

政府總部
香港下亞厘畢道



GOVERNMENT SECRETARIAT
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HONG KONG

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10 November 2005

Mr Philip Dykes, S. C.
Chairman
Hong Kong Bar Association
LG2 Floor
High Court
38 Queensway
Hong Kong

Dear Mr Dykes,

I refer to your letter of 27 July 2005. We have taken some time in preparing our reply pursuant to consultation with our legal adviser and the Judiciary.

Section 9A(1)(g) of the Criminal Procedure Ordinance (CPO) provides that the Criminal Procedure Rules Committee (CPRC) "may, with the approval of the Legislative Council, make rules providing for the granting of legal aid in criminal cases to persons of limited means which rules, in particular, may prescribe the scale of fees and costs which shall be paid to solicitor or counsel acting for an aided person". The scale of fees payable to solicitors and counsel for criminal legal aid cases are currently set out in Rule 21 of the Legal Aid in Criminal Cases Rules.


The authority to approve the adjustment of the fees level has been delegated by the Finance Committee to the Director of Administration, provided that the adjustment does not exceed the movement of the CPI(C) in the relevant reference period. Should the Administration make a policy decision to adjust the fees level, the Administration will, in accordance with section 9A(1) of CPO, seek the approval of the CPRC to make the relevant Rules, and introduce the amendment Rules to the Legislative Council.

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Following the last biennial review, notwithstanding the recorded downward movement of CPI(C) then, the Administration decided not to adjust and reduce the level of fees payable to criminal legal aid lawyers. We also advised the two professional bodies of the policy decision in July 2005. Given that the CPRC's statutory role is to make rules to effect the Administration's decision to adjust the fees level, it has no function to perform in relation to the decision to freeze and not to adjust the fees level. Therefore, the Administration saw no need to refer the matter to the CPRC. We have, nonetheless, kept the then Chairman of the CPRC informed of the review and the Administration's decision, through the Judiciary Administrator's office.

I trust that the above has clarified matters.

Yours sincerely,



(Mrs Alice Cheung)
for Director of Administration

c.c. Director of Legal Aid
Clerk to the LegCo Panel on Administration of Justice and Legal
Services
Secretary to the Criminal Procedure Rules Committee
Judiciary Administrator (Attn.: Ms Sally Wong)