

立法會
Legislative Council

Ref : CB2/BC/7/08

LC Paper No. CB(2)2312/08-09
(These minutes have been seen
by the Administration)

Bills Committee on Legal Practitioners (Amendment) Bill 2009

**Minutes of the first meeting
held on Wednesday, 15 July 2009, at 4:30 pm
in Conference Room B of the Legislative Council Building**

Members present : Dr Hon Margaret NG (Chairman)
Hon Albert HO Chun-yan
Hon LAU Kong-wah, JP
Hon Miriam LAU Kin-ye, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Ronny TONG Ka-wah, SC
Dr Hon Priscilla LEUNG Mei-fun
Hon Paul TSE Wai-chun

Public Officers attending : Department of Justice

Mr Ian Wingfield
Solicitor General

Ms Adeline WAN
Senior Assistant Solicitor General

Ms Sherman CHAN
Senior Assistant Law Draftsman

Ms Emma WONG
Acting Senior Government Counsel

Mr Christopher NG
Senior Government Counsel

Clerk in attendance : Miss Flora TAI
Chief Council Secretary (2)3

Staff in attendance : Miss Winnie LO
Assistant Legal Adviser 7

Ms Amy YU
Senior Council Secretary (2)3

Action

I. Election of Chairman

Dr Margaret NG was elected Chairman of the Bills Committee.

II. Meeting with the Administration

[LC Paper Nos. CB(2)2210/08-09(02) - (04), CB(3)690/08-09, LP 5004/4/1C XIII and LS94/08-09]

2. The Bills Committee deliberated (index of proceedings attached at **Annex**).

3. Members agreed to invite the two legal professional bodies, the Consumer Council and the three local law schools to give views on the Bill and to schedule a meeting to receive views from these organizations.

Clerk

4. Members also agreed -

Clerk

(a) that the Law Society of Hong Kong (the Law Society) be requested to (i) explain in writing how the Code of Conduct for Solicitor-Advocates (the Code of Conduct) would fit within the framework of the Hong Kong Solicitors' Guide to Professional Conduct, particularly in respect of the enforcement of the Code of Conduct (including penalties for infringement), and (ii) to brief members on the content of the draft Code of Conduct; and

(b) that the Law Society and the Hong Kong Bar Association be requested to brief members on their plan for the advocacy course required to be completed for obtaining higher rights of audience, including the frequency, course fee, class size, design and content as well as provider(s) of the course.

III. Any other business

5. There being no other business, the meeting ended at 5:31 pm.

**Proceedings of the first meeting of the
Bills Committee on Legal Practitioners (Amendment) Bill 2009
on Wednesday, 15 July 2009, at 4:30 pm
in Conference Room B of the Legislative Council Building**

Time Marker	Speaker(s)	Subject(s)	Action required
000137 - 000159	Dr Margaret NG Mr Ronny TONG Mr LAU Kong-wah	Election of Chairman	
000200 - 000423	Chairman Clerk	<p>Invitation for public views on the Bill</p> <p>The Chairman's comment that there were two major areas of public concern, namely whether the legislative proposals would bring down the costs of litigation and whether the standard of advocacy before the courts would be affected.</p>	
000424 - 001011	Administration Chairman	<p>Briefing by the Administration on the Bill in respect of the following -</p> <ul style="list-style-type: none"> (a) the origin of the Bill; (b) the membership and functions of the proposed Higher Rights Assessment Board (the Assessment Board); (c) the eligibility requirements for applications by solicitors for higher rights of audience; (d) the power of the Assessment Board to make rules; <ul style="list-style-type: none"> - the Administration's advice that the intention had always been for the Assessment Board to make rules relating to applications for higher rights of audience and determination of those applications, as well as matters concerning its own procedures. Under the Bill as it presently stood, the Assessment Board, rather than the Council of the Law Society of Hong Kong (the Law Society) as originally proposed, would also make rules on matters concerning any courses or training or assessments or examinations required to be completed or passed by an applicant for higher rights of audience. Such change was made as it was considered more desirable to vest in the same body the powers to prescribe rules on both the criteria for assessment and the training/course required to be completed for meeting the specified criteria; (e) provisions in the Bill relating to the quorum for a meeting of the Assessment Board and voting on matters requiring the decision of the Assessment Board; and 	

Time Marker	Speaker(s)	Subject(s)	Action required
		(f) the Code of Conduct for Solicitor-Advocates to be issued by the Council of the Law Society.	
001012 - 001138	Chairman Administration	<p>In response to the Chairman, the Administration's confirmation that the two legal professional bodies agreed with the main proposals in the Bill.</p> <p>The Chairman's enquiry on how the eligibility requirements under the Bill compared with those in the United Kingdom (UK). The Administration's response that the eligibility requirements under the Bill were more rigorous than those in UK. Under the proposed scheme, applicants for higher rights of audience must have at least five years' post-qualification experience, among others. The English system allowed applicants who did not possess the requisite years of practice experience to obtain higher rights of audience via a development route.</p>	
001139 - 001349	Mr Ronny TONG Administration Chairman	<p>Mr Ronny TONG's concern about how the Code of Conduct for Solicitor-Advocates (the Code) would fit within the framework of the Hong Kong Solicitors' Guide to Professional Conduct, in particular in respect of the enforcement of the Code.</p> <p>Members agreed to request the Law Society to explain in writing how the Code would fit within the framework of the Hong Kong Solicitors' Guide to Professional Conduct, particularly in respect of the enforcement of the Code (including penalties for infringement).</p>	Clerk to follow-up (para 4 of minutes)
001350 - 002019	Mr Albert HO Administration Chairman	<p>Mr Albert HO's enquiry on details of the mechanism for assessing the eligibility of applicants for higher rights of audience.</p> <p>The Administration's response that pursuant to the proposed section 73CA, detailed eligibility requirements and matters relating to the assessment of applications under the accreditation route and the exemption route would be governed by subsidiary legislation to be made by the Assessment Board, which would be subject to the scrutiny of the Legislative Council.</p>	
002020 - 002142	Mr Albert HO Chairman	In reply to Mr Albert HO, the Chairman's remarks that the Working Party on Solicitors' Rights of Audience (the Working Party) did not recommend the imposition of a quota on the number of solicitors who might be granted higher rights of audience.	
002143 - 002707	Mr Abraham SHEK Chairman Administration	<p>Mr Abraham SHEK's concerns about the impact of the legislative proposals on the barristers profession, particularly in respect of junior members of the Bar, and on the standard of advocacy before the courts.</p> <p>The Chairman's advice that such issues had been discussed at previous meetings of the Panel on Administration of Justice and Legal Services. The Bar Association</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
		<p>recognized that the proposals would have adverse effect on the prospect of young barristers but nevertheless accepted the proposals as it was in the public interest. Under the proposed scheme, the Assessment Board, comprising mainly senior members of the legal profession, would act as the gatekeeper of the standard of advocacy before the courts.</p> <p>In response to Mr SHEK, the Administration's advice that it had no plan for the fusion of the two branches of the legal profession.</p>	
002708 - 003249	Dr Priscilla LEUNG Chairman Administration	<p>Dr Priscilla LEUNG echoed the concern about the impact of the legislative proposals on young barristers.</p> <p>Dr LEUNG's views that consideration should be given to -</p> <ul style="list-style-type: none"> (a) reviewing on a regular basis the number of solicitors to be granted higher rights of audience every year, for instance, by way of imposing a quota system; and (b) relaxing some of the restrictions currently imposed on barristers such as the referral system. <p>In respect of item (a) above, the Administration's response that there was virtually no support among the respondents to the Working Party's Consultation Paper for the imposition of a quota.</p> <p>The Chairman's advice that the intake of the advocacy course required for obtaining higher rights of audience would restrict the number of solicitors being granted higher rights of audience each year.</p>	
003250 - 003716	Dr Priscilla LEUNG Administration Chairman	<p>Dr Priscilla LEUNG's enquiry on whether the Bill provided for any appeal mechanism in respect of applications for higher rights of audience.</p> <p>The Administration's response that -</p> <ul style="list-style-type: none"> (a) the proposed section 73CA(2)(c)(i) provided that the Assessment Board might make rules on arrangements for appeal or review in respect of matters concerning assessments or examinations; and (b) a person who had failed in his/her application for higher rights of audience was not precluded from making another application in the following year and subsequent years. 	
003717 - 004435	Mr Ronny TONG Chairman Administration	<p>Mr Ronny TONG shared the concern about the impact of the legislative proposals on the barristers profession.</p> <p>Mr TONG's indication that he did not support the imposition of a quota on the number of solicitors to be granted higher rights of audience.</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
		<p>Mr TONG sought information on the frequency and class size of the advocacy course required to be completed under the accreditation route, which would have bearing on the number of solicitors who would be granted higher rights of audience each year.</p> <p>The Administration's response that the rules relating to the detailed arrangements of the course would be made by the Assessment Board after the enactment of the Bill.</p> <p>Members agreed to request the two legal professional bodies to brief members on their plan for the advocacy course, including frequency, course fee, class size, design and content as well as provider(s) of the course.</p>	Clerk to follow up (para 4 of minutes)
004436 - 004554	Mr Abraham SHEK Chairman Mr Ronny TONG	Members' agreement to invite the three local law schools to give views on the Bill.	
004555 - 004901	Ms Miriam LAU Chairman Administration	<p>Ms Miriam LAU's request for clarification as to whether solicitor-advocates who were granted higher rights of audience were subject to the cab-rank rule.</p> <p>The Administration's response that it was a matter of conduct for the profession which would be governed by the Code of Conduct for Solicitor-Advocates to be issued by the Law Society in consultation with the Chief Justice and the Council of the Bar Association.</p> <p>The Law Society to be requested to brief members on the content of the draft Code of Conduct for Solicitor-Advocates when presenting its views to the Bills Committee.</p>	Clerk to follow up (para 4 of minutes)
004902 - 005137	Mr Paul TSE Administration	<p>Mr Paul TSE sought clarification on the rationale for putting in place a more rigorous system than UK in terms of eligibility criteria.</p> <p>The Administration's response that it was the consensus of the Working Group that, to balance competing interests, there should be a threshold on the minimum period of post-qualification experience required of solicitors before they could be granted higher rights of audience. Instead of imposing a quota on the number of solicitors who might be granted higher rights of audience, it was proposed under the scheme that only solicitors who were experienced and competent advocates would be eligible to apply for higher rights of audience.</p>	
005138 - 005707	Mr Paul TSE Administration Chairman	Mr Paul TSE's enquiry on justifications for allowing barristers unlimited rights of audience before the courts upon completion of pupillage without any formal assessment of their competence in advocacy.	

Time Marker	Speaker(s)	Subject(s)	Action required
		<p>The Administration's response that -</p> <p>(a) whilst it was true that newly admitted barristers enjoyed immediate rights of audience to all levels of courts, in practice, owing to the referral system, the solicitors' profession had acted as a gatekeeper for the level of courts at which barristers would be given instruction; and</p> <p>(b) the extent of advocacy training of young barristers was a separate issue from the subject of the Bill which was to grant higher rights of audience to solicitors. The Chairman of the Bar Association had previously indicated to the Panel on Administration of Justice and Legal Services that the Bar Association was considering means to enhance the public's confidence in young barristers in the form of examination or accreditation.</p>	
005708 - 010043	Chairman Mr Paul TSE Mr Ronny TONG Mr Albert HO	Organizations to be invited to give views on the Bill Date of next meeting	Clerk to follow-up (para 3 of minutes)

Council Business Division 2
Legislative Council Secretariat
30 July 2009