	
Q1	Press release Scheme launched at OLY Application opens for <i>Accredited Specialist</i> accreditation Information guides and application forms available on SAL website
	Information evening for potential candidates
Q2	Application closes for <i>Accredited Specialist</i> accreditation
	Candidature confirmed for <i>Accredited Specialist</i> accreditation
Q3	Exam preparatory course



	Examinations – <i>Accredited Specialist</i> candidates
	Examination results finalised
	Application opens for <i>Senior Accredited Specialist</i> accreditation
	Application closes for <i>Senior Accredited Specialist</i> accreditation
Q4	Candidature confirmed for <i>Senior Accredited Specialist</i> accreditation
	Panel interview - <i>Senior Accredited Specialist</i> and <i>Accredited Specialist</i> (for only those who pass the exam) candidates
	(Non-)Successful candidates confirmed
	Results released to all candidates
2018 (Year 2)	
Q1	Senior Accredited Specialists and Accredited Specialists (2017 intake) introduced at OLY 2018
	Application opens for <i>Accredited Specialist</i> accreditation (2018 intake)
	Information evening for potential candidates (2018 intake)
Q2	Application closes for <i>Accredited Specialist</i> accreditation (2018 intake)
	Candidature confirmed <i>Accredited Specialist</i> accreditation (2018 intake)
Q3	Exam preparatory course
	Examination - <i>Accredited Specialist</i> candidates
	Examination results finalised
	Application opens for <i>Senior Accredited Specialist</i> accreditation
	Application closes for <i>Senior Accredited Specialist</i> accreditation
Q4	Candidature confirmed for <i>Senior Accredited Specialist</i> accreditation
	Panel interview - <i>Senior Accredited Specialist</i> and <i>Accredited Specialist</i> (for only those who pass the exam) candidates
	(Non-)Successful candidates confirmed
	Results released to all candidates
2019 (Year 3)	
Q1	Application opens for <i>Accredited Specialist</i> accreditation (2019 intake)
	Information evening for potential candidates (2019 intake)
Q2	Application closes for <i>Accredited Specialist</i> accreditation (2019 intake)
	Candidature confirmed for <i>Accredited Specialist</i> accreditation (2019 intake)
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2020 (Year 4)	
(Scheme to run every other year)	
Q1	Reaccreditation application closes for all accredited specialists (2017 intake)
	Reaccreditation panel interview for all accredited specialists (2017 intake) if necessary
	Reaccreditation results released for all accredited specialists (2017 intake)
2021 (Year 5)	
Q1	Application opens for <i>Accredited Specialist</i> accreditation (2021 intake)
	Reaccreditation application closes for all accredited specialists (2018 intake)
	Information evening for potential candidates (2021 intake)
	Reaccreditation panel interview for all accredited specialists (2018 intake) if necessary
	Reaccreditation results released for all accredited specialists (2018 intake)
Q2	Application closes for <i>Accredited Specialist</i> accreditation (2021 intake)
	Candidature confirmed for <i>Accredited Specialist</i> accreditation (2021 intake)
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2022 (Year 6)	
Q1	Reaccreditation application closes for all accredited specialists (2017 and 2019 intakes)
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Chapter 4

Conclusion

- 4.1 The recommendations contained in this report are aimed at instituting an accreditation scheme for B&C legal practitioners as a channel to excel in their practice of this specialty.
- 4.2 Once approved, the Scheme should be implemented as soon as practicable. It is proposed that the accreditation body establish a Secretariat, *pro tempore* committee and, thereafter, a selection panel for this purpose.



Appendices

Appendix A. Specialist accreditation schemes for construction law in other jurisdictions

Jurisdiction (accreditation body)	Pre-accreditation criteria			Validity	Post-accreditation criteria		
	Min PQE	Substantial involvement	Others	Years	Substantial involvement	Others	Remarks
New South Wales (Law Society)	5	3 years prior to application: <ul style="list-style-type: none"> • have been “engaged” in specialty area • at least 25% of full-time practice 	<ul style="list-style-type: none"> • 3 references • take-home mock file • pass an exam • peer interview 	1	25% of normal full-time practice <u>CPD</u> <ul style="list-style-type: none"> • First-time accredited specialists: 5 points within last 6 months of validity • All other accredited specialists: 10 points, in addition to any points required for practising certificate renewal 		Construction law offered as sub-specialty under Commercial Litigation (2015) and Business Law (2013) accreditation schemes
Queensland (Law Society)	5	3 years prior to application: <ul style="list-style-type: none"> • at least 25% of full-time practice (2017: to be increased to 50%) 	<ul style="list-style-type: none"> • 3 references • take-home mock file • pass an exam • peer interview 	1	25% of normal full-time practice <u>CPD</u> Additional 5 points (ie 15 points a year) (min 10 points must be at <u>advanced</u> level)		Construction law offered as sub-specialty under Commercial Litigation (2016) accreditation scheme



<p>Ontario (Law Society of Upper Canada)</p>	<p>7</p>	<p>5 years prior to application:</p> <ul style="list-style-type: none"> • average 30% of full-time practice • “experience and mastery” in the area (≥ 50 tasks from at least 6 out of 13 categories[†]) <p><u>CPD</u> 2 years prior to application plus 1 year within 5 years prior to application:</p> <ul style="list-style-type: none"> • 50 hours of self-study • min 12 hours of relevant CPD 	<ul style="list-style-type: none"> • 4 references • meet professional standards requirements 	<p>1</p>	<p>As per “Pre-accreditation criteria”</p>	<p>Meet professional standards requirements</p>
<p>Scotland (Law Society)</p>	<p>7</p>	<p>5 years prior to application: “significant experience” based on:</p> <ul style="list-style-type: none"> • proportion of time/chargeable hours spent in work in area of specialisation • complexity of cases (15 examples) • role in those cases <p><u>CPD</u></p> <ul style="list-style-type: none"> • attendance at suitable training courses (emphasis on immediate past 2 years) • participation in teaching (including in-house) (emphasis on immediate past 2 years) • authorship of books, articles, website and in-house materials 	<ul style="list-style-type: none"> • 2 references • clean disciplinary record 	<p>5</p>	<p>Dossier of cases and level of responsibility in those cases</p> <p><u>CPD</u> Information of authorship and presentations</p>	



Florida (Board of Legal Specialization & Education under Florida Bar)	5	3 years prior to application: <ul style="list-style-type: none"> at least 40% of full-time practice devoted to matters in which issues of construction law are significant factors and in which the applicant had substantial and direct participation in those construction law issues <p><u>CPD</u> 3 years prior to application:</p> <ul style="list-style-type: none"> 45 hours of relevant public/private CPD 	<ul style="list-style-type: none"> 5 references pass an exam 	5	At least 40% of full-time practice per year <u>CPD</u> 75 hours in 5 years	5 references
Texas (Texas Board of Legal Specialization under State Bar of Texas)	5	5 years prior to application: <ul style="list-style-type: none"> at least 40% of full-time practice in at least 2 out of 4 areas[†] and level of responsibility <p><u>CPD</u> 3 years prior to application:</p> <ul style="list-style-type: none"> 60 hours CPD 5 hours of self-study 	<ul style="list-style-type: none"> 5 references pass an exam 	5	At least 40% of full-time practice per year <u>CPD</u> 100 hours in 5 years	5 references

[†]Categories include: development; financing; tenders & proposals; design & professional services; procurement & construction; insurance; labour; post-construction; security for payment & performance; trust claims; disputes; liens.

[†]1. Negotiation, preparation and operation of contracts

2. Experience with procurement and project delivery systems, construction lending, insurance and suretyship

3. Construction claim development and presentation (eg lien, performance bonds, statutory claims, construction injury, wage/labour, negligence)

4 Construction dispute resolution

