

For information

**Paper for the Panel on
Administration of Justice and Legal Services (“AJLS”)
Chambers Hearings**

Purpose

The purpose of this paper is to set out the background, the present position and the way forward regarding the opening up to the public of chambers hearings in civil proceedings in the High Court, the District Court, the Lands Tribunal and the Family Court.

Background

2. In May 1997, the Working Party on Civil Proceedings Conducted in Private (“the Working Party”) appointed by the then Chief Justice published a Report, recommending, among other things, that chambers hearings should, as much as possible, be conducted in public, except where a hearing in private was considered appropriate applying the criteria in Article 10 of the Hong Kong Bill of Rights Ordinance, Cap. 383 (“Article 10”).

3. The possibility of implementing the Working Party’s recommendations by legislative amendments was first explored. In 2001, relevant parties including the legal profession were consulted on a draft Bill prepared by the Department of Justice. One major issue raised in the course of the consultation was the suggestion that certain chambers hearings (e.g. all ex parte hearings) should continue to be held in private and exceptions should be made for them, for instance by way of Practice Directions (“PDs”) issued by the Chief Justice.

4. In the light of the responses to the consultation on the draft Bill, the Judiciary reviewed the approach for the implementation of the Working Party’s recommendations, and decided in July 2004 that it would be more appropriate to proceed by way of PDs.

5. Since July 2004, the Judiciary worked on the draft PDs. In January 2005, the Judiciary issued the draft PDs to the Bar Association,

the Law Society, the Director of Legal Aid, the Official Receiver and the Department of Justice for comments. Responses were received by mid-April 2005.

Present Position

6. On 1 June 2005, having considered the responses received, the Judiciary published the following two PDs -

- (a) PD25.1 - Chambers Hearings in Civil Proceedings in the High Court, the District Court, the Family Court and the Lands Tribunal; and
- (b) PD25.2 - Reports on Hearings Held in Chambers Not Open to the Public.

7. Copies were sent to the AJLS Panel, the two legal professional bodies and the relevant Government Departments on the same day, and uploaded onto the Judiciary website at http://legalref.judiciary.gov.hk/doc/prac_dir/html/PD25.1.htm and http://legalref.judiciary.gov.hk/doc/prac_dir/html/PD25.2.htm.

PDs 25.1 and 25.2

8. The objective of the above two PDs is to open up chambers hearings in civil proceedings as much as possible and to allow such hearings to be reported just like hearings in court, subject to the provisions of Article 10.

9. They aim at implementing the recommendations made in the Report of the Working Party. Under these two PDs, chambers hearings will generally be open to the public and the hearings may be reported in the same way as hearings in court.

10. The PDs provide for only two kinds of exceptions -

- (a) First, chambers hearings will not be open to the public where this is required by statute, for example, in adoption proceedings (see Schedule 1 to PD25.1); and

- (b) Secondly, the proceedings identified in Schedule 2 to PD 25.1 would usually not be open to the public since by reason of their nature, the reasons laid down in Article 10 for excluding the press and the public are considered to be usually satisfied. These proceedings include matters relating to children and financial provisions in matrimonial proceedings, ex parte applications for injunctions and similar orders. However, in these instances, the court may, applying Article 10, order the hearing to be open to the public.

Way Forward

11. Although published on 1 June 2005, the two PDs will only come into operation on 18 July 2005. This will give the legal profession time to make appropriate arrangements to comply. In the meantime, the Judiciary is putting in place the practical arrangements to ensure the smooth implementation of the new arrangements under the two PDs. These include –

- (a) Revised summons forms will be made available as from 2 July 2005 at the Registries of the High Court, District Court, Family Court and the Lands Tribunal as well as the Judiciary's website to facilitate a party's indication as to whether chambers hearings on or after 18 July 2005 are to be open or not open to the public (as per the requirement in paragraph 9 of PD 25.1);
- (b) The daily cause lists of chambers hearings in civil proceedings of the relevant Courts will specify such hearings as either "*In chambers (open to the public)*" or "*In chambers (not open to the public)*"; and
- (c) Signage will be put up outside the relevant court to distinguish chambers hearings open to the public and those which are not.

12. With the implementation of these PDs, chambers hearings will generally be open to the public and this will enhance transparency in the judicial process.