

立法會
Legislative Council

LC Paper No. LS94/08-09

**Paper for the House Committee Meeting
on 26 June 2009**

**Legal Service Division Report on
Legal Practitioners (Amendment) Bill 2009**

I. SUMMARY

- 1. Object of the Bill** To amend the Legal Practitioners Ordinance (Cap. 159) to implement the scheme proposed by the Working Party on Solicitors' Rights of Audience (the Working Party) for granting rights of audience to solicitors before the High Court and the Court of Final Appeal in civil and criminal proceedings.
- 2. Comments** The Bill proposes to provide for a framework for the granting of the higher rights of audience to solicitors. Under the Bill, solicitors who have at least five years' post-qualification practice, of which at least two years must have been in Hong Kong and who have satisfied further eligibility requirements prescribed by the rules to be made by the Higher Rights Assessment Board (the Board) may apply to the Board for rights of audience before the High Court and the Court of Final Appeal in civil proceedings, criminal proceedings, or both.
- 3. Public Consultation** A consultation paper was issued by the Working Party in May 2006. Responses were received from members of the legal profession and the community at large.
- 4. Consultation with
LegCo Panel** The Panel on Administration of Justice and Legal Services was consulted on the legislative proposal to grant higher rights of audience to solicitors on 16 December 2008. Members noted that the proposal was supported by barristers and solicitors. A member expressed concern about the impact of the legislative proposal on the development of barristers as a profession. No objection was raised to the proposal.
- 5. Conclusion** Members may wish to consider the need for a Bills Committee to study the detailed arrangements of the scheme.

II. REPORT

Objects of the Bill

To amend the Legal Practitioners Ordinance (Cap. 159) to implement the scheme proposed by the Working Party on Solicitors' Rights of Audience (the Working Party) for granting rights of audience to solicitors before the High Court and the Court of Final Appeal in civil and criminal proceedings.

LegCo Brief Reference

2. LP 5004/4/1C XIII issued by the Department of Justice on 10 June 2009.

Date of First Reading

3. 24 June 2009.

Comments

Existing rights of audience

4. With the legal profession in Hong Kong being comprised of two branches, a lawyer cannot at the same time be both a solicitor and a barrister, but must practise as one or the other. In very broad terms, the principal distinction between the two branches is that barristers specialise in advocacy and have unlimited rights of audience in any court in Hong Kong, while solicitors do not. Solicitors only have rights of audience which have been acquired by legislation or through usage of particular courts. Currently, solicitors have rights of audience in, inter alia, magistrates' courts and the District Court, and in chambers hearings in the Court of First Instance and the Court of Appeal.

New Part IIIB on Solicitor Advocates¹

5. A new Part IIIB is added to the Legal Practitioners Ordinance (Cap. 159) to provide for the legal framework for the granting of higher rights of audience to solicitors.

¹ Defined in the proposed section 2(1) as "a person who has higher rights of audience under Part IIIB".

Higher Rights Assessment Board

6. A Higher Rights Assessment Board (the Board) is established to determine applications by solicitors for higher rights of audience. It comprises members appointed by the Chief Justice from serving and former judges, members of the legal profession and officers of the Department of Justice, as well as a lay member to be selected by the chairperson of the Board from among a panel of lay persons appointed by the Chief Justice. Provisions are made for their terms of office, resignation or removal of a Board member and its proceedings.

7. The Board, rather than the Council of the Law Society (the Council) as originally proposed in paragraph 6 of the paper issued by the Department of Justice in December 2008 (LC Paper No. CB(2)438/08-09(09)), will make rules (the Rules) to deal with various matters including those relating to any courses or training or assessments or examinations required to be completed or passed by an applicant for higher rights of audience. The Board may delegate to its committees its powers and duties in relation to any interview required to be attended by an applicant for higher rights of audience.

Application to the Board and eligibility requirements

8. A solicitor who satisfies the eligibility requirements may apply to the Board for higher rights of audience, whether in respect of civil proceedings, criminal proceedings or both. The application must be in a form to be specified by the Board, and accompanied by supporting information and a prescribed fee. The Board is to specify one or more periods during which applications may be made. It is noted that the recommendation of the Working Party in its report (the Report) was that applications should be made to the Council for review before passing them with its recommendation for rejection or grant to an assessment board.

9. As regards eligibility requirements, the applicant has to have at least 5 years' post-qualification practice, of which at least two years must have been in Hong Kong during the period of 7 years immediately before the date of application. Further, the applicant has to comply with requirements (e.g. respecting completion of an approved advocacy course and passing of related assessments) to be prescribed by the Rules unless an exemption applies.

Determination of application by the Board

10. The proposed section 39K provides for the determination by the Board of an application, and requires the notification of its decision. The required time-frame for the determination and notification is "as soon as practicable".

11. The proposed section 39L sets out the conditions for granting the application. The Board has to be satisfied, inter alia, that the applicant has acquired sufficient litigation experience within the period of 3 years immediately before the date of the application and is in all respects a suitable person.

12. The Board is empowered to, inter alia, make enquiries with the Council regarding eligibility and other requirements, and also to require the applicant to provide it with further information relating to the application at an interview before it or otherwise. If the application is proposed to be refused, the applicant must be given an opportunity to make representation.

Higher rights of audience certificate

13. The proposed section 39N makes it clear that on the granting of an application, the applicant has the higher rights of audience sought, and those rights would then be exercisable by the applicant as a solicitor. The Council, upon notification, must issue a higher rights of audience certificate to the successful applicant. The Council is to maintain a register of those who are granted certificates, make it available for public inspection and provide the Registrar of the High Court with the names of such persons. The Council may make rules in order to deal with the issue of and other matters concerning higher rights of audience certificates.

14. The Council is also empowered to issue a code of conduct for Solicitor Advocates, in consultation with the Chief Justice and the Council of the Hong Kong Bar Association.

Cessation and re-acquisition of higher rights of audience

15. A solicitor who has been granted higher rights of audience ceases to have those rights on being adjudged bankrupt, or on ceasing to be on the roll of solicitors, or on being suspended from practice as a solicitor. The solicitor may re-acquire the rights in specified circumstances.

Unlawful exercise of higher rights of audience

16. The proposed section 45A provides for a penalty for the unlawful exercise of higher rights of audience as a solicitor, and stipulates that any costs in respect of anything done by that person in purported exercise of those rights as a solicitor are not recoverable by any person. However, moneys paid by a solicitor for a client would not, by reason of the proposed section 45A, become irrecoverable by the solicitor in purported exercise of any higher rights of audience as a solicitor while not having those rights under the new Part IIIB, if those moneys would have been recoverable had the solicitor had those rights under that Part.

Public Consultation

17. According to paragraphs 25 and 26 of the LegCo Brief, the Working Party issued a consultation paper in May 2006 seeking the public's views on the various issues which the Working Party had identified as relevant to the question of extending rights of audience of solicitors. Of some 260 responses received, most were from members of the legal profession, while some were from the community at large. An overwhelming majority favoured extending higher rights of audience to suitably qualified solicitors.

18. According to paragraph 27 of the LegCo Brief, both the Law Society of Hong Kong and the Hong Kong Bar Association expressed support for the Report. They were consulted on the drafts of the Bill and their responses have been taken into account in the drafting of the Bill.

Consultation with LegCo Panel

19. At its meeting on 16 December 2008, the Panel on Administration of Justice and Legal Services (the AJLS Panel) was consulted on the legislative proposal to grant higher rights of audience to solicitors. Members noted that the proposal was supported by both branches of the legal profession. Members also noted that details of the administration of the mechanism for dealing with the grant of extended rights of audience to solicitors would be contained in subsidiary legislation which would be made by the Council of the Law Society of Hong Kong after the enactment of the relevant primary legislation. A member expressed concern about the impact of the legislative proposal on the future development of the Bar but no objection was raised to the proposal.

20. Members may wish to refer to the minutes of the meeting of the AJLS Panel (LC Paper No. CB(2)837/08-09) for details of the discussion.

Conclusion

21. Members may wish to consider the need for a Bills Committee to study the detailed arrangements of the scheme.

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22 June 2009