

**Legal Practitioners (Amendment) Bill 2009 (“Bill”)**

**Introduction**

This paper sets out the Administration’s response to the following requests by the members (“**Members**”) of the Bills Committee (“**BC**”) at the BC meetings respectively held on 6 and 22 October 2009:

- (a) to respond to the BC on the proposed procedures for the Higher Rights Assessment Board’s (“**Assessment Board**”) enquiries with the Council of the Law Society of Hong Kong (“**Council**”) under the proposed section 73CA(1)(a)(v) after ascertaining the Judiciary’s current thinking on the procedures envisaged for such enquiries;
- (b) to provide further draft Committee Stage Amendments (“**CSAs**”) to the proposed sections 39K(2)(a)(ii), 39M(3) and 39O(2)(c)(ii) of the Bill;
- (c) to advise in writing the intended date for the resumption of the Second Reading debate on the Bill; and
- (d) to provide an indication on the commencement date of the Ordinance after ascertaining from the Judiciary the timetable for implementation of the scheme for granting solicitors higher rights of audience, including the schedule for the appointment of the Assessment Board, etc.

**Proposed procedures for enquiries with the Council**

2. We envisage that the rules to be made by the Assessment Board would likely provide for the following minimum requirements and have written to the Judiciary in October 2009 to seek its confirmation that we could revert to the BC accordingly:

- (a) a prior written consent from the applicant for release of information should be obtained. This can be done by asking the applicant to give consent in his or her application for higher rights of audience under the proposed section 39H(1);

- (b) both the request for and the provision of information shall be made on a confidential basis and in writing;
- (c) the Assessment Board shall inform the applicant when it requests his or her information from the Council; and
- (d) any information disclosed by the Council to the Assessment Board under the proposed section 39M(1)(a) will be disclosed to the applicant at the same time.

3. While pointing out that the Assessment Board has not yet been formed and it is inappropriate to pre-empt the Board on this subject, the Judiciary has confirmed that it would have no objection for us to suggest the above requirements to the Assessment Board when it is formed for its consideration.

### CSAs

4. Attached at **Annex A** is a complete set of CSAs in English and Chinese that the Administration proposes to move in connection with the resumption of the Second Reading debate of the Bill. These CSAs, in addition to those stated in our earlier paper to the Bills Committee (LC Paper No. CB(2)83/09-10(01)), include the following:

- (a) a CSA to amend the proposed section 39K(2)(a)(ii) such that the Assessment Board must provide the reasons for its decision for granting higher rights of audience in civil or criminal proceedings when the application is for both proceedings;
- (b) a CSA to amend the proposed section 39M(3) such that the Assessment Board must also give the applicant an opportunity to make representations, if the Assessment Board proposes to grant higher rights of audience in civil or criminal proceedings when the application is for both proceedings ; and
- (c) a CSA to fine tune the proposed section 39O(2)(c)(ii) by deleting the word “otherwise” from that section.

### **Resumption of the Second Reading**

5. We intend to resume the Second Reading debate of the Bill on 20 January 2010.

### **Timetable for the commencement and implementation of the Ordinance if passed**

6. We are consulting the Judiciary on the issues raised and shall revert to the BC after receipt of the Judiciary's advice.

**Department of Justice  
December 2009**

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LEGAL PRACTITIONERS (AMENDMENT) BILL 2009

COMMITTEE STAGE

Amendments to be moved by the Secretary for Justice

<u>Clause</u>	<u>Amendment Proposed</u>
4	<p>(a) In the proposed section 39E(3), by deleting “the following members appointed by the Chief Justice”.</p> <p>(b) By deleting the proposed section 39E(3)(a) and substituting – “(a) a chairperson appointed by the Chief Justice, who must be an eligible person;”.</p> <p>(c) In the proposed section 39E(3)(b), by deleting “10 other members” and substituting “9 other members appointed by the Chief Justice,”.</p> <p>(d) In the proposed section 39E(3)(b)(iii), by adding “and” at the end.</p> <p>(e) By deleting the proposed section 39E(3)(b)(v).</p> <p>(f) In the proposed section 39E(3), by adding – “(c) one other member selected by the chairperson from among the members of the panel appointed by the Chief Justice under subsection (5).”.</p> <p>(g) In the proposed section 39E(4)(b), by deleting “Bar Council” and substituting “Hong Kong Bar Association”.</p> <p>(h) In the proposed section 39E(5), by deleting “subsection (3)(b)(v)” and substituting “subsection (3)(c)”.</p> <p>(i) In the proposed section 39E(5), by deleting “appointment” and substituting “selection”.</p>

- (j) In the proposed section 39F, in the heading, by adding “**or of panel appointed under section 39E(5)**” after “**Board**”.
- (k) In the proposed section 39F(1), by deleting everything after “**Board**” and substituting “**or of the panel appointed under section 39E(5) holds office for a term not exceeding 3 years, but may be reappointed or reselected.**”.
- (l) In the proposed section 39F(2), by adding “**or of the panel appointed under section 39E(5)**” after “**Board**”.
- (m) In the proposed section 39F(3), by adding “**or of the panel appointed under section 39E(5)**” after “**Board**”.
- (n) In the proposed section 39F(4)(b), by deleting “**Bar Council**” and substituting “**Hong Kong Bar Association**”.
- (o) In the proposed section 39G(1), by adding before paragraph (a) –
  - “(aa) one must be the chairperson of the Board or a member appointed under section 39E(3)(b)(i);”.
- (p) In the proposed section 39G, by adding –
  - “(1A) At a meeting of the Assessment Board –
    - (a) subject to paragraph (b), the chairperson of the Board must preside; or
    - (b) if the chairperson is not present at the meeting, a member of the Board appointed under section 39E(3)(b)(i) and nominated by the chairperson must preside.”.
- (q) In the proposed section 39G(4), by deleting “**the chairperson of**” and substituting “**the person presiding at the meeting of**”.

- (r) In the proposed section 39K, by adding –
- “(1A) For the purposes of subsection (1), if the class of proceedings in respect of which the applicant is applying for higher rights of audience is that specified in section 39H(2)(c), the Assessment Board may grant the application –
- (a) without modifications to the class of proceedings to which the application relates; or
- (b) only in respect of a class of proceedings specified in section 39H(2)(a) or (b).”.
- (s) In the proposed section 39K(2)(a)(ii), by adding “grants the application under subsection (1A)(b) or” after “if it”.
- (t) In the proposed section 39L(1)(b), by deleting “for which the application is made” and substituting “in respect of which the Board is to grant the application”.
- (u) In the proposed section 39L(1)(c), by deleting “for which the application is made” and substituting “in respect of which the Board is to grant the application”.
- (v) In the proposed section 39M(3), by adding “grant the application under section 39K(1A)(b) or to” after “proposes to”.
- (w) In the proposed section 39N(a), by deleting “for which the application has been made” and substituting “in respect of which the Board has granted the application”.
- (x) In the proposed section 39O(2)(c)(ii), by deleting

“otherwise”.

- (y) In the proposed section 39P(1), by deleting everything after “an application” and substituting “in respect of any higher rights of audience, the Council must issue to the person by whom the application has been made a certificate in respect of those rights.”.

5 In the proposed section 45A, in the Chinese text, by deleting “看來” where it twice appears and substituting “其意” .

6(3) In the proposed section 50A(2), in the Chinese text, by deleting “某律師看來是以律師身分行使任何較高級法院出庭發言權 (但該律師並非根據第 III B 部享有該等權利) 的情況下，代某當事人行事，並已經或將會就他如此行事期間作出的任何事情，代表該” and substituting “並非根據第 III B 部享有任何較高級法院出庭發言權的律師，在其意是以律師身分行使該等權利的情況下，已經或將會就他於如此行事期間作出的任何事情，代表其”.