

**For discussion
on 30 June 2014**

Bills Committee on Competition (Amendment) Bill 2014

Responses to follow-up questions arising from the previous meeting

Purpose

This paper responds to Members' question raised at the meeting of 12 June 2014 as to whether rights of audience before the Competition Tribunal ("the Tribunal") should be granted to solicitors.

Status of Competition Tribunal

2. According to section 134(2) of the Competition Ordinance ("CO") (Cap 619), the Tribunal is a superior court of record consisting of the judges of the Court of First Instance ("CFI") appointed in accordance with section 6 of the High Court Ordinance ("HCO") (Cap 4). The Tribunal has the power to enforce its orders in the same way as a superior court of record. Generally speaking, the Tribunal would have the jurisdiction of the CFI to grant remedies and relief as provided under the HCO and the Rules of the High Court ("RHC") (Cap. 4A), and could exercise the CFI's inherent jurisdiction insofar as they relate to the practice and procedure of the CFI in exercising its civil jurisdiction. The CO has also adopted a general approach such that the Tribunal may generally follow the practice and procedure of the CFI.

3. In short, the Tribunal is pitched at the level of the CFI of the High Court and operates in a similar way as the CFI in many aspects.

Higher Rights of Audience

4. The legal profession in Hong Kong, in common with many common law jurisdictions, is divided into two branches: solicitors and barristers. 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. Before the enactment of the Legal Practitioners (Amendment) Ordinance 2010 (“the LP(A)O”), while barristers have unlimited rights of audience in any court in Hong Kong, solicitors only had rights of audience in magistrates’ courts and the District Court, and in chambers hearings in the CFI and the Court of Appeal.

5. On the issue of extension of solicitors’ rights of audience, the former Chief Justice set out clearly the key considerations in his speech in the opening of the legal year in February 2005 as follows :

“For a long time, calls have been made for an extension of solicitors’ existing rights of audience with a view to enlarging the pool of advocates available to the public. The subject is a most important one. It is fundamental to consider what is in the public interest. ***A most important facet is that there must be the highest standards of advocacy before the courts. This is essential to the administration of justice in an adversarial system.*** Another most important facet of the public interest is that there should be a strong and independent Bar.” (emphasis added)

6. The Final Report published in 2007 by a Working Party set up by the Chief Justice on Solicitors’ Rights of Audience has also found that public interest is the sole criterion for determining whether, and if so by what mechanism, solicitors’ rights of audience should be extended and it concluded that that principle mandates a scheme which grants solicitors higher rights of audience while ensuring that standards of advocacy before the courts are maintained (or enhanced), and does not threaten the continued viability of the Bar.

7. Furthermore, the questions as to whether the solicitors’ then existing rights of audience should be extended and, if so, by what mechanism should such extended rights of audience be granted, had also been extensively deliberated in LegCo during the scrutiny of the Legal Practitioners (Amendment) Bill 2009 which sought to introduce the new Part IIIB to the Legal Practitioners Ordinance (“LPO”) (Cap 159). Specifically, the present scheme endorsed by LegCo in 2010, whereby only solicitors fulfilling the relevant requirements as set out in Part IIIB of the LPO (which

are summarized at **Annex A** and its subsidiary legislation may be granted by the Higher Rights Assessment Board rights of audience before the High Court and the Court of Final Appeal, represents a fine balance among competing interests. Please see **Annex B** for details.

Need for Consistency between the CFI and the Tribunal

8. For the Tribunal, even though section 144(3) of the CO provides that the Tribunal is to conduct its proceedings with as much informality as is consistent with attaining justice, it is not considered to be a valid ground for making any exceptional arrangement for all solicitors, rather than solicitor advocates only, to have the rights of audience before the Tribunal which is pitched at the level of the CFI. In fact, it should be noted that section 144(1) of the CO directs that while the Tribunal may decide its own procedures, it may follow the practice and procedure of the CFI and for this purpose has the same jurisdiction, powers and duties of the CFI.

9. The main concern is that there must be the highest standards of advocacy before the superior courts. This is essential to the administration of justice in an adversarial system. Cases to be handled by the Tribunal are likely to be similar in nature, scale and complexity as the complicated commercial cases in the CFI. It is considered to be essential that only practitioners with the necessary experience and expertise in advocacy be granted the rights of audience before the Tribunal.

10. The present proposal of extending solicitors advocates' higher rights of audience to the Tribunal is consistent with and is a simple reflection of the present policy relating to higher rights of audience. "Higher rights of audience" is defined in section 39H of the LPO to mean "rights of audience before the High Court and the Court of Final Appeal...". The present proposal would also enable the same team of solicitors/barristers to handle a case which may be transferred between the CFI and the Tribunal in part or in whole (as provided under sections 113 and 114 of the CO).

11. The proposal was agreed by the Bar Association and the Law Society in late 2013 during the Judiciary Administration's consultation with them on the proposed legislative amendments now included in the Competition (Amendment) Bill 2014.

12. Following the arrangements in the CFI, solicitors will also be given right of audience in the Tribunal for hearings in chambers.

**The Department of Justice
The Judiciary Administration
Commerce and Economic Development Bureau
June 2014**

Annex A

Summary of the Principal Requirements for Higher Rights of Audience under Part IIIB of the Legal Practitioners Ordinance (“LPO”) as introduced by the Legal Practitioners (Amendment) Ordinance 2010

- (1) An Applicant for higher rights of audience must have five years’ post-qualification experience of which at least two years must have been in Hong Kong. (section 39I(2) of the LPO)
- (2) The three years immediately preceding the application must include what the Assessment Board considers to be sufficient litigation experience, with due weight being given to the applicant’s experience in advocacy work, whether written or oral. (sections 39L(1)(b) and 39L(2)(a)(i) of the LPO)
- (3) In addition to satisfying the minimum practice requirements, the applicant should satisfy the Assessment Board that he is in all other respects suitable to be granted higher rights of audience. (section 39L(1)(c) of the LPO)
- (4) The Applicant for higher rights of audience must also either attend and pass examination(s) approved by the Assessment Board (see sections 39I(1)(c) and 73CA(1)(a)(i) of the LPO); or demonstrate to the satisfaction of the Assessment Board that he or she possesses the necessary professional competence to exercise higher rights of audience in respect of the class of proceedings for which the application is made (sections 39L(1)(a) and 73CA(1)(a)(iv) of the LPO).

Annex B

Previous Discussions leading to the enactment of the Legal Practitioners (Amendment) Ordinance 2010

Since the enactment of the Legal Practitioners (Amendment) Ordinance 2010 (“LP(A)O”) and the Higher Rights of Audience Rules (Cap 159 sub-leg AK), solicitors fulfilling the eligibility requirements may apply to the Higher Rights Assessment Board for rights of audience before the High Court and the Court of Final Appeal in civil proceedings, criminal proceedings or both.

2. The LP(A)O was in fact put forward on the basis of a Final Report published in 2007 by a Working Party set up by the Chief Justice on Solicitors’ Rights of Audience under the chairmanship of a permanent judge of the Court of Final Appeal.

3. In paragraph 5 of the Final Report (ref : LC Paper No. CB(2)464/07-08(01) at Appendix I), the Working Party indicated their guiding principles as follows:

“Plainly the public interest is the sole criterion.... *The public interest demands a high standard of advocacy before the courts. And it is in the public interest to enlarge the pool of advocates capable of reaching that standard.* To that end, the talent for and interest in advocacy likely to be found in some solicitors should be tapped to enlarge that pool of advocates, provided that it can be done without creating an unacceptable risk to the sustainability of a separate referral Bar.” (emphasis added)

4. The Working Party also indicated in paragraph 21 of the Final Report that:

“the arguments for and against the extension of solicitors’ rights of audience have been debated for many years. We do not propose to rehearse them here in detail, but in broad terms they may be said to come down to the following:

- Those in favour of an extension of rights of audience argue that it will bring down the costs of litigation and increase the consumer's choice by enlarging the pool of competent advocates and increasing competition;
- Those against an extension of rights of audience argue that it will threaten the existence of the Bar and lower the overall standards of advocacy before the courts."

5. In paragraph 22 of the Final Report, the Working Party indicated the need for a scheme to govern the granting of higher rights of audience to solicitors as follows:-

“Compliance with the guiding principle which set out at paragraph 5 of this paper (which echoes the views of the Chief Justice set out in paragraph 20) would in our view answer the principal objection of those who oppose an extension of rights of audience. ***That principle mandates a scheme which grants solicitors higher rights of audience while ensuring that standards of advocacy before the courts are maintained (or enhanced)***, and does not threaten the continued viability of the Bar.” (emphasis added)

6. When the Legal Practitioners (Amendment) Bill 2009 (leading to the LP(A)O) was discussed at LegCo in 2009 (ref : LC Paper No. CB(2)666/09-10 at Appendix II), some LegCo members were concerned about the impact of the Bill on the barristers' profession, particularly in respect of junior members of the Bar, and on the standard of advocacy before the courts. Moreover, the Bills Committee at that time noted that the Higher Rights Assessment Board to be set up under the LP(A)O would act as the gatekeeper of the standard of advocacy before the courts.

7. At the Bills Committee stage, some also sought clarification on the rationale for putting in place a more rigorous system than UK in terms of eligibility criteria (ref : LC Paper No. CB(2)2312/08-09 at Appendix III). The Administration explained that it was the consensus of the Working Party that, to balance competing interests, there should be a threshold on the minimum period of post-qualification experience required of solicitors before they could be granted higher rights of audience. Instead of imposing a quota on the number of solicitors who might be granted higher rights of

audience, it was proposed under the scheme that only solicitors who were experienced and competent advocates would be eligible to apply for higher rights of audience.

Working Party on Solicitors' Rights of Audience

Final report

Introduction

1. On 24 June 2004, the Chief Justice established a Working Party under the chairmanship of the Hon Mr Justice Bokhary, Permanent Judge of the Court of Final Appeal, with the following terms of reference:

"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."

2. The other members of the Working Party appointed by the Chief Justice are:

The Hon Mr Justice Ma, Chief Judge of the High Court

The Hon Mr Justice Tang, SBS, Vice-President of the Court of Appeal

The Hon Mr Justice Andrew Cheung, Judge of the Court of First Instance of the High Court

The Hon Mr Justice Pang, Judge of the Court of First Instance of the High Court

Mr Robert Allcock, BBS, JP, Solicitor General, Department of Justice (until January 2007)

Mr Ian Wingfield, GBS, JP, Solicitor General, Department of Justice (from February 2007)

Mr Peter Barnes, Solicitor

Mr Denis Brock, Solicitor (until December 2006)

Mr Andrew Jeffries, Solicitor (from December 2006)

Mrs Eleanor Ling, SBS, OBE, JP

Mr Joseph Tse, SC, Barrister

Mr Benjamin Yu, SC, Barrister

The Secretary is Mr Stuart Stoker of the Department of Justice.

Consultation paper

3. In May 2006, the Working Party issued a consultation paper which set out the guiding principle which the Working Party considered should underlie any changes to the existing rules on rights of audience in the higher courts. The paper also sought the public's views on the various issues which the Working Party had identified as relevant to the question of extending rights of audience.

4. The Working Party received some 260 responses to the consultation paper, mostly from members of the legal profession, but including some from the community at large. An overwhelming majority favoured extending higher rights of audience to suitably qualified solicitors. There was strong opposition to applying a limit to the number of solicitors who could be granted higher rights of audience in any year, or to restricting solicitor-advocates to particular areas of law or particular types of proceedings. On other issues, views were more diverse, particularly in relation to the ways in which a solicitor should be able to qualify for higher rights of audience. The Working Party has carefully considered the responses to the consultation paper and the conclusions presented in this report take those views into account.

The Working Party's guiding principle

5. The two questions under our terms of reference are:
- i) whether solicitors' existing rights of audience should be extended; and
 - ii) if so, by what mechanism should such extended rights of audience be granted.

Plainly the public interest is the sole criterion on each question. The public interest demands a high standard of advocacy before the courts. And it is in the public interest to enlarge the pool of advocates capable of reaching that standard. To that end, the talent for and interest in advocacy likely to be found in some solicitors should be tapped to enlarge that pool of advocates, provided that it can be done without creating an unacceptable risk to the sustainability of a separate referral Bar. The Working Party thinks that solicitors can be granted higher rights of audience without creating that risk.

6. Before presenting our conclusions in relation to higher rights of audience, it may be helpful if we begin with a general outline of the structure and workings of the legal profession in Hong Kong.

The structure of the legal profession in Hong Kong

7. The legal profession in Hong Kong, in common with many common law jurisdictions, is divided into two branches: solicitors and barristers. 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 do, however, have rights of audience in magistrates' courts and the District Court, and in chambers hearings in the Court of First Instance and the Court of Appeal.

8. The training and qualifications for both branches of the profession are to a large extent the same.¹ A prospective lawyer in either branch must first complete a Bachelor of Laws degree from a Hong Kong University or from an approved overseas university, in the course of which he must obtain passes in a number of specified subjects. Thereafter all prospective entrants to the profession (other than those who have qualified elsewhere) must complete a one-year course leading to the Post-graduate Certificate in Laws (PCLL). The PCLL is currently offered by both the University of Hong Kong and the City University of Hong Kong not only to their own graduates, but also to those who have obtained a degree from an overseas university. From 2008, the PCLL will also be offered by the Chinese University's School of Law. It is only on completion of the PCLL that the training diverges and the would-be lawyer must opt for one branch of the profession or the other.

9. Those opting to become barristers must serve a one-year pupillage. During this period the pupil barrister is attached to a practising barrister (his "pupil master") who provides him with practical guidance and experience. The pupil is not paid, but after completing the first six-months of his pupillage he can apply to the Court to be admitted as a barrister. He can then obtain a limited practising certificate which will allow him certain rights of audience. On completion of his pupillage (part of which may be served in the Department of Justice or as a judge's marshall in Hong Kong), the new barrister is eligible to apply to the Bar Council for a certificate granting him unrestricted rights of audience.

10. A prospective solicitor must serve two years as a trainee solicitor, during which time he will be attached to a practising solicitor (the trainee's "Principal") and must obtain experience in a number of specified aspects of a solicitor's practice. He will be paid at not less than the rate fixed from time to time by the Law Society of Hong Kong, the governing body for the solicitors' branch of the profession. On completion of his traineeship (part of which may be undertaken in the Department of Justice), the trainee can apply to the Court of First Instance for admission as a solicitor, and thereafter

¹ This introduction restricts itself to outlining the qualification route for lawyers who train in Hong Kong. There are special provisions which relate to the admission in Hong Kong of lawyers admitted in an overseas jurisdiction.

to the Law Society for a practising certificate. This certificate must be renewed annually for so long as the solicitor practises in Hong Kong.

11. The majority of lawyers in Hong Kong are solicitors, with 5,799 holding current practising certificates as solicitors as at August 2007. As at August 2007, there were 1,028 practising barristers.

The Bar Association and the Law Society

12. The Bar Association is the professional organisation for barristers. It is a society registered under the Societies Ordinance. Its objects include prescribing rules of professional conduct, discipline and etiquette. The Bar Council, elected annually by barristers, is the executive committee of the Bar Association. Barristers must comply with the *Code of Conduct of the Bar of Hong Kong* issued by the Bar Association, which may be amended from time to time by the Association in general meeting or the Bar Council. Where the Council considers that the conduct of a barrister should be inquired into as a result of a complaint, this will be referred to a Barristers Disciplinary Tribunal, consisting of a Senior Counsel, a barrister who is not a Senior Counsel and a lay person.

13. The Law Society of Hong Kong is the professional body for solicitors. It is an incorporated company limited by guarantee and its objects include promoting high standards of work and ethical practice in the profession and ensuring compliance with the law and rules affecting solicitors. The Law Society Council is the Society's governing body. All solicitors must comply with the *Hong Kong Solicitor's Guide to Professional Conduct* issued by the Society. Where the Council considers that a solicitor's conduct should be inquired into as a result of a complaint, the matter will be referred to a Solicitors Disciplinary Tribunal, consisting of two solicitors and one lay person.

How the profession works

14. Solicitors may either practise alone, or they may form partnerships with other solicitors, known as "firms". They may also carry on group practices. Legislation has been passed that will permit solicitors to practise within solicitor corporations, but that legislation is not yet in force. Many solicitors will choose to specialise in a particular type of legal work, such as conveyancing or family law, though those practising alone or in a small firm will usually offer general legal services. The larger firms often provide specialist teams of lawyers handling particular areas of practice, such as litigation.

15. In contrast, barristers practise alone and are not permitted to form partnerships with anyone else, whether or not they are lawyers. For administrative convenience, however, groups of barristers usually form together to share office accommodation and support services. This shared accommodation is known as "chambers".

16. While a member of the public may approach a solicitor direct to obtain his legal services, he cannot do so in relation to a barrister. Instead, a barrister can generally only be engaged by a solicitor, and the prospective client must therefore first consult a solicitor in relation to any matter on which a barrister's services are sought.² Members of certain other professions are, however, permitted direct access to barristers. The rationale for this general distancing of the barrister from the client is that it helps to maintain the barrister's objectivity, it allows for specialisation, and it ensures an efficient division of labour as between a client's solicitor and barrister.

17. A practising barrister is bound to accept any instruction to appear before a court in the field in which he professes to practise at his usual fee having regard to the type, nature, length and difficulty of the case. This is customarily known as "the cab-rank rule". However, special circumstances such as conflict of interest may exist which justify a barrister in refusing to accept a particular instruction. The "cab-rank rule" does not apply to solicitors.

18. The fact that solicitors have only restricted rights of audience means that a solicitor will, for instance, need to engage a barrister on behalf of his client to appear in any trial or open hearing³ in the Court of First Instance. Even where a solicitor is able to appear himself, he may nevertheless choose to use the services of a barrister instead. This may be because the solicitor lacks experience in advocacy, or because the matter is complex and falls within the expertise of a particular barrister, or simply for reasons of efficiency.

19. The present position is that the Bar has been the only source of direct appointment to the High Court bench. However, solicitors who are qualified to practise as a solicitor of the High Court and have so practised for at least ten years are eligible for appointment to the High Court.

A case for change

20. At the ceremony marking the opening of the legal year in February 2005, the Chief Justice said:

"For a long time, calls have been made for an extension of solicitors' existing rights of audience with a view to enlarging the pool of advocates available to the public. The subject is a most important one. It is fundamental to consider what is in the public interest. A most important facet is that there must be the highest standards of advocacy before the courts. This is essential to the administration of justice in an adversarial system. Another most important facet of the public interest is that there should be a strong and independent Bar."

² In certain circumstances, barristers may also be instructed by other professionals, such as accountants, company secretaries, surveyors and arbitrators.

³ Subject to certain limited exceptions.

21. The arguments for and against the extension of solicitors' rights of audience have been debated for many years. We do not propose to rehearse them here in detail, but in broad terms they may be said to come down to the following:

- Those in favour of an extension of rights of audience argue that it will bring down the costs of litigation and increase the consumer's choice by enlarging the pool of competent advocates and increasing competition.
- Those against an extension of rights of audience argue that it will threaten the existence of the Bar and lower the overall standards of advocacy before the courts.

Of course, there are other arguments advanced for and against an extension of rights of audience, but few if any that do not fall on analysis to be merely a variant of one or other of the arguments outlined above.

22. Compliance with the guiding principle which we set out at paragraph 5 of this paper (which echoes the views of the Chief Justice set out at paragraph 20) would in our view answer the principal objection of those who oppose an extension of rights of audience. That principle mandates a scheme which grants solicitors higher rights of audience while ensuring that standards of advocacy before the courts are maintained (or enhanced), and does not threaten the continued viability of the Bar. We believe that the scheme which we describe in the following paragraphs complies fully with our guiding principle. Taken together with the overwhelming support from respondents to the consultation paper for an extension of rights of audience in the higher courts, we have concluded that rights of audience in the higher courts should be granted to solicitors who satisfy the terms of the scheme we propose.

23. We examine now in turn the elements of the proposed scheme to grant solicitors higher rights of audience, together with the issues which we believe need to be addressed in relation to each element.

Elements of the proposed scheme for granting solicitors higher rights of audience

Eligibility

24. A key element of any scheme is determining what categories of solicitor should be eligible for higher rights of audience. Clearly, the criteria to be applied must be sufficiently strict to ensure that only competent advocates qualify, and that viability of the Bar (particularly the junior Bar) is not compromised, while at the same time ensuring that the standards are not so restrictive as to preclude any meaningful increase in the pool of practising advocates available in the higher courts.

25. It would seem reasonable to impose a primary requirement for eligibility that the applicant solicitor should have completed a minimum specified period of post-qualification practice. We note that in England a solicitor must have a minimum of three years' litigation experience in the higher courts of England and Wales (see regulation 4 of the Higher Courts Qualification Regulations 2000), while in their December 2002 proposal the Law Society of Hong Kong suggested a minimum five years' practice.

26. A range of views were expressed by those who responded to our consultation paper. A significant number rejected the imposition of any minimum period of practice, pointing out that what was important was the amount of quality experience, as opposed to the number of years of post-qualification experience. Quality of experience and the number of years experience did not necessarily correlate. It was also pointed out that there was no similar restriction on barristers' level of qualification and many argued that solicitors and barristers should be treated in the same way in this regard. Of those who considered that a minimum period of practice was appropriate, the majority favoured the Law Society's proposal that solicitor applicants for higher rights of audience should have completed five years of practice. The Bar Association did not object to this suggestion.

27. Having carefully considered the various views expressed on this issue, we have concluded that a minimum period of practice should be a pre-requisite for a solicitor to gain higher rights of audience. We believe that that approach properly balances the public interest in expanding the pool of competent advocates in the higher courts while maintaining the viability of an independent Bar. We conclude that five years is an appropriate minimum period of practice and recommend that this should be a minimum requirement before a solicitor can apply for higher rights of audience.

28. If the intention is to ensure that applicant solicitors have appropriate advocacy skills, then there is a case for saying that a period of practice in another common law jurisdiction should count towards the minimum practice period required. We note that that is the case under the English provisions, and under the Law Society of Hong Kong's proposal. Strong views were expressed on consultation both for and against allowing overseas experience to count towards the minimum practice period. On balance, we are persuaded that experience in a common law jurisdiction should be taken into account, but that a minimum period of practice in Hong Kong should be prescribed. We think that two years is an appropriate minimum period of Hong Kong practice, and so recommend.

29. It is foreseeable that a barrister with a number of years of experience might choose to switch his career to that of a solicitor, and apply to become a solicitor-advocate. In such circumstances, we think that the applicant's experience as a barrister should be taken into account but that the same minimum requirements as to post-qualification experience should apply. In other words, an applicant should be required to have completed five years'

practice as a solicitor or a barrister, with at least two years' practice in Hong Kong.

Litigation experience

30. Clearly, a solicitor should not be granted higher rights of audience unless he is able to demonstrate adequate litigation experience. We have recommended that five years' post-qualification practice be a prerequisite for eligibility to apply for higher rights of audience, but a successful applicant would also need to satisfy certain minimum requirements as to his litigation experience. However, while it is a simple matter to apply a clear-cut measure such as the number of years of post-qualification practice, it is much less so to determine what amounts to "litigation experience". If a minimum period of litigation experience is to be required, how is that to be measured? Should it, for instance, be restricted to periods when the candidate was engaged solely in litigation practice, or should it include times when his work was only partly litigation? Should different weight be given to different types of litigation work, whether by distinguishing between different levels of forum, or between advocacy and other work performed by solicitors?

31. In this regard, we recognise that "advocacy" encompasses the acts of speaking and writing in support of a position, and that a litigation solicitor who is involved in higher court work (a) may be involved in a substantial amount of written advocacy and (b) is constrained by the current restrictions as to the amount of oral advocacy he or she may practise in such courts.

32. We acknowledge the difficulty of prescribing with precision what should constitute appropriate litigation experience and we believe that some measure of discretion will need to be applied by the Higher Rights Assessment Board, the body we propose should administer the scheme for admission. We have concluded that an applicant for higher rights of audience should be required to show that he has three years of relevant recent litigation experience. That experience could include advocacy work or other litigation work. The Assessment Board should be given a degree of latitude in determining what amounts to relevant litigation experience. Different weight would need to be given to different types of experience, with much weight given to actual advocacy, whether written or oral. Examples of such work would include contested hearings before a Master and conducting trials in the District Court and the magistracies (or their equivalents in other common law jurisdictions), together with experience of written or oral advocacy in the higher courts for which qualification is sought.

33. Along with the application form, a candidate for higher rights of audience would need to provide the Board with full information about his litigation and advocacy experience during the three years prior to the date of application. That information would need to include details of applications or hearings conducted by the applicant. The candidate's record of advocacy

experience would enable him to demonstrate the quality as well as the quantity of that experience.

34. We have proposed to avoid any rigid requirements as to the number or type of court or tribunal appearances which an applicant must show. A minimum of 30 was an initial requirement in England, but this led to difficulties with applicants attending, for example, numerous time summonses and so reaching the required number whilst at the same time having gained insufficient demonstrable advocacy experience. We are content to proceed in this less prescriptive way in part as applicants will also have to pass (or be exempted from) written tests in High Court procedure and in ethics, as well as a practical advocacy test, before being granted higher rights.

35. In addition to satisfying the minimum practice requirements, an applicant should have to satisfy the Board that he was “*in all other respects suitable*.” This would give the Board discretion to refuse an application where, for instance, the Board was not satisfied as to the applicant’s overall competence, professional conduct record or integrity.

Restriction by quota

36. Concern has been expressed in some quarters that the granting of higher rights of audience to solicitors may lead to a flood of solicitor-advocates, which would threaten the existence of the Bar. One way to avoid this would be to impose a quota on the number of solicitors who will be granted higher rights of audience each year. In that way, numbers could be maintained at a level which increased the pool of advocates while maintaining the viability of the Bar.

37. Against that approach it may be said that:

- A quota system would have arbitrary consequences where there were a number of competing solicitors of equal abilities.
- There is no evidence from other jurisdictions which have allowed suitably qualified solicitors higher rights of audience that that has led to the demise of the referral Bar.
- It would be difficult to establish objectively at what level the number of solicitor-advocate entrants allowed each year would constitute a genuine threat to the viability of the Bar.

38. There was virtually no support among those who responded to the Working Party’s consultation paper for the imposition of a quota. It was pointed out that a quota would not be in the public interest and would seriously distort the enhanced competition and advocacy standards which extended rights of audience would bring. There was no reason to suppose that there would be a flood of applicants for higher rights of audience and, even if there were, the Bar’s future could be adequately safeguarded by

ensuring that the eligibility criteria for higher rights of audience were sufficiently high. The Bar Association itself agreed that, for the purpose of ensuring the quality of solicitor-advocates, the question of establishing appropriate criteria for eligibility was more important than fixing a quota on the number of solicitors who could apply each year.

39. In the light of the near unanimity of views expressed to us, we do not think that a quota should be imposed on the number of solicitors who may be granted higher rights of audience each year. Under the scheme we propose, only solicitors who are experienced and competent advocates would be eligible to apply for higher rights of audience. As the Bar Association points out, the key issue is to establish the criteria for eligibility at a level which ensures candidates satisfy the highest standards of advocacy. In our view, that will remove any risk of a flood of applicants without the need for imposing artificial and arbitrary quotas.

Scope of accreditation

40. The question arises as to whether unrestricted rights of audience should be granted to all solicitor-advocates, or whether these should be limited in some way. In both England and Wales and Scotland, a solicitor may be granted higher rights of audience in all proceedings, or his rights of audience may be restricted to civil or criminal proceedings only. A similar approach is proposed in the Hong Kong Law Society's draft legislation. A 1996 statistical survey of solicitor-advocates in Scotland found that the majority of applicants opted for rights in either civil or criminal proceedings, rather than in all proceedings. That would seem unsurprising, given the increasing specialisation of legal practice.

41. A further refinement would be to restrict higher rights of audience to a particular field of expertise (such as commercial law, or family law). It could be argued that that would ensure a higher level of expertise in those granted such rights. The downside of such an approach, however, would be that it would raise significant practical problems. Firstly, there would be difficulties of definition (what proceedings does, say, "family law" cover?), and secondly, problems would arise when proceedings involved more than one area of expertise, or where the proceedings unexpectedly gave rise to issues outside the solicitor-advocate's area of authorised practice.

42. An alternative suggested by some is that solicitor-advocates should be precluded from conducting jury trials. This is because such proceedings require a particularly high level of court expertise. The counter arguments which might be advanced to such a restriction include:

- There is no such restriction on a barrister, who is eligible to appear before a jury immediately on completion of his pupillage.
- In contrast to the newly qualified barrister, a solicitor-advocate under the scheme we envisage would have been in practice for

a number of years and would have had to demonstrate his competency in advocacy to the satisfaction of the accrediting body.

- A litigant or defendant should not be precluded from instructing a newly accredited solicitor-advocate in a jury trial if he wishes to do so, just as he is free to instruct a newly admitted barrister under the current rules.

We note that no such restriction is imposed under the provisions in either England or Scotland, and it is not envisaged in the scheme put forward by the Hong Kong Law Society.

43. Most respondents to the Working Party's consultation paper who addressed this issue gave broad support to the Law Society's view that a solicitor should be able to apply for higher rights of audience in respect of civil proceedings, criminal proceedings, or both. The suggestion that a solicitor-advocate should be limited to particular areas of law or a particular type of proceedings, or that they should be precluded from jury trials, was roundly rejected. The Bar Association supported the Law Society's view that solicitor-advocates should be granted either civil or criminal rights of audience, or both, if they can demonstrate the requisite experience and skills.

44. We are not aware that the schemes applied in the United Kingdom have caused difficulty there. Bearing that in mind, and taking account of the views expressed by those responding to the Working Party's consultation paper, we consider that solicitor-advocates should be granted higher rights of audience for civil proceedings, criminal proceedings, or both, providing they satisfy the criteria specified. We are confirmed in our view by the fact that both the Law Society and the Bar Association favour such an approach.

The Higher Rights Assessment Board

45. The consultation paper prompted a range of views from respondents as to the appropriate accreditation body for granting higher rights of audience. Some favoured the Council of the Law Society, while others argued for a different accrediting body. In favour of the former, it can be said that:

- This would be analogous with the existing provisions in respect of the admission of solicitors.
- No separate body is deemed necessary to govern the admission of barristers, who enjoy unrestricted rights of audience from their first day of practice. The Law Society should therefore be the appropriate body to set and assess standards for solicitor-advocates (who, by definition, are already experienced practitioners).

In favour of an accrediting body other than the Council of the Law Society, it can be said that:

- The Law Society may not be best placed to assess the skills required of those seeking to undertake advocacy in the higher courts.
- An independent accreditation body would offer the applicant, the Judiciary and the public assurance that solicitor-advocates met an appropriate standard of advocacy competence

46. The consultation paper pointed out that Legal Practitioners Ordinance (Cap 159) provides that solicitors are admitted by the Court of First Instance if the court is satisfied that the applicant is “*a fit and proper person to be a solicitor*” (see section 4) and the applicant has complied with the requirements as to training and qualifications prescribed by the Council of the Law Society of Hong Kong. Similarly, section 27 of Cap 159 provides that the Court of First Instance may admit as a barrister a person whom it considers “*a fit and proper person to be a barrister*” who has complied with the requirements prescribed by the Council of the Hong Kong Bar Association.

47. As observed by the consultation paper, an analogous provision in respect of solicitor-advocates would be to provide that the Court of First Instance may grant a solicitor rights of audience in the higher courts if the court considers the applicant to be “*a fit and proper person to be a solicitor-advocate*” and the applicant has complied with the requirements as to training and qualifications prescribed by the Council of the Law Society. We note that this is the approach adopted in England and Scotland, where the respective Law Societies regulate admission as a solicitor-advocate.

48. An alternative approach presented in the consultation paper would be for a body other than the Law Society to prescribe the requirements as to training and qualifications which an applicant solicitor must satisfy before seeking accreditation as a solicitor-advocate, and to assess whether or not an applicant has satisfied those requirements. The alternatives would include:

- the Chief Justice, or a person or persons appointed by him; or
- a body similar in composition to the Working Party, with representatives from the Judiciary, the Bar, the Law Society, the Department of Justice and the community.

49. Having considered the various options and the responses to the consultation paper, we think it important that the system for accreditation should ensure that it is not only the interests of solicitors which are taken into account, but that there is also input from the judiciary, the Bar and the wider community. We accordingly recommend that the accrediting authority, to be known as the Higher Rights Assessment Board, should be chaired by a senior

judge (nominated by the Chief Justice) and should consist of the following additional members:

- (a) Two experienced members of the Judiciary (either serving or retired), nominated by the Chief Justice;
- (b) Three litigation solicitors, nominated by the Council of the Law Society of Hong Kong;
- (c) Three Senior Counsel, nominated by the Bar Council of Hong Kong;
- (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.

50. The organisation and administration for the Board would be provided by the Council of the Law Society. We envisage that meetings of the Board would generally be held quarterly, but only if there were applications to consider, but could be more frequent if workload demanded. Decisions of the Board would be made by majority vote, with a minimum of seven members required in support to approve an application.

51. In considering an application for higher rights of audience, where it considers it appropriate the Board should be entitled to request information from the applicant in addition to that provided in the application form, or to invite the candidate to attend for interview. There would also need to be a mechanism to ensure that any potential conflicts of interest are declared by members of the Board, such as where an applicant is a member of the same firm or chambers as a member of the Board.

Application procedure

52. Under the scheme we propose, candidates for higher rights of audience would submit their applications to the Council of the Law Society. The Council would be required to review each application and, if it considers an application complies with the prescribed requirements, would pass the application to the Assessment Board for consideration. Where the Council believes a candidate has not satisfied the prescribed requirements (such as where, for instance, he has not been in practice in Hong Kong for at least two years, or has not been qualified as a solicitor or barrister for five years), the Council will recommend to the Board that the application be rejected. The Board is not, of course, bound to accept a recommendation by the Council, either to reject or to grant an application, and it is the Board's decision which is determinative.

53. Successful applicants will be issued with a Higher Rights Qualification Certificate by the Council. The Council will be required to keep a register of solicitors granted higher rights of audience. The register should be open to public inspection and the Council should be required to notify the Judiciary Administrator of the names of all those granted higher rights of audience.

54. In order not to unduly lengthen the process of qualifying for higher rights of audience, we think that there should be some flexibility in the application process. It should therefore be open to prospective applicants to sit the prescribed advocacy course (on which we elaborate later in this paper) before they have completed the minimum five years' post-qualification practice necessary to qualify for higher rights of audience.

55. It falls to be considered whether there should be any limit on the number of times a failed applicant should be entitled to re-apply for higher rights of audience. If a limit is to be imposed, should this be a lifetime limit, or merely a restriction on the number of applications which an individual may make within a specified period? The imposition of a limit would ensure that the Council and the Board are not bombarded with repeated applications from unsuitable candidates. In practice, however, it is unlikely that a solicitor would choose to put his professional reputation at stake by risking repeated rejections. The imposition of a lifetime limit on the number of applications an individual may make would seem arbitrary, and would unreasonably penalise a solicitor who subsequently attained the requisite level of competence. A compromise might be to allow an individual to apply only once each calendar year.

Routes to qualification

56. In England and Wales, solicitors may gain higher rights of audience by one of four routes:

- development route (by satisfying specific training, assessment and experience criteria);
- accreditation route (by practising as a lawyer for a minimum specified period, having litigation experience for a minimum specified period, and complying with training and assessment requirements);
- exemption route (by relevant advocacy or judicial experience in England and Wales or a relevant jurisdiction); or
- qualification in another jurisdiction (by having appropriate qualifications in another jurisdiction).

57. Should a similar approach be adopted in Hong Kong, or should only some of these alternatives be available and, if so, which one or ones? We note in this regard that the Hong Kong Law Society's draft legislation proposes exemption and qualification routes, and that in order to be qualified a solicitor must have practised for several years, have considerable advocacy experience, and must undergo additional training. We understand that the development and accreditation routes in England and Wales are being phased out.

58. There was a wide range of views expressed on this aspect of the consultation paper. Some favoured the least restrictive approach, arguing that a solicitor, whom the court must have been satisfied was a "fit and proper person to be a solicitor", was *prima facie* qualified to be an advocate with rights of audience in the higher courts and should be granted those rights with the minimum formality. Others argued that candidates for higher rights of audience must be able to demonstrate substantial advocacy experience in Hong Kong over many years.

59. Having considered the views of those who responded to the consultation paper and having reviewed the various possible alternatives, we have concluded that there should be only two routes by which candidates can attain higher rights of audience. In addition to satisfying the minimum periods of post-qualification practice and litigation experience, candidates should either:

- (a) pass an Advocacy Course approved by the Assessment Board ("the Qualification Route"); 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 ("the Exemption Route").

60. Most candidates for higher rights of audience would be expected to apply via the Qualification Route. They would be required to complete an Advocacy Course, which would be in a form prescribed by the Council of the Law Society and approved by the Higher Rights Assessment Board, with separate courses set for criminal and civil proceedings. The course would consist of both written and practical examinations, with a practical assessment before an assessor nominated by the Board. The written part would be, first, an examination in Higher Court procedure for those who could not show sufficient relevant Higher Court litigation experience to be granted exemption, and, second, an examination in the ethics of advocacy. For the practical assessment, this would comprise mock advocacy in the form of a short mock trial, including witness examinations. The practical assessor may (but need not) be a member of the Board. There would be no restriction on entry to the Advocacy Course, so that a solicitor who paid the necessary fees would be eligible to sit the course before he had completed the minimum period of post-qualification practice to apply for a Higher Rights Qualification Certificate.

61. The Exemption Route would, *inter alia*, enable solicitors with extensive overseas advocacy experience but limited Hong Kong experience to obtain higher rights of audience. It would also offer a means by which experienced Hong Kong solicitors (including a barrister who has converted to become a solicitor) could qualify without the need to complete the Advocacy Course. To qualify for exemption, a candidate would need to satisfy the Board that:

- (a) he has substantial recent advocacy experience in the higher courts in proceedings in which the qualification for which he has applied would entitle him to appear as an advocate; or
- (b) he has substantial judicial, or quasi-judicial, or arbitral experience, having presided over trials or hearings in judicial, quasi-judicial or arbitral proceedings in Hong Kong; or
- (c) by reason of the totality of his advocacy or judicial, quasi-judicial or arbitral experience in Hong Kong or any other common law jurisdiction, he is suitably experienced and qualified to exercise rights of audience before the higher courts in such proceedings.

In determining a candidate's suitability for exemption, the Board would take into account all relevant circumstances, including any written references from judges, etc, before whom the candidate has appeared. The Board would be entitled to require a candidate to attend an interview as part of the assessment procedure.

Conduct and discipline

62. The consultation paper noted that in both England and Wales and Scotland the respective Law Societies have drawn up codes of conduct specific to solicitor-advocates, and that the Hong Kong Law Society's draft legislation envisages that the Society's Council would draw up specific rules for solicitor-advocates. Views were evenly split among those who responded to the consultation paper, with half in favour of the Law Society taking responsibility for the conduct and discipline of solicitor-advocates and half against. Of those against, the majority proposed that this role should be taken on by an independent panel appointed by the Chief Justice. The Bar considered that once the changes in the code of conduct had been discussed and enacted, the Law Society should be responsible for the conduct and discipline of solicitor-advocates.

63. Among the arguments advanced in favour of the Law Society taking responsibility for the conduct and discipline of solicitor-advocates was the fact that a system by which some parts of a solicitor's conduct (the exercise of higher rights of audience) were regulated by a different body would invite complexity, possible inconsistency of approach and risk double

jeopardy. A counter argument put forward was that the Law Society was not best placed to be entrusted with the task of disciplining solicitor-advocates.

64. In relation to the specific issue of the “cab-rank rule” to which we referred at paragraph 17 of this paper, a number of respondents argued that this should not apply to solicitor-advocates. They observed that a fundamental ethical obligation for solicitor-advocates should be always to consider whether any particular case would best be served by representation by a solicitor-advocate or by counsel. In addition, they questioned whether it was appropriate to apply the “cab-rank rule” to solicitor-advocates who (unlike barristers) did not operate independently but were subject to their firm’s conflict procedures.

65. Taking account of the various views expressed and the approach favoured in other jurisdictions, we consider that the Council of the Law Society, in consultation with the Bar Council and the judiciary, should draw up a code of conduct for solicitor-advocates. Once that code has been adopted, we recommend that the Council of the Law Society should be responsible for applying the code and for the conduct and discipline of solicitor-advocates. A specific issue which the code would need to address would be whether, or to what extent, the “cab rank rule” should apply to solicitor-advocates.

Legislation

66. Legislation providing the necessary framework is plainly the appropriate means by which to grant higher rights of audience to solicitors.

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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**Paper for the House Committee meeting
on 8 January 2010**

Report of the Bills Committee on Legal Practitioners (Amendment) Bill 2009

Purpose

This paper reports on the deliberations of the Bills Committee on Legal Practitioners (Amendment) Bill 2009.

Background

Existing rights of audience

2. 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 specialize 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.

Consultation Paper on Legal Services

3. 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."

4. 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 (the Bar Association) objected to it. In view of the Bar Association'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 higher rights of audience to solicitors. The survey showed that a majority of the respondents agreed to the extension of solicitors' rights of audience.

5. 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 on Administration of Justice and Legal Services (the AJLS 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 higher 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 (CSAs) 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 amendments exceeded the scope of the Bill and might not be proposed to the Bill.

Working Party on Solicitors' Rights of Audience

6. In June 2004, the Chief Justice (CJ) 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 (CFA). Other members of the Working Party comprised four other judges, a Law Officer from the Department of Justice (DoJ), two barristers, two solicitors and a lay member not connected with the practice of law. The Working Party's terms of reference was 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.

7. In 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. The Final Report of the Working Party (the Final Report) was published in October 2007. The Working Party recommended that legislation should be enacted to provide the necessary framework for the granting of higher rights of audience to solicitors. CJ had accepted the Working Party's recommendations and requested the Administration to take forward the matter by appropriate legislation.

The Bill

8. The objects of the Bill are to amend the Legal Practitioners Ordinance (Cap. 159) (LPO) to implement the scheme proposed by the Working Party for granting higher rights of audience to solicitors before the High Court (HC) and CFA in civil and criminal proceedings. A new Part IIIB is added to LPO to provide for the necessary legal framework. Under the proposed section 2(1) of the Bill, a solicitor advocate is defined as "a person who has higher rights of audience under Part IIIB".

The Bills Committee

9. At the House Committee meeting on 26 June 2009, Members formed a Bills Committee to study the Bill. The membership list of the Bills Committee is in **Appendix I**.

10. Under the chairmanship of Dr Hon Margaret NG, the Bills Committee has held four meetings with the Administration. Representatives from the Bar Association, the Law Society of Hong Kong (the Law Society) and the Consumer Council have participated in the deliberations of the Bills Committee.

Deliberations of the Bills Committee

Impact of the Bill on the barristers profession

11. The Bills Committee notes that the two legal professional bodies agree with the main proposals in the Bill. Some members including Mr Abraham SHEK, Mr Ronny TONG and Dr Priscilla LEUNG, however, have expressed concerns about the impact of the Bill on the barristers' profession, particularly in respect of junior members of the Bar, and on the standard of advocacy before the courts. It is the position of the Bar Association that it has accepted the proposals in the Bill for the sake of public interest, notwithstanding the adverse effect on the prospects of young barristers. The Bar Association believes that new entrants with aspiration for advocacy work will still choose to join the barrister profession. The Bar Association has also set up Bar Scholarships to encourage bright law graduates to join the Bar by providing them with financial incentive and/or assistance during pupillage.

12. The Bills Committee notes that under the proposed scheme, the Higher Rights Assessment Board (the Assessment Board), comprising mainly senior members of the legal profession, will act as the gatekeeper of the standard of advocacy before the courts. Members have agreed that there is a need to review the proposed scheme at an appropriate junction, say around two years after its implementation. Members have further agreed that the issue should be referred to the AJLS Panel for follow-up.

The Assessment Board

(Proposed new sections 39E, 39F, 39G, 73CA and 73CB)

13. The Assessment Board is established to determine applications by solicitors for higher rights of audience. It comprises members appointed by CJ from serving and former judges, members of the legal profession and an officer of DoJ, as well as a lay member to be selected by the chairperson of the Assessment Board from among a panel of lay persons appointed by CJ. The Assessment 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. Provisions are made for the terms of office, resignation or removal of a Board member and its proceedings.

14. The Assessment Board, rather than the Council of the Law Society (the Council) as originally proposed when the Administration briefed the AJLS Panel in December 2008, will make 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 Assessment Board Rules). Such change has been made as it is considered more desirable to vest in the same body the powers to prescribe rules on both the criteria for assessment and the training/course required to be completed for meeting the specified criteria.

15. The six-year and six-board Rules (the six-six Rules) have been stipulated in the general guidelines on appointments to public sector advisory and statutory bodies (ASBs) issued to appointing authorities for reference. The six-year Rule means that a non-official member of any ASB should not serve for more than six years in any one capacity. The six-board Rule means that a person should not serve as a member on more than six ASBs at the same time. Some members including Mr LAU Kong-wah and Mr Paul TSE have expressed the view that the six-six Rules should also apply to the appointment of the Assessment Board. Dr Margaret NG, however, considers that while the application of the six-six Rules poses no problem as a matter of policy, its inclusion in the law will leave no room for any flexibility in appointment.

16. The Administration has explained that it has not proposed to apply the six-six Rules to the Assessment Board for the following reasons -

- (a) except possibly in relation to the panel of lay members under the proposed new section 39E(5), the pool of persons who are eligible for appointment to the Board is quite small and there can be practical difficulties in identifying sufficient volunteers to fill all the positions if they are bound by the strict requirements of the six-year Rule that they can only serve two terms;
- (b) with regard to the appointments of Board members who are solicitors, Senior Counsel and representative of DoJ, CJ must consult the President of the Law Society, the Chairman of the Bar Council (to be amended to "the Chairman of the Hong Kong Bar Association" as elaborated in

paragraph 24 below) and the Secretary for Justice under the proposed new section 39E(4). Those recommending authorities may have good reasons for recommending a particular nominee to serve more than two three-year terms; and

- (c) under the proposed new section 39E(3), the lay member will be selected by the chairperson of the Board from a panel of persons appointed by CJ. It will be at the discretion of the chairperson whether to select a single member for an extended period or to rotate the panel members. At this stage, it will not be desirable to anticipate how the chairperson will make his or her selection and it will be best to avoid the inflexibility that will arise if the appointment to the panel cannot be for a period of longer than six years.

17. According to the Administration, the Judiciary has expressed agreement with the above reasons. It is considered best for CJ to develop his policy on the number of terms that a member can serve in the light of experience gained after the establishment of the Assessment Board and after taking into account the views of the chairperson and the nominating authorities.

18. The two legal professional bodies have advised the Bills Committee that they appreciate the need for flexibility and raise no objection to the Administration's proposal of not specifying in the Bill any restriction on the length of service for members of the Assessment Board. The Bills Committee notes from the Law Society that the Judiciary generally follows the six-year Rule in making appointments to ASBs dealing with legal matters.

19. Members in general agree that while as a matter of policy, the six-six Rules should be applicable to the Assessment Board, it will 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 CJ to decide on the appointment.

20. The Administration has informed the Bills Committee that the proposed section 39E(3)(b)(v) requires the person who is selected by the chairperson from the panel of lay persons to join the Assessment Board to be appointed by CJ. Since the members of the panel are appointed by CJ under the proposed new section 39E(5), the Judiciary takes the view that the further appointment under the proposed new section 39E(3)(b)(v) by CJ is unnecessary. At the request of CJ, the Administration will introduce CSAs to remove such requirement to avoid the need for double appointment by CJ.

21. The Administration has also informed the Bills Committee that the Bill does not provide for the term of the members of the panel of lay persons. The Administration will introduce CSAs to provide that the members of the panel shall hold office for a term not exceeding three years but may be reappointed to align with the term of the members of the Assessment Board.

22. The legal adviser to the Bills Committee has observed that while the quorum of the Assessment Board under the proposed new section 39G(1) is seven members, it does not require the chairperson to be one of these seven members. Therefore, meetings of the Assessment Board may be held and decisions to be made without any serving or former judges. The legal adviser has suggested that the Administration should consider whether it is necessary to specify that the quorum of the Assessment Board must include the chairperson or an eligible-person member acting as the chairperson. Members consider that an express expression should be added to the Bill to plug any possible loophole as identified by the legal adviser.

23. The Administration has confirmed that there is no provision in the Bill specifying that another member can act as the chairperson in the absence of the latter. Dr Margaret NG has expressed the view that there should be a procedure for another person to chair a meeting in the absence of the chairperson. After consideration of members' views and consultation with the Judiciary, the Administration has agreed to move CSAs to the proposed new section 39G to provide that the quorum of the Assessment Board must include the chairperson or an eligible-person member and an eligible-person nominated by the chairperson should preside at a meeting in the absence of the chairperson.

24. At members' request, the Administration has agreed, after consultation with the Bar Association, to amend the term "the Chairman of the Bar Council" in the proposed new section 39E(4)(b) and the proposed new section 39F(4)(b) to "the Chairman of the Hong Kong Bar Association", so as to achieve consistency with the use of "the President of the (Law) Society" in the proposed new sections 39E(4)(a) and 39F(4)(a).

Application to the Assessment Board and eligibility requirements
(Proposed new sections 39H to 39J)

25. A solicitor who satisfies the eligibility requirements may apply to the Assessment 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 Assessment Board, and accompanied by supporting information and a prescribed fee. The Assessment Board must, in relation to each calendar year, specify one or more periods during which applications may be made.

26. According to the eligibility requirements stipulated in the proposed section 39I, the applicant has to have at least five years' post-qualification practice, of which at least two years must have been in Hong Kong during the period of seven years immediately before the date of application. Further, the applicant has to comply with requirements (e.g. completion of an approved advocacy course and passing of related assessments) to be prescribed by the Assessment Board Rules unless an exemption applies.

27. The two legal professional bodies have confirmed that they are in agreement with the proposed eligibility requirements. Mr Ronny TONG, however, has expressed concern that these eligibility requirements do not include experience in advocacy work before the courts which should be a critical factor of consideration in the grant of higher rights of audience. The two legal professional bodies have advised that advocacy encompasses the acts of speaking and writing in support of a position. The Working Party has recommended in its Final Report that the Assessment Board should be given a degree of latitude in determining the relevant advocacy experience of an applicant, taking into account the totality of his or her litigation and advocacy experience.

28. The Administration has explained that the eligibility requirements under the proposed new section 39I are the threshold requirements only. Apart from satisfying these threshold requirements, an applicant should also satisfy the conditions for granting applications set out under the proposed new section 39L, including experience and competence in litigation and advocacy, whether written or oral.

Determination of application by the Assessment Board
(Proposed new sections 39K to 39M and proposed new section 73CA)

29. The proposed new section 39K provides for the determination by the Assessment Board of an application, and requires the notification of its decision. The required timeframe for the determination and notification is "as soon as practicable". In response to members' enquiry, the Administration has confirmed that in respect of applications for higher rights of audience for both civil and criminal proceedings made under the proposed new section 39H(2)(c), its policy intent is to empower the Assessment Board to grant the applicants higher rights of audience for only civil proceedings or criminal proceedings or both. The Administration will introduce CSAs to add a new section 39K(1A) to make clear such policy intent. The Administration will also introduce consequential amendments to the proposed new section 39K(2)(a)(ii) and the proposed new section 39M(3) to provide that the Assessment Board must also give reasons for its decision made under the proposed new section 39K(1A)(b) to grant an application in part and, where an application is granted in part, the applicant must be given an opportunity to make representation.

30. The proposed new section 39L sets out the conditions for granting the application. The Assessment Board has to be satisfied, inter alia, that the applicant has acquired sufficient litigation experience within the period of three years immediately before the date of the application and is in all respects a suitable person. Pursuant to the proposed new section 73CA, detailed eligibility requirements and matters relating to the assessment of applications under the accreditation route and the exemption route will be governed by subsidiary legislation to be made by the Assessment Board, which will be subject to the scrutiny of LegCo.

31. The Assessment 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.

32. In response to members' enquiry about the appeal mechanism in respect of applications for higher rights of audience, the Administration has advised that the proposed new section 73CA(2)(c)(i) provides that the Assessment Board may make rules on arrangements for appeal or review in respect of matters concerning assessments or examinations. A person who has failed in his or her application for higher rights of audience is not precluded from making another application in the following year and subsequent years.

33. Ms Miriam LAU has enquired as to whether the applicant concerned will be notified of the enquiries made by the Assessment Board with the Council concerning his or her eligibility under the proposed new section 39M(1)(a), and whether the details of the enquiries and the information provided by the Council will be conveyed to the applicant.

34. The Administration has advised that pursuant to the proposed new section 73CA(1)(a)(v), the Assessment Board is empowered to make rules to provide for the enquiries made under the proposed new section 39M(1)(a). It is envisaged that the rules to be made by the Assessment Board would, subject to the Assessment Board's own views, be likely to provide for the following minimum requirements -

- (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.

35. The Administration has further advised that while the Judiciary has pointed out that it is inappropriate to pre-empt the Assessment Board (which has not yet been formed) on this subject, it would have no objection for the Administration to suggest the above requirements to the Assessment Board when it is formed for its consideration.

36. The Law Society has explained to the Bills Committee that the most common enquiry is likely to be in respect of conduct matters and it is the firm view of the Council that only those cases which result in disciplinary action should be disclosed to the Assessment Board. Chapter 16 of the Hong Kong *Solicitors' Guide to Professional Conduct* lists the sanctions which can be imposed by the Law Society: "Letter of Regret", "Letter of Disapproval"/"Strong Letter of Disapproval" and finally a referral to the Convenor of the Solicitors Disciplinary Tribunal.

Higher rights of audience certificate

(Proposed new sections 39N, 39P to 39R and proposed amended section 73)

37. The proposed new section 39N makes it clear that on the granting of an application, the applicant has the higher rights of audience sought, and those rights will then be exercisable by the applicant as a solicitor. The Council, upon notification, must issue a certificate in respect of higher rights of audience 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 HC 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. The Council is also empowered to issue a code of conduct for solicitor advocates, in consultation with CJ and the Council of the Bar Association.

38. The Consumer Council which is in support of the Bill has suggested that the list of persons with higher rights of audience to be kept by the Council should include further information such as specialized areas and year of admission of the solicitors. The Law Society has undertaken to consider positively the Consumer Council's suggestion. The Administration has expressed the view that while it might be desirable for potential clients to obtain the additional information concerning the solicitor advocates as suggested by the Consumer Council, it is not appropriate to require such information for the purposes of the Bill, as such information is not directly relevant to their accreditation as solicitors with higher rights of audience.

Cessation and re-acquisition of higher rights of audience

(Proposed new section 39O)

39. 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.

40. In response to members' enquiries about the arrangement for a solicitor to reacquire higher rights of audience, the Administration has advised that a person will reacquire his higher rights of audience automatically on fulfillment of the relevant conditions set out in the proposed new section 39O(2) as appropriate, i.e. the rights will be reacquired by operation of law and no procedure for reacquiring such rights

will be required. Ms Miriam LAU has, however, expressed concern that while the proposed new section 39O(2)(a) stipulates to the effect that a person will automatically reacquire his or her higher rights of audience upon being discharged from bankruptcy, in reality that person has to apply to the Law Society to resume his or her practice as a solicitor before being able to exercise higher rights of audience again.

41. The Law Society has explained that for a solicitor who has been adjudged bankrupt, his or her practicing certificate will "automatically determine" pursuant to section 6(7) of LPO. The name of the bankrupt solicitor will not be struck off the Roll of Solicitors. Upon discharge a solicitor can make an application for a new practicing certificate.

Unlawful exercise of higher rights of audience

(Proposed new section 45A and proposed amended sections 50A and 51)

42. 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.

43. Some members have queried whether there is a need for imposing criminal sanction against purported exercise of higher rights of audience by a person not having such right under the proposed new section 45A on the grounds that it is the court's inherent jurisdiction to hold a person in contempt; there is no precedent found of a person being prosecuted for such act under the existing section 45(2)(a) and (c); and the matter can also be dealt with by the disciplinary proceedings of the Law Society. They are also concerned that under the proposed section 45A, a person who has purported to exercise higher rights of audience may be subject to double jeopardy, i.e. that person can be guilty of contempt of the court under subsection (a) and also liable to prosecution for an offence under subsection (c).

44. The Administration has given the following justifications for the proposed new section 45A -

- (a) the legal profession supports the need for imposing sanction against purported exercise of higher rights of audience;
- (b) when a person not having higher rights of audience holds himself or herself out to have such rights to represent members of the public before the court, it is not only an internal matter for the Law Society, but also a matter of public interest; and

- (c) while the act is an affront to the court in question which will be entitled to punish that person for contempt, it may not be detected until after that person has appeared before the court, in which case the sanction under the proposed new section 45A(c) can be invoked.

The Administration has assured members that if it has come to the attention of DoJ that a person has already been punished for contempt of the court for a certain act, it will certainly be a factor of consideration in deciding whether prosecution action should be taken in respect of the same act by that person.

45. Some members consider that the Chinese rendition of the word "purport" ("看來是") in the proposed new section 45A does not reflect fully the meaning of the word in the context. After consideration, the Administration has agreed to adopt "其意是" as the Chinese rendition for the word and will move a CSA to such an effect.

Commencement of the Amendment Ordinance

46. The Law Society has expressed its hope that the Assessment Board will be convened within six months of the passage of the Bill and will be operational within six months thereafter. According to the Administration, the Judiciary has advised that on the assumption that the legislation would be brought into force in about six months after enactment, it is expected that the Assessment Board would become operational within one month thereafter. In this connection, barring unexpected circumstances, the Administration would expect the Board to be in a position to invite applications about 12 months after the enactment of the Bill.

Committee Stage amendments

47. Apart from the CSAs highlighted above, the Administration will also move minor and consequential amendments. A full set of the CSAs to be moved by the Administration and agreed by the Bills Committee is in **Appendix II**.

Resumption of Second Reading debate

48. Subject to the moving of the proposed CSAs by the Administration, the Bills Committee supports the resumption of the Second Reading debate on the Bill at the Council meeting on 20 January 2010.

Advice sought

49. Members are invited to note the deliberations of the Bills Committee.

Council Business Division 2
Legislative Council Secretariat
6 January 2010

Bills Committee on Legal Practitioners (Amendment) Bill 2009

Membership list

Chairman Dr Hon Margaret NG

Members Hon Albert HO Chun-yan
Hon LAU Kong-wah, JP
Hon Miriam LAU Kin-yee, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Ronny TONG Ka-wah, SC
Dr Hon Priscilla LEUNG Mei-fun
Hon Paul TSE Wai-chun

Total : 9 members

Clerk Miss Flora TAI

Legal Adviser Miss Winnie LO

Date 15 July 2009

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 IIIB 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 IIIB 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”.

立法會
Legislative Council

Ref : CB2/BC/7/08

LC Paper No. CB(2)2312/08-09
(These minutes have been seen
by the Administration)

Bills Committee on Legal Practitioners (Amendment) Bill 2009

**Minutes of the first meeting
held on Wednesday, 15 July 2009, at 4:30 pm
in Conference Room B of the Legislative Council Building**

Members present : Dr Hon Margaret NG (Chairman)
Hon Albert HO Chun-yan
Hon LAU Kong-wah, JP
Hon Miriam LAU Kin-yee, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Ronny TONG Ka-wah, SC
Dr Hon Priscilla LEUNG Mei-fun
Hon Paul TSE Wai-chun

Public Officers attending : Department of Justice

Mr Ian Wingfield
Solicitor General

Ms Adeline WAN
Senior Assistant Solicitor General

Ms Sherman CHAN
Senior Assistant Law Draftsman

Ms Emma WONG
Acting Senior Government Counsel

Mr Christopher NG
Senior Government 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

Action

I. Election of Chairman

Dr Margaret NG was elected Chairman of the Bills Committee.

II. Meeting with the Administration

[LC Paper Nos. CB(2)2210/08-09(02) - (04), CB(3)690/08-09, LP 5004/4/1C XIII and LS94/08-09]

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

Clerk

3. Members agreed to invite the two legal professional bodies, the Consumer Council and the three local law schools to give views on the Bill and to schedule a meeting to receive views from these organizations.

Clerk

4. Members also agreed -

- (a) that the Law Society of Hong Kong (the Law Society) be requested to
 - (i) explain in writing how the Code of Conduct for Solicitor-Advocates (the Code of Conduct) would fit within the framework of the Hong Kong Solicitors' Guide to Professional Conduct, particularly in respect of the enforcement of the Code of Conduct (including penalties for infringement), and (ii) to brief members on the content of the draft Code of Conduct; and
- (b) that the Law Society and the Hong Kong Bar Association be requested to brief members on their plan for the advocacy course required to be completed for obtaining higher rights of audience, including the frequency, course fee, class size, design and content as well as provider(s) of the course.

III. Any other business

5. There being no other business, the meeting ended at 5:31 pm.

**Proceedings of the first meeting of the
Bills Committee on Legal Practitioners (Amendment) Bill 2009
on Wednesday, 15 July 2009, at 4:30 pm
in Conference Room B of the Legislative Council Building**

Time Marker	Speaker(s)	Subject(s)	Action required
000137 - 000159	Dr Margaret NG Mr Ronny TONG Mr LAU Kong-wah	Election of Chairman	
000200 - 000423	Chairman Clerk	<p>Invitation for public views on the Bill</p> <p>The Chairman's comment that there were two major areas of public concern, namely whether the legislative proposals would bring down the costs of litigation and whether the standard of advocacy before the courts would be affected.</p>	
000424 - 001011	Administration Chairman	<p>Briefing by the Administration on the Bill in respect of the following -</p> <ul style="list-style-type: none"> (a) the origin of the Bill; (b) the membership and functions of the proposed Higher Rights Assessment Board (the Assessment Board); (c) the eligibility requirements for applications by solicitors for higher rights of audience; (d) the power of the Assessment Board to make rules; - the Administration's advice that the intention had always been for the Assessment Board to make rules relating to applications for higher rights of audience and determination of those applications, as well as matters concerning its own procedures. Under the Bill as it presently stood, the Assessment Board, rather than the Council of the Law Society of Hong Kong (the Law Society) as originally proposed, would also make rules on matters concerning any courses or training or assessments or examinations required to be completed or passed by an applicant for higher rights of audience. Such change was made as it was considered more desirable to vest in the same body the powers to prescribe rules on both the criteria for assessment and the training/course required to be completed for meeting the specified criteria; (e) provisions in the Bill relating to the quorum for a meeting of the Assessment Board and voting on matters requiring the decision of the Assessment Board; and 	

Time Marker	Speaker(s)	Subject(s)	Action required
		(f) the Code of Conduct for Solicitor-Advocates to be issued by the Council of the Law Society.	
001012 - 001138	Chairman Administration	<p>In response to the Chairman, the Administration's confirmation that the two legal professional bodies agreed with the main proposals in the Bill.</p> <p>The Chairman's enquiry on how the eligibility requirements under the Bill compared with those in the United Kingdom (UK). The Administration's response that the eligibility requirements under the Bill were more rigorous than those in UK. Under the proposed scheme, applicants for higher rights of audience must have at least five years' post-qualification experience, among others. The English system allowed applicants who did not possess the requisite years of practice experience to obtain higher rights of audience via a development route.</p>	
001139 - 001349	Mr Ronny TONG Administration Chairman	<p>Mr Ronny TONG's concern about how the Code of Conduct for Solicitor-Advocates (the Code) would fit within the framework of the Hong Kong Solicitors' Guide to Professional Conduct, in particular in respect of the enforcement of the Code.</p> <p>Members agreed to request the Law Society to explain in writing how the Code would fit within the framework of the Hong Kong Solicitors' Guide to Professional Conduct, particularly in respect of the enforcement of the Code (including penalties for infringement).</p>	Clerk to follow-up (para 4 of minutes)
001350 - 002019	Mr Albert HO Administration Chairman	<p>Mr Albert HO's enquiry on details of the mechanism for assessing the eligibility of applicants for higher rights of audience.</p> <p>The Administration's response that pursuant to the proposed section 73CA, detailed eligibility requirements and matters relating to the assessment of applications under the accreditation route and the exemption route would be governed by subsidiary legislation to be made by the Assessment Board, which would be subject to the scrutiny of the Legislative Council.</p>	
002020 - 002142	Mr Albert HO Chairman	In reply to Mr Albert HO, the Chairman's remarks that the Working Party on Solicitors' Rights of Audience (the Working Party) did not recommend the imposition of a quota on the number of solicitors who might be granted higher rights of audience.	
002143 - 002707	Mr Abraham SHEK Chairman Administration	<p>Mr Abraham SHEK's concerns about the impact of the legislative proposals on the barristers profession, particularly in respect of junior members of the Bar, and on the standard of advocacy before the courts.</p> <p>The Chairman's advice that such issues had been discussed at previous meetings of the Panel on Administration of Justice and Legal Services. The Bar Association</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
		<p>recognized that the proposals would have adverse effect on the prospect of young barristers but nevertheless accepted the proposals as it was in the public interest. Under the proposed scheme, the Assessment Board, comprising mainly senior members of the legal profession, would act as the gatekeeper of the standard of advocacy before the courts.</p> <p>In response to Mr SHEK, the Administration's advice that it had no plan for the fusion of the two branches of the legal profession.</p>	
002708 - 003249	Dr Priscilla LEUNG Chairman Administration	<p>Dr Priscilla LEUNG echoed the concern about the impact of the legislative proposals on young barristers.</p> <p>Dr LEUNG's views that consideration should be given to -</p> <ul style="list-style-type: none"> (a) reviewing on a regular basis the number of solicitors to be granted higher rights of audience every year, for instance, by way of imposing a quota system; and (b) relaxing some of the restrictions currently imposed on barristers such as the referral system. <p>In respect of item (a) above, the Administration's response that there was virtually no support among the respondents to the Working Party's Consultation Paper for the imposition of a quota.</p> <p>The Chairman's advice that the intake of the advocacy course required for obtaining higher rights of audience would restrict the number of solicitors being granted higher rights of audience each year.</p>	
003250 - 003716	Dr Priscilla LEUNG Administration Chairman	<p>Dr Priscilla LEUNG's enquiry on whether the Bill provided for any appeal mechanism in respect of applications for higher rights of audience.</p> <p>The Administration's response that -</p> <ul style="list-style-type: none"> (a) the proposed section 73CA(2)(c)(i) provided that the Assessment Board might make rules on arrangements for appeal or review in respect of matters concerning assessments or examinations; and (b) a person who had failed in his/her application for higher rights of audience was not precluded from making another application in the following year and subsequent years. 	
003717 - 004435	Mr Ronny TONG Chairman Administration	<p>Mr Ronny TONG shared the concern about the impact of the legislative proposals on the barristers profession.</p> <p>Mr TONG's indication that he did not support the imposition of a quota on the number of solicitors to be granted higher rights of audience.</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
		<p>Mr TONG sought information on the frequency and class size of the advocacy course required to be completed under the accreditation route, which would have bearing on the number of solicitors who would be granted higher rights of audience each year.</p> <p>The Administration's response that the rules relating to the detailed arrangements of the course would be made by the Assessment Board after the enactment of the Bill.</p> <p>Members agreed to request the two legal professional bodies to brief members on their plan for the advocacy course, including frequency, course fee, class size, design and content as well as provider(s) of the course.</p>	Clerk to follow up (para 4 of minutes)
004436 - 004554	Mr Abraham SHEK Chairman Mr Ronny TONG	Members' agreement to invite the three local law schools to give views on the Bill.	
004555 - 004901	Ms Miriam LAU Chairman Administration	<p>Ms Miriam LAU's request for clarification as to whether solicitor-advocates who were granted higher rights of audience were subject to the cab-rank rule.</p> <p>The Administration's response that it was a matter of conduct for the profession which would be governed by the Code of Conduct for Solicitor-Advocates to be issued by the Law Society in consultation with the Chief Justice and the Council of the Bar Association.</p> <p>The Law Society to be requested to brief members on the content of the draft Code of Conduct for Solicitor-Advocates when presenting its views to the Bills Committee.</p>	Clerk to follow up (para 4 of minutes)
004902 - 005137	Mr Paul TSE Administration	<p>Mr Paul TSE sought clarification on the rationale for putting in place a more rigorous system than UK in terms of eligibility criteria.</p> <p>The Administration's response that it was the consensus of the Working Group that, to balance competing interests, there should be a threshold on the minimum period of post-qualification experience required of solicitors before they could be granted higher rights of audience. Instead of imposing a quota on the number of solicitors who might be granted higher rights of audience, it was proposed under the scheme that only solicitors who were experienced and competent advocates would be eligible to apply for higher rights of audience.</p>	
005138 - 005707	Mr Paul TSE Administration Chairman	Mr Paul TSE's enquiry on justifications for allowing barristers unlimited rights of audience before the courts upon completion of pupillage without any formal assessment of their competence in advocacy.	

Time Marker	Speaker(s)	Subject(s)	Action required
		<p>The Administration's response that -</p> <p>(a) whilst it was true that newly admitted barristers enjoyed immediate rights of audience to all levels of courts, in practice, owing to the referral system, the solicitors' profession had acted as a gatekeeper for the level of courts at which barristers would be given instruction; and</p> <p>(b) the extent of advocacy training of young barristers was a separate issue from the subject of the Bill which was to grant higher rights of audience to solicitors. The Chairman of the Bar Association had previously indicated to the Panel on Administration of Justice and Legal Services that the Bar Association was considering means to enhance the public's confidence in young barristers in the form of examination or accreditation.</p>	
005708 - 010043	Chairman Mr Paul TSE Mr Ronny TONG Mr Albert HO	<p>Organizations to be invited to give views on the Bill</p> <p>Date of next meeting</p>	Clerk to follow-up (para 3 of minutes)