

**Response to the letter from  
the Panel on Administration of Justice and Legal Services**

**Final Report of the Working Party on  
Solicitors' Rights of Audience**

The Panel on Administration of Justice and Legal Services was briefed on the Final Report of the Working Party on Solicitors' Rights of Audience at its meeting in December 2007. The Panel requested the Administration to consider the matter and take it forward by appropriate legislation.

2. Members of the Panel considered that –
  - (a) the primary legislation to implement the recommendations of the Working Party should be introduced into the Legislative Council (“LegCo”) as soon as possible and within the current session; and
  - (b) the code of conduct for solicitor-advocates should be drawn up by the Council of the Law Society (“the Council”) in consultation with the Bar Council and the Judiciary, and should be available for LegCo’s consideration at the same time as the primary legislation is introduced.
  
3. On (a) above, the Panel asked the Department of Justice to advise the legislative timetable and the steps it needs to go through before introducing the relevant legislation into LegCo.

**Legislative timetable**

4. On 14 December 2007, the Department of Justice sent letters to the Law Society and the Bar Association to seek confirmation of their endorsement of the Working Party’s recommendations and support for their implementation in due course. On 10 January 2008, we wrote again to the Law Society inviting it to prepare the code of conduct for solicitor-advocates. The Law Society indicated its support to us on 11 January 2008.
  
5. As requested by members of the Panel, the code of conduct for solicitor-advocates would have to be drawn up by the Council and be available

at the same time as the primary legislation. The Department of Justice considers that, in practice, it is not possible to introduce the necessary primary legislation into LegCo during the current session due to the time required for drafting of the proposed legislation, consultation among relevant parties and the need for the Law Society to prepare the code of conduct for solicitor-advocates. However, we will try our best to obtain a legislative slot to introduce the proposed legislation at the next LegCo session, and we expect that the necessary code of conduct would be available for discussion by the Panel before the introduction of the Bill.

### **Proposed legislation**

6. In respect of implementing the recommendations of the Working Party, we consider that amendments to the Legal Practitioners Ordinance (Cap. 159) (“the Ordinance”) need to be made to provide for the following matters –

- (1) Applicants for higher rights of audience must have five years’ post-qualification practice of which at least two years must have been in Hong Kong.
- (2) The three years immediately preceding the application must include what an assessment board considers to be sufficient litigation experience, with the greatest weight being given to actual advocacy.
- (3) Successful applicants should be granted higher rights of audience for civil proceedings, criminal proceedings or both.
- (4) A Higher Rights Assessment Board should be established. This would be chaired by a senior judge, nominated by the Chief Justice, and would consist of members of the Judiciary, solicitors, Senior Counsel, a representative of the Department of Justice and a lay member.
- (5) Applications for higher rights of audience should be made to the Council, which will review applications before passing them with its recommendation for rejection or grant to the Assessment Board.

- (6) The Assessment Board should not be bound by the Council's recommendation, and it should be the Board's decision which is determinative.
- (7) In addition to satisfying the minimum practice requirements, an applicant should have to satisfy the Board that he is in all other respects suitable to be granted higher rights of audience.
- (8) Applicants for higher rights of audience must either pass an Advocacy Course approved by the Assessment Board; or satisfy the Assessment Board that they are suitably experienced and suitably qualified senior litigation practitioners to exercise higher rights of audience in proceedings relating to the qualification for which they have applied.
- (9) Successful applicants should be issued with a Higher Rights Qualification Certificate by the Council. The Council must maintain a register of those granted Certificates, and must provide the Judiciary Administrator with the names of such person.
- (10) The conduct and discipline of solicitor-advocates will be the responsibility of the Council, who will apply a code of conduct to be drawn up by the Council in consultation with the Bar Council and the Judiciary.

7. The existing empowering provision of the Council in the Ordinance would have to be widened, particularly in relation to items (5), (9) and (10) of paragraph 6. After the relevant legislation is drafted, it will be referred for the comments of relevant parties including the Judiciary, the Law Society, the Bar Association and the law faculties of the universities. Details of the administration of the system would be governed by subsidiary legislation which will be made by the Council after the enactment of the relevant primary legislation.