

**立法會**  
**Legislative Council**

Ref : CB2/BC/7/08

LC Paper No. CB(2)55/09-10  
(These minutes have been seen  
by the Administration)

**Bills Committee on Legal Practitioners (Amendment) Bill 2009**

**Minutes of the third meeting  
held on Tuesday, 6 October 2009, at 10:45 am  
in Conference Room A of the Legislative Council Building**

**Members present** : Dr Hon Margaret NG (Chairman)  
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  
Hon Paul TSE Wai-chun

**Members absent** : Hon Albert HO Chun-yan  
Dr Hon Priscilla LEUNG Mei-fun

**Public Officers attending** : Department of Justice  
  
Mr Ian Wingfield  
Solicitor General  
  
Ms Sherman CHAN  
Senior Assistant Law Draftsman  
  
Mr Christopher NG  
Senior Government Counsel  
  
Ms Peggy AU YEUNG  
Senior Government Counsel  
  
Ms Karmen KWOK  
Government Counsel

**Attendance by invitation** : Hong Kong Bar Association  
Mr Richard KHAW

The Law Society of Hong Kong

Mr Huen WONG  
President

Mr Peter Barnes  
Chairman of Working Party on Higher Rights of Audience

Mr Ernest YANG  
Member of Working Party on Higher Rights of Audience

Ms Joyce WONG  
Director of Practitioners Affairs

Consumer Council

Mr Simon CHUI  
Senior Legal 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

Mrs Fanny TSANG  
Legislative Assistant (2)3

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Action

**I. Confirmation of minutes of meetings**  
[LC Paper No. CB(2)2579/08-09]

The minutes of meeting held on 7 September 2009 were confirmed.

**II. Meeting with the Administration**

[LC Paper Nos. CB(2)2210/08-09(02) - (04), CB(2)2427/08-09(01) and (02), CB(2)2459/08-09(01), CB(2)2568/08-09(01) and (02), CB(2)2575/08-09(01), CB(3)690/08-09 and LP 5004/4/1C XIII]

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

Action

- Admin** 3. The Bills Committee raised no objections to the Administration introducing Committee Stage amendments (CSAs) to the proposed new section 39G of the Bill along the lines set out in its reply to the legal adviser's letter dated 7 September 2009 [LC Paper No. CB(2)2575/08-09(01)].
- Admin** 4. Members noted that it was the Administration's intention to introduce CSAs to make clear its policy intent to empower the Higher Rights Assessment Board, in respect of applications for higher rights of audience for both civil and criminal proceedings made under the proposed section 39H(2)(c), to grant the applicants higher rights of audience for only civil proceedings or criminal proceedings or both.
- Admin** 5. The Bills Committee completed its discussion on the policy issues of the Bill. The Administration was requested to -
- (a) ascertain from the Judiciary its current thinking on the procedure envisaged for enquiries made under the proposed section 73CA(1)(v), including the manner in which the consent of the applicant was sought, the manner in which the information was provided by the Council of the Law Society to the Assessment Board, and whether such information would be provided to the applicant as well;
  - (b) reconsider the drafting of the proposed section 39O in the light of members' views;
  - (c) clarify the workings of the proposed section 45A(a) and (c), to confirm whether there was any precedent of a person being prosecuted under section 45(2)(a) and (c) separately for the same act, and to consider the feasibility of making amendments to section 45 to mirror any amendments to be made to the proposed section 45A(a), if any; and
  - (d) consider the use of the word "purport" in the proposed section 45A and its Chinese rendition.
- The Law Society** 6. The Law Society undertook to revert to members on whether the name of a person who had been adjudged bankrupt would be struck off the roll of solicitors, in addition to having his practicing certificate suspended. The Law Society was also invited to give its view on the issue raised in paragraph 5(d) above.

**III. Any other business**

7. The Bills Committee agreed to hold the next meeting on 22 October 2009 at 8:30 am.

Action

8. The meeting ended at 12:27 pm.

Council Business Division 2  
Legislative Council Secretariat  
20 October 2009

**Proceedings of the third meeting of the  
Bills Committee on Legal Practitioners (Amendment) Bill 2009  
on Tuesday, 6 October 2009, at 10:45 am  
in Conference Room A of the Legislative Council Building**

Time Marker	Speaker(s)	Subject(s)	Action required
000016 - 000115	Chairman	Confirmation of minutes of meeting	
000116 - 000350	Chairman	Opening remarks	
000351 - 001520	Chairman Administration Law Society of Hong Kong (Law Society) Hong Kong Bar Association (Bar Association) Consumer Council Mr Paul TSE Ms Miriam LAU	<p>Discussions on the Administration's response to issues raised by members at the last meeting [LC Paper No. CB(2)2568/08-09(01)].</p> <p><u>Section 39E(4)(b)</u></p> <p>Members did not raise any queries on the proposal to amend "the Chairman of the Bar Council" in sections 39E(4)(b) and 39F(4)(b) to "the Chairman of the Hong Kong Bar Association".</p> <p><u>Applicability of the six-year and six-board rules to the Higher Rights Assessment Board (the Assessment Board)</u></p> <p>The Law Society's views that [LC Paper No. CB(2)2568/08-09(02)] -</p> <p>(a) as a matter of principle, the general rule that a person should not sit on an advisory body for more than six years should apply to members of the Assessment Board. It noted that the Judiciary generally followed the six-year rule in making appointments to advisory/statutory bodies dealing with legal matters; and</p> <p>(b) at the same time, it appreciated the need for flexibility and raised no objection to the proposal of not specifying in the Bill any restriction on the length of service for members of the Assessment Board.</p> <p>The Bar Association shared the view of the Law Society on (b) above.</p> <p>Mr Paul TSE's view that as a matter of policy, the six-year and six-board rules should be applicable to the Assessment Board.</p> <p>The Chairman's view that while application of the six-year and six-board rules posed no problem as a matter of policy, its inclusion in the law would leave no room for any flexibility.</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
		Members generally agreed that it would not be desirable to include in the Bill a restriction on the maximum length of service for members of the Assessment Board, so as to retain more flexibility in the hands of the Chief Justice to decide on the appointments.	
001521 - 001916	Chairman Administration	<p>The Administration's reply to the legal adviser's letter dated 7 September 2009 [LC Paper No. CB(2)2575/08-09(01)].</p> <p>Members raised no objection to the Administration introducing Committee Stage amendments (CSAs) to the proposed new section 39G of the Bill along the lines set out in its reply.</p>	<b>Admin</b> (para 3 of minutes)
Administration's briefing on the provisions of the Bill [with reference to the marked-up copy of the relevant provisions to be amended by the Bill (LC Paper No. CB(2)2210/08-09(02))]			
001917 - 002616	Chairman Administration Ms Miriam LAU	<p><i>The proposed section 39K</i> (Determination of application by Assessment Board)</p> <p>The Administration's confirmation that, in respect of applications for higher rights of audience for both civil and criminal proceedings made under the proposed section 39H(2)(c), its policy intent was to empower the Assessment Board to grant the applicants higher rights of audience for only civil proceedings or criminal proceedings or both. The Administration would introduce CSAs to make clear such policy intent.</p>	<b>Admin</b> (para 4 of minutes)
002617 - 003949	Administration Chairman Ms Miriam LAU Law Society Bar Association Mr Paul TSE	<p><i>The proposed section 39L</i> (Conditions for granting application)</p> <p>Discussions on the meaning of the phrase "whether written or oral" in the proposed section 39L(2)(a) and (b)(i)</p> <p>The views of the two legal professional bodies and the Chairman that the phrase meant that an applicant's experience in both written and oral advocacy work would be taken into account by the Assessment Board.</p> <p>Members also noted from the Administration and the two legal professional bodies that the policy intent of these provisions, as reflected in the Final Report of the Working Party on Solicitors' Rights of Audience (the Final Report), was to allow the Assessment Board a degree of latitude in determining the relevant advocacy experience of an applicant, taking into account the totality of his litigation and advocacy experience.</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
003950 - 004857	Administration Ms Miriam LAU Chairman Law Society	<p><i>The proposed section 39M</i> (Further provisions applicable to determination of application)</p> <p>Ms Miriam LAU's enquiry as to whether the applicant concerned would be notified of the enquiries made by the Assessment Board with the Council of the Law Society (the Council) concerning his eligibility under the proposed section 39M(1)(a), and whether the details of the enquiries and the information provided by the Council would be conveyed to the applicant.</p> <p>The Administration's response that pursuant to the proposed section 73CA(1)(v), the Assessment Board was empowered to make rules to provide for the enquiries made under the proposed section 39M(1)(a).</p> <p>The Administration was requested to ascertain from the Judiciary its current thinking on the procedure envisaged for the enquiries made under the proposed section 73CA(1)(v), including the manner in which the consent of the applicant was sought, the manner in which the information was provided by the Council to the Assessment Board, and whether such information would be provided to the applicant as well.</p>	<p><b>Admin</b> (para 5 of minutes)</p>
004858 - 005128	Mr Paul TSE Chairman Law Society	<p>In response to Mr Paul TSE's enquiry on the proposed section 39L(1)(a), the Administration's advice that the alternative requirements for the exemption route to be prescribed by rules would be based on the recommendations made in paragraph 61 of the Final Report.</p>	
005129 - 005158	Administration	<p><i>The proposed section 39N</i> (Applicant having higher rights of audience on grant of application)</p>	
005159 - 010740	Administration Chairman Mr Paul TSE Law Society Ms Miriam LAU Mr Ronny TONG	<p><i>The proposed section 39O</i> (Loss of higher rights of audience)</p> <p>In response to the Chairman's enquiry, the Administration's advice that a person would reacquire his higher rights of audience automatically on fulfillment of the relevant conditions set out in the proposed section 39O(2) as appropriate, i.e. the rights would be reacquired by operation of law and no procedure for reacquiring such rights would be required.</p> <p>The Law Society's advice that a solicitor who had been discharged from bankruptcy had to apply to the Law Society before he could resume his practice as a solicitor.</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
		<p>Ms Miriam LAU's view that while the proposed section 39O(2)(a) stipulated to the effect that a person would automatically reacquire his higher rights of audience upon being discharged from bankruptcy, in reality this was not the case as he had to apply to the Law Society for resuming his practice as a solicitor before he could exercise his higher rights of audience again.</p> <p>The Administration was requested to reconsider the drafting of the proposed section 39O in the light of members' views.</p> <p>The Law Society's advice that for a solicitor who had been adjudged bankrupt, his practicing certificate would be suspended. The Law Society undertook to revert to members on whether the name of that person who had been adjudged bankrupt would be struck off the roll of solicitors.</p>	<p><b>Admin</b> (para 5 of minutes)</p> <p><b>The Law Society</b> (para 6 of minutes)</p>
010741 - 010913	Administration	<i>The proposed section 39P</i> (Higher rights of audience certificate)	
010914 - 011037	Administration Chairman	<i>The proposed section 39Q</i> (List of persons with higher rights of audience)	
011038 - 011123	Administration Chairman	<i>The proposed section 39R</i> (Code of conduct for solicitor advocates)	
011124 - 011948	Chairman Administration Mr Ronny TONG Law Society	<p><u>Clause 5 - Section added</u></p> <p><i>The proposed new section 45A</i></p> <p>The Chairman's query on the need for the proposed section 45A(a), given that it was the court's inherent jurisdiction to hold a person in contempt. The Administration's response that the proposed section 45A(a) was mirrored on section 45(2)(a) of the Legal Practitioners Ordinance (Cap. 159).</p> <p>Mr Ronny TONG's concern that under the proposed section 45A, a person who purported to exercise higher rights of audience might be subject to double jeopardy, i.e. he could be guilty of contempt of the court under subsection (a) and also liable to prosecution for an offence under subsection (c).</p> <p>The Administration was requested to clarify the workings of the proposed section 45A(a) and (c), to confirm whether there was any precedent of a person being prosecuted under section 45(2)(a) and (c) separately for the same act and consider the feasibility of making amendments to section 45 of Cap. 159 to mirror any amendments to be made to the proposed section 45A(a), if any.</p>	<p><b>Admin</b> (para 5 of minutes)</p>



Time Marker	Speaker(s)	Subject(s)	Action required
011949 - 012406	Mr Paul TSE Chairman Law Society Administration Mr Ronny TONG	<p>The Chairman and Mr Paul TSE's view that the Chinese rendition of the word "purport" ("看來是") in the proposed section 45A did not fully reflect the meaning of the word.</p> <p>Mr Ronny TONG's view that consideration could be given to using the words "shall not act as" in section 45(1) of Cap.159 in lieu of the word "purport".</p> <p>The Administration was requested to consider the use of the word "purport" and its Chinese rendition.</p> <p>The Law Society was invited to give its view on the issue.</p>	<p><b>Admin</b> (para 5 of minutes)</p> <p><b>The Law Society</b> (para 6 of minutes)</p>
012407 - 012500	Administration	<u>Clause 6 - Recovery of moneys in certain cases</u>	
012501 - 012527	Administration	<u>Clause 7 - Application of penal provisions to body corporate</u>	
012528 - 012617	Administration Chairman	<u>Clause 8 - Power of the Council to make rules</u>	
012618 - 012801	Administration Chairman	<p><u>Clause 9 - Sections added</u></p> <p><i>The proposed new section 73CA</i></p>	
012802 - 013248	Administration Chairman Ms Miriam LAU Law Society	<p><i>The proposed new section 73CB</i></p> <p>In response to Ms Miriam LAU's enquiry as to whether there were provisions to regulate the relationship between the Assessment Board and its committees, the Administration's advice that pursuant to the proposed section 73CA(1)(b)(iv), the Assessment Board was conferred with the power to make rules on the appointment and removal of members of its committees and the procedures of the committees.</p>	
013249 - 013313	Administration	<u>Clause 10 - Interpretation</u>	
013314 - 013850	Mr Paul TSE Administration Chairman Law Society	<p>In reply to Mr Paul TSE's enquiry, the Administration's explanation that -</p> <p>(a) solicitor advocates, as defined in Clause 3, referred to solicitors granted with higher rights of audience and they were not a separate class of solicitors per se; and</p> <p>(b) the term was specifically added to section 73(1)(a)(i) and the new section 73(1)(de) as solicitor advocates would also be subject to the code of conduct</p>	

<b>Time Marker</b>	<b>Speaker(s)</b>	<b>Subject(s)</b>	<b>Action required</b>
		for solicitor advocates and would be issued with a separate certificate relating to their higher rights of audience.	
013851 - 014129	Administration Law Society Chairman Miriam	<u>Clause 11 - Interpretation</u>	
014130 - 014201	Chairman	Date of next meeting	

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Legislative Council Secretariat  
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