

For discussion  
on 16 December 2008

## **LegCo Panel on Administration of Justice and Legal Services**

### **Solicitors' rights of audience**

#### **Introduction**

In June 2004, the Chief Justice established the Working Party on Solicitors' Rights of Audience ("WP") to consider whether solicitors' existing rights of audience should be extended and, if so, the mechanism for dealing with the grant of extended rights of audience to solicitors.

2. In October 2007, the WP published a report ("WP Report") recommending a proposed scheme for granting solicitors higher 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 Department of Justice has assumed policy responsibility for implementing the report.

3. The Department of Justice submitted a written response to a letter from the Panel in January 2008. The Department of Justice mentioned in the response that we would try our best to obtain a legislative slot to introduce the proposed legislation at this Legislative session, and we expected that the necessary code of conduct would be available for discussion by the Panel before the introduction of the Bill.

#### **Proposed Legislation**

4. We propose to make amendments to the Legal Practitioners Ordinance (Cap. 159) ("the Ordinance") by way of a Legal Practitioners (Amendment) Bill for implementing the recommendations of the Working Party. The proposed Bill will 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 of the Law Society (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.

5. The existing empowering provisions of the Council in the Ordinance would be appropriately widened to cater for the above matters.

6. 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.

7. In July 2008, the Department of Justice has prepared a draft Bill for consultation with the Law Society and the Bar Association. Responses from the two professional bodies were received in September and November 2008 respectively. Their comments will be considered and reflected in a revised draft Bill. The Law Society has already prepared the draft Code of Conduct which has been tabled for discussion by the Panel. The Department of Justice is prepared to promote the Legal Practitioners (Amendment) Bill 2009 in this legislative session.

Department of Justice  
December 2008