

**For information on  
25 February 2008**

**LegCo Panel on Administration of Justice and Legal Services**

**Review of Criminal Legal Aid Fees System**

**PURPOSE**

This paper reports the progress of discussions with the two legal professional bodies on the criminal legal aid fee system.

**BACKGROUND**

2. The Legal Aid Department (LAD) engages counsel and solicitors in the private practice as defence lawyers in criminal legal aid cases. The scale of fees payable to these assigned lawyers as well as the fee assessment mechanism are set out in the Legal Aid in Criminal Cases Rules (the Rules), a subsidiary legislation of the Criminal Procedure Ordinance (Cap. 221).

3. In response to the call for change by the two legal professional bodies, the Administration has since March 2006 engaged stakeholders, namely, the Judiciary, the Hong Kong Bar Association (the Bar Association), the Law Society of Hong Kong (the Law Society) and the Department of Justice in a comprehensive review. The Administration considered that it would be important to take the following principles into account in taking forward the review –

- (a) general compatibility of the criminal legal aid fee system for the defense lawyers with the fee regime for the prosecution counsel;
- (b) rectification of inconsistency between policy on payment to solicitors and counsel;
- (c) reasonable and effective remuneration for legal aid assigned lawyers within the remits of public affordability; and
- (d) prudence in public money spending.

## **PROGRESS**

4. The Administration had responded to the various suggestions by the two legal professional bodies in a positive manner. The Administration has reached broad consensus with the two legal professional bodies on the proposed structure of the criminal legal aid fee system that will operate on a “marked-brief” basis.

5. The proposed fee structure is an overhaul of the current system. The major improvements are set out below –

### **(A) Proper recognition for preparation or pre-trial work**

6. Under the current system, solicitors and counsel alike are paid a “flat” fee for pre-trial preparation, irrespective of the hours put in. We accept that this does not fully recognize the preparation and effort put in pre-trial work.

7. Under the proposed system, pre-trial work will be remunerated according to the time required. In gist, for counsel, there will be a “brief fee” to cover the first day of pre-trial work and the first day of court hearing. A new “additional preparation fee” will be payable for each subsequent half day of pre-trial work and a “refresher fee” for each subsequent court hearing day. As for solicitors, there will be a “reading fee” to be payable every hour (90 pages to be regarded as an hour’s reading), depending on the volume of material to be read, a “preparation fee” to be paid on a half-day basis for other pre-trial preparation, and a “court hearing day fee” for each court hearing day.

### **(B) Rationalisation of fee items**

8. At present, where a conference has taken place among the assigned lawyers and the legally aided defendant, the counsel, but not the solicitor, is eligible for a “conference fee”. Under the proposed structure, conference fee will also be payable to solicitors.

9. Under the proposed system, there will also be transparent criteria for classification of cases where necessary and the applicable rates will be clearly set out. Also, the nomenclature of payment items will better reflect the different nature of work of counsel and solicitors.

(C) Enhanced transparency for the fee setting and re-determination basis

10. Under the current system, the fee payable to an assigned lawyer is assessed after the work is done and the case concluded. Under the proposed system, the classification of a particular case and hence the rates, as well as the required preparation time will be assessed beforehand and marked on the brief when making the assignment. Assigned lawyers will be allowed to view bundle before accepting assignments whenever circumstances permit, to facilitate their consideration. These measures will greatly enhance the transparency of the fee system.

11. At present, an increase in the fee payable is only allowed if the case is exceptionally lengthy or complex, in which case the assigned lawyer has to first apply to the court and be granted with certificates of exceptionalities after the trial. Under the proposed system, assigned lawyers may seek LAD's re-determination both during and at the end of the case. For transparency, the circumstances that may require re-determination will be set out. For instance, where there is voluminous amount of additional evidence provided by prosecution after the case is assigned; where research on special/peculiar legal issues that are not identified at the time of assignment is required, etc.

**Payment for individual cases**

12. The improvements mentioned in paragraphs 7 to 11 above will directly increase the payment for individual cases. The Administration reported to this Panel that based on the criminal legal aid fee expenditure in the financial year 2004-05 (about \$91 million), the estimated increase in criminal legal aid expenditure arising from the proposed change in the fee structure would be roughly \$30 million per annum, on the basis of current rates. In 2006-07, the criminal legal aid fee expenditure was about \$105 million. The expenditure in criminal legal aid fee is expected to increase by around 30% should we adopt the proposed fee structure. The actual extent of increase may be more and will vary among cases, largely depending on how much pre-trial work the assigned lawyers devoted to the case, and, in the case of solicitors, also the number of hours of conference taken place.

## **WAY FORWARD**

13. There is already a broad consensus with the two legal professional bodies on the fee structure. We wrote to the Law Society in July 2007 to invite its continual discussion with the Administration on the issue of rates. In December 2007, the Law Society wrote back reiterating its concern on the existing rates.

14. We will continue to discuss with the stakeholders on the proposed rates for the various items with a view to resolving differences. We are mindful that in working out an improved criminal legal aid fee system, we have to balance the need to provide reasonable and effective remuneration to assigned lawyers, and the duty to be prudent in public money spending.

15. As and when we have reached agreement with the two professional bodies, the Administration will revise the Rules and seek Finance Committee's approval for the additional financial provisions. Separately, the Rules will be submitted to the Criminal Procedure Rules Committee for endorsement and Legislative Council for approval through a positive resolution.

Home Affairs Bureau  
Legal Aid Department

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