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Panel on Administration of Justice and Legal Services

Background brief for the meeting on 16 December 2008

Solicitors' rights of audience

Purpose

This paper provides information on the past discussion of the Panel on Administration of Justice and Legal Services (the Panel) on the issue of solicitors' rights of audience.

Background

The legal profession

2. The legal profession in Hong Kong is divided into two branches - barristers and solicitors. Lawyers practising within one branch of the profession are not, at the same time, allowed to practise within the other. The training and qualifications for both branches of the profession are, however, to a large extent the same, with the exception of pupillage for prospective barristers and traineeship for prospective solicitors.

3. Barristers specialise in advocacy and consultancy work. As a general rule, they cannot act directly for a client without instructions from a solicitor. They work as sole practitioners, sometimes alone but traditionally with other barristers in offices known as sets of chambers. They are not permitted to enter into partnerships. All barristers have unlimited rights of audience before the courts, i.e. they can appear on behalf of a party to proceedings in any court.

4. Solicitors can deal directly with members of the public and are mostly engaged in general practice. Solicitors may form partnerships. They have the right of audience in the magistrates' courts and the District Court, and in chambers hearings in the Court of First Instance and the Court of Appeal.

Consultation Paper on Legal Services

5. In March 1995, the then Attorney General's Chambers (AGC) published the "Consultation Paper on Legal Services" for public consultation and one of the recommendations made in the Consultation Paper was -

".....it should be possible for solicitors to acquire rights of audience in all courts under statutory provisions similar to those in England and Wales."

6. While a vast majority of the written submissions responding to the consultation paper in general expressed support for the proposal of extending solicitors' rights of audience, the Hong Kong Bar Association (Bar Association) objected to it. In view of the Bar's objection, the Administration conducted a further study of the state of the Bar in other common law jurisdictions where solicitors could acquire full rights of audience. The Administration also commissioned the City University of Hong Kong to conduct an opinion survey on the issue of granting the rights of audience to solicitors. The survey showed that a majority of the respondents agreed to the extension of solicitors' rights of audience.

7. The Report on "Public Opinion Survey on Extension of Solicitors' Rights of Audience" and the Report on "The State of the Bar in Various Commonwealth Jurisdictions" were submitted to the Panel at its meeting on 8 July 1996. Some members of the Panel at that time shared the concern of the Bar Association about the possible negative impact of the proposed extension of solicitors' rights of audience on the Bar. They also considered that it might be too early to draw conclusion from the experience in England in view of the small number of solicitor-advocates who obtained rights of audience there. Notwithstanding the reservations expressed by the Bar Association and some members of the Panel, the Administration had considered moving Committee Stage amendments to the Legal Services Legislation (Miscellaneous Amendments) Bill 1996, which was going through the legislative process of consideration by the Legislative Council (LegCo) at that time, to extend the rights of audience of solicitors. However, the President of LegCo subsequently gave a ruling that the proposed amendment exceeded the scope of the Bill and might not be proposed to the Bill.

Working Party on Solicitors' Rights of Audience

8. In June 2004, the Chief Justice established a Working Party on Solicitors' Rights of Audience (the Working Party) under the chairmanship of Hon Mr Justice Bokhary, Permanent Judge of the Court of Final Appeal. Other members of the Working Party comprised four other judges, a Law Officer from the Department of Justice, two barristers, two solicitors and a lay member not connected with the practice of law. The Working Party's terms of reference are 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.

9. On 7 June 2006, the Working Party issued the "Consultation Paper on Solicitors' Rights of Audience" for public consultation. An overwhelming majority of the responses to the consultation paper favoured extending higher rights of audience to suitably qualified solicitors. On 29 November 2007, the Final Report of the Working Party was released. The Working Party recommended that legislation should be enacted to provide the necessary framework for the granting of higher rights

of audience to solicitors. An extract from the Final Report on a summary of the recommendations made is in **Appendix I**.

Discussion of the Panel on the Final Report of the Working Party on Solicitors' Rights of Audience

10. The Panel received a briefing on the Final Report of the Working Party on Solicitors Rights of Audience at its meeting on 13 December 2007. The Panel noted that the Chief Justice had accepted the Working Party's recommendations and requested the Administration to take forward the matter by appropriate legislation. The Panel also noted that both the Bar Association and the Law Society of Hong Kong (Law Society) expressed support for the recommendations of the Final Report.

11. On the concern about the standard of advocacy before the courts, the Panel was informed that a Higher Rights Assessment Board chaired by a senior judge would be established to consider applications for higher rights of audience. The conduct and discipline of solicitor-advocates would be the responsibility of the Council of the Law Society, and a code of conduct would be drawn up by the Council in consultation with the Council of the Bar Association and the Judiciary. At members' request, the Administration undertook to have ready the code of conduct for the Panel's consideration before the introduction of the relevant bill into LegCo.

12. Some members expressed concern about the position of junior members of the Bar as solicitor-advocates who were granted higher rights of audience by the Higher Rights Assessment Board would be regarded as having the seal of approval. Members were advised that the Bar Association was considering means to enhance the public's confidence in barristers who had completed pupillage, for example, in the form of examination or accreditation.

13. On the question of whether the proposal would bring down litigation costs, the Chairman of the Bar Association advised the Panel that extending higher rights of audience to qualified solicitors would not necessarily bring down litigation costs, but it would provide more choices to the public by enlarging the pool of advocates. Representatives of the Law Society also agreed that the proposal did not always bring down litigation costs. They, however, pointed out that there were examples where significant costs were saved. Under the Solicitor's Guide to Professional Conduct, a solicitor also had the duty to advise his client of the costs of the different options.

Latest development

14. According to the Legislative Programme 2008-2009 provided by the Administration on 22 October 2008, the Administration aims to introduce an amendment bill into LegCo in the second half of the 2008-2009 legislative session to implement the recommendations made in the Final Report of the Working Party on Solicitors' Rights of Audience.

Relevant papers

15. A list of the relevant papers with their hyperlinks at the LegCo website (<http://www.legco.gov.hk>) is in **Appendix II**.

Council Business Division 2
Legislative Council Secretariat
10 December 2008

**Extract from the Final Report of the Working Party on
Solicitors' Rights of Audience**

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Summary of recommendations

67. We recommend that:

- (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 the following additional members:
 - (a) Two experienced members of the Judiciary, nominated by the Chief Justice;
 - (b) Three litigation solicitors, nominated by the Council of the Law Society;
 - (c) Three Senior Counsel, nominated by the Bar Council;
 - (d) One member selected by the Chairman from a panel of persons appointed by the Chief Justice, who are not, in the opinion of the Chief Justice, connected in any way with the practice of law; and
 - (e) A Law Officer or Deputy Law Officer in the Department of Justice, nominated by the Secretary for Justice.
- (5) Application for higher rights of audience should be made to the Council of the Law Society, 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:
 - (a) pass an Advocacy Course approved by the Assessment Board; or
 - (b) 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 of the Law Society. 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 of the Law Society, who will apply a code of conduct to be drawn up by the Council of the Law Society in consultation with the Bar Council and the Judiciary.
- (11) Legislation should be enacted to provide the necessary framework for the granting of higher rights of audience to solicitors.

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Solicitors' rights of audience

Relevant documents

<u>Meeting</u>	<u>Meeting Date</u>	<u>Paper</u>
Panel on Administration of Justice and Legal Services	8 July 1996	Minutes of meeting [LC Paper No. CB(2)1991/95-96]
	26 June 2006	Consultation paper prepared by the Chief Justice's Working Party on Solicitors' Rights of Audience [LC Paper No. CB(2)2312/05-06(01)]
	13 December 2007	Background Brief prepared by the Legislative Council Secretariat on "Solicitors' rights of audience" [LC Paper No. CB(2)559/07-08(06)]
		Final Report of the Working Party on Solicitors' Rights of Audience [LC Paper No. CB(2)464/07-08(01)]
		Press release concerning the Final Report [LC Paper No. CB(2)464/07-08(02)]
	Judiciary Administration's paper on "Final Report of the Working Party on Solicitors' Rights of Audience" [LC Paper No. CB(2)559/07-08(07)]	
	Minutes of meeting [LC Paper No. CB(2)927/07-08]	
	--	Administration's reply on the legislative timetable to implement the recommendations of the Final Report of the Working Party on Solicitors' Rights of Audience [LC Paper No. CB(2)878/07-08(01)]