

**立法會**  
**Legislative Council**

Ref : CB2/BC/7/08

LC Paper No. CB(2)567/09-10  
(These minutes have been seen  
by the Administration)

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

**Minutes of the 4<sup>th</sup> meeting**  
**held on Thursday, 22 October 2009, at 8:30 am**  
**in Conference Room A of the Legislative Council Building**

- Members present** : Dr Hon Margaret NG (Chairman)  
Hon Albert HO Chun-yan  
Hon LAU Kong-wah, JP  
Hon Audrey EU Yuet-mee, SC, JP  
Hon Paul TSE Wai-chun
- Members absent** : Hon Miriam LAU Kin-ye, GBS, JP  
Hon Abraham SHEK Lai-him, SBS, JP  
Hon Ronny TONG Ka-wah, SC  
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 Karmen KWOK  
Government Counsel
- Attendance by invitation** : Hong Kong Bar Association  
  
Mr Philip Dykes, SC

The Law Society of Hong Kong

Mr Huen WONG  
President

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 meeting**  
[LC Paper No. CB(2)55/09-10]

The minutes of meeting held on 6 October 2009 were confirmed.

**II. Meeting with the Administration**

[LC Paper Nos. CB(2)53/09-10(01) CB(2)83/09-10(01),  
CB(2)2210/08-09(02) - (04), CB(3)690/08-09 and LP 5004/4/1C XIII]

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

3. The Bills Committee completed clause-by-clause examination of the English text of the Bill. The legal adviser to the Bills Committee was requested to examine the Chinese text of the Bill, and to alert the Bills Committee of any issues which required the Bills Committee to consider. The Administration undertook to –

Action

- Admin
- (a) provide further draft Committee Stage amendments (CSAs) to sections 39K(2)(a)(ii), 39M(3) and 39O(2)(c)(ii) of the Bill;
  - (b) advise in writing the intended date for the resumption of the Second Reading debate on the Bill; and
  - (c) provide an indication on the commencement date of the Ordinance after ascertaining from the Judiciary the timetable for the implementation of the scheme for granting solicitors higher rights of audience after the passage of the Bill, including the schedule for the appointment of the Higher Rights Assessment Board, etc.

Clerk

4. The Bills Committee agreed that the responses on the outstanding issues to be provided by the Administration (including the proposed procedures for enquiries with the Council of the Law Society of Hong Kong by the Higher Rights Assessment Board) and the further proposed CSAs would be circulated to members for consideration. The Bills Committee also agreed that if there was no request for the Bills Committee to hold a further meeting to discuss the Administration's responses, the Bills Committee would report to the House Committee in support of the Bill.

**III. Any other business**

5. There being no other business, the meeting ended at 9:24 am.

Council Business Division 2  
Legislative Council Secretariat  
15 December 2009

**Proceedings of the 4<sup>th</sup> meeting of the  
Bills Committee on Legal Practitioners (Amendment) Bill 2009  
on Thursday, 22 October 2009, at 8:30 am  
in Conference Room A of the Legislative Council Building**

Time Marker	Speaker(s)	Subject(s)	Action required
000005 - 000036	Chairman	Confirmation of minutes of meeting	
000037 - 000148	Chairman	Opening remarks	
000149 - 000352	Chairman Administration	The Administration's response on issues raised by members at the last meeting [LC Paper No. CB(2)83/09-10(01)]	
000353 - 000920	Chairman Hong Kong Bar Association (Bar Association) Administration	<p>In response to the Bar Association's query on the legal policy behind the proposed section 45A, the Administration's explanation that -</p> <p>(a) the policy intent behind the proposed section 45A(a) was that the person should only be guilty of contempt of the court in respect of the matter in which he appeared before the court. If it was only discovered afterwards that he did not have those higher rights, the prosecution route under section 45A(c) might then be contemplated; and</p> <p>(b) if it had come to the attention of the Department of Justice (DoJ) that a person had already been punished for contempt of the court for a certain act, it would certainly be a factor of consideration in deciding whether prosecution action should be taken in respect of the same act.</p>	
000921 - 001104	Bar Association Chairman Administration	<p>The Bar Association's enquiry on whether the member of the Higher Rights Assessment Board (Assessment Board) appointed under the proposed section 39E(3)(b)(iv) (i.e. a Law Officer or a Principal Government Counsel of DoJ) had to possess higher rights of audience.</p> <p>The Administration's response that -</p> <p>(a) by virtue of the Legal Officers Ordinance (Cap. 87), all Law Officers and Government Counsel had ex-officio rights of audience before any court or tribunal; and</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
		<p>(b) in making recommendation to the Chief Justice (CJ) on an appointment to be made under section 39E(3)(b)(iv), the Secretary for Justice would take into account the nominee's experience of advocacy in higher courts, albeit it might be difficult on a particular occasion to appoint somebody with substantial experience of advocacy in higher courts having regard to the limited pool of candidates.</p>	
001105 - 001207	Chairman	Letter from the Law Society on issues raised at the last meeting [LC Paper No. CB(2)53/09-10(01)]	
001208 - 001703	Mr Paul TSE Administration Chairman	<p>Mr Paul TSE's reservations about the need for imposing criminal sanction against purported exercise of higher rights of audience by a person not having such rights under the proposed section 45A(c), considering that there was no precedent of a person being prosecuted under the existing section 45(2)(a) and (c) separately for the same act, and having regard to the fact that, aside from the inherent jurisdiction of the court to hold the person concerned guilty of contempt of the court, the matter could also be dealt with by the disciplinary proceedings of the Law Society.</p> <p>The Administration's response that –</p> <p>(a) the legal profession supported the need for imposing sanction against purported exercise of higher rights of audience;</p> <p>(b) when a person not having higher rights of audience held himself out to have such rights to represent members of the public before the court, it was not only an internal matter for the Law Society, but also a matter of public interest; and</p> <p>(c) while the act was an affront to the court in question which would be entitled to punish that person for contempt, it might not be detected until after that person had appeared before the court, in which case the sanction under the proposed section 45A(c) could be invoked.</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
Clause-by-clause examination of the Bill [with reference to the marked-up copy of the Bill setting out the proposed Committee Stage amendments (CSAs) to be moved by the Administration (Annex A to LC Paper No. CB(2)83/09-10(01)]			
001704 - 001931	Chairman Administration	Clause 1	
001932 - 002208	Chairman Administration The Law Society of Hong Kong (Law Society)	Clause 2  The Chairman's enquiry on the commencement date of the Bill after its passage.  The Administration's response that its intention was to have the Bill come into effect as soon as practicable after its enactment, but it would have to consult the Judiciary on the exact time frame.  The Law Society's expression of its hope that the Assessment Board would be convened within six months of the passage of the Bill and would be operational within six months thereafter.  At the request of the Chairman, the Administration agreed to provide an indication on the commencement date of the Ordinance after ascertaining from the Judiciary the timetable for the implementation of the scheme for granting solicitors higher rights of audience after the passage of the Bill, including the schedule for the appointment of the Assessment Board, etc.	<b>Admin</b> (para 3 of minutes)
002209 - 002213	Chairman Administration	Clause 3	
002214 - 002440	Chairman Administration	Clause 4  <i>The proposed section 39E</i>  The Administration's explanation that the proposed CSAs to section 39E(3) and (5) were to provide that a person selected by the chairperson from among the panel of persons appointed by CJ under section 39E(5) (the Panel) to join the Assessment Board should become a member of the Assessment Board without a further appointment by CJ. The CSAs were made at the request of CJ to avoid the need for double appointment by CJ.  The proposed CSAs to amend the term "the Chairman of the Bar Council" in	

Time Marker	Speaker(s)	Subject(s)	Action required
		sections 39E(4)(b) and 39F(4)(b) to "the Chairman of the Hong Kong Bar Association"	
002441 - 002630	Chairman Administration	<p><i>The proposed section 39F</i></p> <p>The Administration's explanation of the proposed CSAs to the section to make it clear that members of the Panel should hold office for a term not exceeding three years but might be re-appointed.</p>	
002631 - 002813	Chairman Administration	<p><i>The proposed section 39G</i></p> <p>The Administration's explanation of the proposed CSAs to the section to provide that the quorum of the Assessment Board must include the chairperson or an eligible-person member and that the chairperson must preside, or if the chairperson is not present at the meeting, an eligible-person member nominated by the chairperson should preside at the meeting.</p>	
002814 - 002831	Chairman	<i>The proposed section 39H</i>	
002832 - 002916	Chairman	<i>The proposed section 39I</i>	
002917 - 002942	Chairman	<i>The proposed section 39J</i>	
002943 - 003245	Chairman Administration	<p><i>The proposed section 39K</i></p> <p>The Administration's explanation of the proposed CSAs to provide the Assessment Board with the power to grant higher rights of audience in either civil or criminal proceedings when the applicant applied for higher rights of audience in both civil and criminal proceedings.</p> <p>The Administration's advice that it would introduce a further consequential amendment to section 39K(2)(a)(ii) to provide that the Assessment Board must also give reasons for its decision made under section 39K(1A)(b) to grant an application in part.</p>	<b>Admin</b> (para 3 of minutes)
003246 - 003515	Chairman Mr Paul TSE Administration	<p><i>The proposed section 39L</i></p> <p>In response to Mr Paul TSE's enquiry, the Administration's confirmation that all the conditions listed in subsection (1)(a), (b) and (c) had to be satisfied for granting an application.</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
		The Administration's explanation that the proposed CSAs were consequential amendments arising from the proposed CSAs to section 39K(1A).	
003516 - 003619	Chairman Administration	<i>The proposed section 39M</i>  The Administration's advice that it would introduce a further consequential amendment to section 39M(3) to provide that where an application was granted in part under section 39K(1A)(b), the applicant must be given an opportunity to make representation.	<b>Admin</b> (para 3 of minutes)
003620 - 003636	Chairman	<i>The proposed section 39N</i>	
003637 - 003836	Chairman ALA7 Administration	<i>The proposed section 39O</i>  The Administration's advice that in response to the view of the legal adviser to the Bills Committee, it would introduce a CSA to delete the word "otherwise" in section 39O(2)(c)(ii).	<b>Admin</b> (para 3 of minutes)
003837 - 003907	Chairman	<i>The proposed section 39P</i>	
003908 - 004120	Chairman Administration Law Society	<i>The proposed section 39Q</i>  Members agreed that it was not necessary to amend subsection (4) to provide that the Council of the Law Society must provide a copy of the original list to the Registrar. The provision of a copy of the updated list would be sufficient.	
004121 - 004146	Chairman	<i>The proposed section 39R</i>	
004147 - 004239	Chairman	Clause 5	
004240 - 004455	Chairman Administration	Clause 6	
004456 - 004511	Chairman	Clause 7	
004512 - 004526	Chairman	Clause 8	
004527 - 004749	Chairman	Clause 9	
004750 - 005034	Chairman Administration Mr Paul TSE	Clause 10	
005035 - 005051	Chairman	Clause 11	



Time Marker	Speaker(s)	Subject(s)	Action required
005052 - 005349	Chairman Mr Albert HO	<p>Completion of the clause-by-clause examination of the English text of the Bill.</p> <p>The Administration was requested to inform members in writing of the intended date for the resumption of the Second Reading debate on the Bill.</p> <p>The Bills Committee's agreement that -</p> <p>(a) the further proposed CSAs and the responses on the outstanding issues to be provided by the Administration would be circulated to members for consideration; and</p> <p>(b) if there was no request for the Bills Committee to hold a further meeting to discuss the Administration's responses, the Bills Committee would report to the House Committee in support of the Bill.</p>	<p><b>Admin</b> (para 3 of minutes)</p> <p><b>Clerk</b> (para 4 of minutes)</p>