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GOVERNMENT SECRETARIAT

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來函檔號 Your Ref.:

Mrs Percy Ma
Clerk to Panel on Administration
of Justice and Legal Services
Legislative Council Secretariat
3/F, Citibank Tower
3 Garden Road
Hong Kong

By Fax [2509 9055]

Dear Mrs Ma,

Panel on Administration of Justice and Legal Services

Criminal Legal Aid Fees and

**Five Yearly Review of the Criteria for Assessing Financial
Eligibility of Legal Aid Applicants (Five-Yearly Review)**

Thank you for your letter of 6 July on the submissions from the two legal professional bodies on criminal legal aid fees.

In reply to a LegCo question on 11 May 2005, the Chief Secretary for Administration said that the Administration would keep an open mind to proposals that might further improve the cost-effectiveness of the criminal legal aid fees system. We have recently received and started to examine the Bar Association's and the Law Society's separate submissions on the fees system, made available to us in April and June 2005 respectively. We will consider carefully the need and basis for reviewing the criminal legal aid fee system. As requested, we will update you on the progress, and as far as possible an indication of the timetable when we may be able to make a substantive response to the separate submissions.

I would also like to take the opportunity to update Members on the position of the 2004 biennial review of criminal legal aid fees. Taking account of the views submitted by the Bar Association and the Law Society on the review findings, the Administration has decided not to follow the recorded deflation rate of 4.4% and adjust downward the fee level now. Rather, the Administration would reserve the 4.4% reduction and consider it together with the findings of the next biennial review, due in mid 2006. We have just advised the two professional bodies of the Administration's decision and, following established practice, copied the correspondence to the Panel.

As to the five-yearly review, in line with the established mechanism, we completed the review and consulted the Panel on the review findings and proposals to improve the assessment criteria. Panel papers (No. CB(2)2581/02-03(02) and No. CB(2)159/03-04(03)) and the discussion at the Panel meetings on 29 July 2003 and 29 January 2004 are relevant. We have also kept the Panel informed of our responses to the Legal Aid Services Council and the Law Society in September 2004. The Administration's agreed improvement measures are recapitulated in Annex for easy reference.

To facilitate early implementation of the improvement measures, we undertook at the beginning of the current legislative term to start preparing the amendment regulations in consultation with the Department of Justice. We will strive to complete the drafting work as soon as possible, with a view to tabling the amendment regulations in the Legislative Council upon the commencement of the 2005/06 legislative session.

The amendment regulations are subject to negative vetting of the Legislative Council. We stand ready to brief Members on the subsidiary legislation when a Subcommittee is set up to examine the regulations.

I should be grateful if you would keep Members informed of the developments.

Yours sincerely,



(Mrs Alice Cheung)
for Director of Administration

cc The Honorable Margaret Ng, Panel Chaitman
DLA

Annex

Improvement Measures

Five Yearly Review of the Criteria for Assessing Financial Eligibility
Of Legal Aid Applicants (Five-Yearly Review)

- (a) in calculating a legal aid applicant's income, the loss or reduction of future income, subject to satisfactory proof to the Director of Legal Aid ("DLA"), will be taken into account.
- (b) in calculating a legal aid applicant's disposable income, the following items should be included as deductible –
- (i) provision for care of all dependants (other than just dependant children) during the time that the legal aid applicant is at work if considered reasonable, provided that they are living with the applicant, and are unable to take care of themselves by reasons of mental or physical disabilities or infirmity;
 - (ii) extension of the above deductible to also self-employed applicants; and
 - (iii) maintenance payment for ex-spouse and children, either ordered by the court and actually paid, or in case of voluntary payment, the amount actually paid which is considered reasonable and which should not exceed the statutory allowances as if the ex-spouse and children were the applicants' dependants.
- (c) in assessing disposable capital of an applicant to pursue an accident-related personal injury claim, DLA should be able to disregard an amount of the insurance monies received by the applicant in respect of the injuries to which the claim relates, to cover such future expenses on treatment, equipment and care in the following three years, as considered by DLA to be reasonable;
- (d) the contribution rate for the Supplementary Legal Aid Scheme should be reduced from the present 12% to 10%;
- (e) the interest rate to be accrued and payable by the aided person if the DLA agrees to defer enforcing the first charge on property recovered should be one that have regard to the movements in the market, instead of a fixed rate as at present. The rate will on one hand be lower than the commercial best lending rate and on the other hand, not incur a loss to the Government.