

**For discussion  
on 22 June 2009**

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

### **Review of Criminal Legal Aid Fees System**

#### **PURPOSE**

This paper reports the latest progress of discussion with the Law Society of Hong Kong (“the Law Society”) on the criminal legal aid fees system.

#### **BACKGROUND**

2. At the meeting of the Legislative Council Panel on Administration of Justice and Legal Services (“the Panel”) held on 16 December 2008, the Administration informed the Panel of our offer to the Law Society in November 2008 on increased rates for Solicitors handling criminal legal aid cases.

#### **RECENT DEVELOPMENTS**

3. We note the Law Society’s concern that the rates offered to the Instructing Solicitors handling criminal legal aid cases at the District Court level (which amounted to some \$520 per hour) are not acceptable. As requested, the Administration has again critically re-visited the offer made to the Law Society in November 2008. In April 2009, we wrote to the Law Society offering a further increase to the rate for Instructing Solicitors handling criminal legal aid cases at the District Court. A comparison of the current rate and the proposed rate for Solicitors (simplified as hourly rates) is provided at **Enclosure A** for Members’ reference.

4. In considering the level of rates for Solicitors, we have taken into account factors including division of labor between Counsel and Solicitors in criminal legal aid cases, and the Law Society’s wish to have the fees raised to a professional and reasonable level to attract more Solicitors to take up criminal legal aid work. We have adopted the

principle of prudent utilization of public funds, and considered from the perspective of public affordability in determining the appropriate increase in criminal legal aid fees for Solicitors. In the process, we have drawn reference from the remuneration to government lawyers handling criminal cases<sup>1</sup>.

5. Depending on the level of courts and the individual cases, remuneration for Solicitors would increase by about one to four times under the new fee structure and rates.

## WAY FORWARD

6. We welcome continuous discussion with the Law Society on the remuneration package for Solicitors, and are prepared to review the rates in two years' time upon implementation of the new rates<sup>2</sup>.

7. As a next step, we hope to proceed with consultation with the Criminal Procedure Rules Committee upon reaching agreement with the Law Society. Draft legislative work for implementation of the new criminal legal aid fee structure and fees will follow.

8. Separately, the Administration has completed the biennial review of the criminal legal aid fees. Details of the review are set out at **Enclosure B**. The fees will be raised by 8.3% in accordance with the movement in Consumer Price Index (CPI) (C) during the reference period

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<sup>1</sup> For illustration purpose, the hourly rates for Government Counsel and Legal Aid Counsel in 1992 and 2009 are respectively \$260 and \$468 per hour, while the rates for Senior Government Counsel and Senior Legal Aid Counsel in 1992 and 2009 are respectively \$310 and \$687.

For the assigned Solicitors undertaking legal aid cases, the hourly rates in 1992 and 2009 are respectively \$280 and \$425 for High Court cases. The rates are now proposed to be increased to \$730 per hour in the current review exercise, representing a 160% increase over the rates in 1992. For the District Court cases, the hourly rates in 1992 and 2009 are respectively \$190 and \$300. In response to the Law Society's request, the rates are now proposed to be further increased from \$520 to \$620 per hour, representing a 226% increase over those in 1992.

Separately, at the Panel meeting held on 16 December 2008, Members enquired about the status of the grade structure review on the Government Counsel grade. We understand from the Department of Justice that the report for Grade Structure Review (Report No. 43) was released on 27 November 2008. Both the starting point and the maximum point of the Government Counsel rank (which also apply to Legal Aid Counsel) remain unchanged.

<sup>2</sup> As regards the suggestion of the Hong Kong Bar Association to delink the implementation of the revised criminal legal fee structure for Counsel from that for Solicitors, the Administration will keep in view of the proposal by the Bar Association on delinking the implementation of the criminal legal fee system for Counsel from that for Solicitors and the outcome of discussion with the Law Society.

from July 2006 to July 2008. The Legal Aid Services Council and the legal professional have been informed of the adjustment. Subject to the amendments made by the Criminal Procedure Rules Committee to Rule 21 of the Legal Aid in Criminal Cases Rules to give effect to the proposed new fees, we will give notice to move a motion to obtain the approval from the Legislative Council of the amendment Rules in the next legislative session.

**Home Affairs Bureau  
Legal Aid Department  
June 2009**

**Comparison of Current Rates and Proposed Rates for Solicitors  
Undertaking Criminal Legal Aid Cases**

	(a)  Current Rates <i>(simplified as hourly rate)</i>	(b)  Proposed Rates under New Structure and New Rates for Solicitors (taking into account the 8.3% price adjustment as a result of biennial review)  <i>(simplified as hourly rate)</i>
<b>District Court</b>		
Instructing Solicitor	Not exceeding \$300	Not exceeding \$620 (Original proposal: Not exceeding \$520)
Solicitor- Advocate	Not exceeding \$1,050	Not exceeding \$1,136
<b>Court of First Instance</b>		
Instructing Solicitor	Not exceeding \$425	Not exceeding \$730
<b>Court of Appeal</b>		
Instructing Solicitor	Not exceeding \$570	Not exceeding \$990

**The Biennial Review of Criminal Legal Aid Fees, Prosecution Fees  
and Duty Lawyer Fees**

The Administration has completed the 2008 biennial review of the fees payable to:

- (a) lawyers in private practice engaged to appear for the Government in criminal cases;
- (b) lawyers in private practice who undertake litigation work in respect of criminal cases on behalf of the Legal Aid Department; and
- (c) duty lawyers providing legal assistance under the Duty Lawyer Scheme<sup>3</sup>.

2. This paper reports on the Administration's findings and proposed way forward.

**BACKGROUND**

3. The fees for lawyers in private practice assigned to undertake litigation work in respect of criminal cases on behalf of the Legal Aid Department are prescribed in Rule 21 of the Legal Aid in Criminal Cases Rules under the Criminal Procedure Ordinance. The Department of Justice uses the same scale of fees to engage counsel in private practice to appear for the Government in criminal cases. The fee payable under the Duty Lawyer Scheme is the same as the brief fee payable by the Department of Justice to counsel to appear in the magistrate court as prosecuting counsel.

4. Pursuant to the decision of the Legislative Council Finance Committee in October 1992, the above fees (collectively referred to as "the fees" in the rest of the paper) are subject to review by the Administration on a biennial basis. The Finance Committee also delegated in June 2003 the authority to approve future adjustments to any of the fees to the Director of Administration, provided that the extent of adjustment is no greater than the movement of the Consumer Price Index

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<sup>3</sup> The Duty Lawyer Scheme provides legal representation to eligible defendants who appear in Magistrates' Courts, Juvenile Courts and the Coroners' Court.

(C) (CPI(C)) during the reference period.

## THE PREVIOUS BIENNIAL REVIEWS

5. In conducting the biennial reviews, the Administration takes into account mainly inflation/deflation during the reference period and whether there has been difficulty in engaging the services of counsel and solicitors. We would also consider other factors such as the state of economy and office rental. The last biennial review was completed in 2006. The following summarizes the outcome of the previous biennial reviews -

Year	Adjustment
1996 review	+18.18%
1998 review	+/-0%
2000 review	+/-0%
2002 review	- 4.3%
2004 review	+/-0%
2006 review	+/-0%

## THE CURRENT REVIEW

6. The Administration has completed the 2008 biennial review. We note that the CPI(C) for the reference period (i.e. July 2006 to July 2008) had increased by 8.3%.

7. The Home Affairs Bureau, in consultation with the Director of Legal Aid and the Department of Justice, therefore proposes to adjust the fees upward by 8.3% in accordance with inflation in the reference period. The existing fees and the proposed fees, rounded to the nearest \$10, are listed in the Appendix.

8. The impact of economic changes after July 2008 will be reflected in the next biennial review.

**June 2009**

**Biennial Review –  
Criminal Legal Aid Fees,  
Prosecution Fees and Duty Lawyer Fees**

<u>Nature of fee</u>	<u>Department/ Service</u>	Current Maximum w.e.f. <u>4 July 2003</u> (\$)	With a 8.3% <u>increase</u> (\$)
<b>1. Court of First Instance Cases</b>			
(a) Counsel			
(i) brief fee	LAD/DOJ*	20,410	22,100
(ii) refresher fee per day	LAD/DOJ*	10,210	11,050
(b) Solicitor			
(i) brief fee	LAD^	6,790	7,350
(ii) refresher fee per day	LAD^	830 to 4,420	890 to 4,780
(c) Conference per hour (counsel)	LAD/DOJ	1,080	1,160
(d) Pre-trial review (per review)	DOJ	2,030	2,190
<b>2. District Court Cases</b>			
(a) Counsel			
(i) brief fee	LAD/DOJ*	13,600	14,720
(ii) refresher fee per day	LAD/DOJ*	6,800	7,360
(b) Solicitor (acting as instructing solicitor)			
(i) brief fee	LAD^	4,840	5,240
(ii) refresher fee per day	LAD^	1,160 to 2,900	1,250 to 3,140
(c) Solicitor (acting as advocate as well as instructing solicitor)			
(i) brief fee	LAD*	16,800	18,190
(ii) refresher fee per day	LAD*	9,310	10,080
(d) Conference per hour (counsel)	LAD/DOJ	880	950
(e) Brief fee for mention/sentence	DOJ	2,710	2,930
<b>3. Magistrates' Court Cases</b>			
(a) Counsel			
(i) brief fee	DOJ	8,160	8,830
(ii) refresher fee per day	DOJ	4,080	4,410

<u>Nature of fee</u>	<u>Department/ Service</u>	<u>Current Maximum w.e.f. 4 July 2003 (\$)</u>	<u>With a 8.3% increase (\$)</u>
(b) Counsel or solicitor (acting as advocate) in committal proceedings			
(i) brief fee	LAD	8,160	8,830
(ii) refresher fee per day	LAD	4,080	4,410
(c) Solicitor for instructing counsel in committal proceedings			
(i) brief fee	LAD	2,210	2,390
(ii) refresher fee per day	LAD	1,810	1,960
(d) Counsel or solicitor acting as advocate in preliminary inquiry			
(i) brief fee	LAD	8,160	8,830
(ii) refresher fee per day	LAD	4,080	4,410
(e) Brief in place of court prosecutor per day	DOJ	5,430	5,880
(f) Duty Lawyer Fee	DLS	a day 5,430	5,880
(g) Pre-trial fee per hour	DLS	half day 2,710 670	2,930 720
<b>4. Appeals</b>			
(a) Settling notice of appeal	LAD	2,710	2,930
(b) Instructing solicitors for appeals to the Court of Appeal			
(i) from the Court of First Instance	LAD	First day 9,160 1,150 to 5,910 Per subsequent day	9,920 1,240 to 6,400
(ii) from the District Court	LAD	First day 7,330 910 to 4,760 Per subsequent day	7,930 980 to 5,150
(c) Counsel for appeals to the Court of Appeal			
(i) from the Court of First Instance	LAD/DOJ	First day 27,210 13,610 Per subsequent day	29,460 14,730
(ii) from the District Court	LAD/DOJ	First day 21,760 10,880 Per subsequent day	23,560 11,780



<u>Nature of fee</u>	<u>Department/ Service</u>	<u>Current Maximum w.e.f. 4 July 2003 (\$)</u>	<u>With a 8.3% increase (\$)</u>
(d) Conference per hour (counsel)	LAD/DOJ	1,080	1,160

Note :

LAD Legal Aid Department

DOJ Department of Justice

DLS Duty Lawyer Service

\* Subject to an increase of 10% on the base figures for each of the second to sixth defendant or appellant.

^ Subject to an increase of such amount as appears to the Director of Legal Aid to be proper in the circumstances.