

**For information on
16 December 2008**

LegCo Panel on Administration of Justice and Legal Services

Review of Criminal Legal Aid Fees System

PURPOSE

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

BACKGROUND

2. To ensure general compatibility of the fee systems between the prosecution and the criminal legal aid regime (i.e. equality of arms) and to provide reasonable and effective remuneration for assigned lawyers undertaking criminal legal aid work within the remits of public affordability, the Administration has embarked on a review of the criminal legal aid fees system.

3. A broad consensus has been reached with the Law Society and the Hong Kong Bar Association (“Bar Association”) on the adoption of a new fee structure, with the following improvements –

(a) Proper recognition for preparation or pre-trial work

Under the current system, solicitors and counsel are paid a “flat” fee for pre-trial preparation, irrespective of the time spent. Under the proposed system, **pre-trial work will be remunerated** according to the time required.

(b) Rationalization of fee items

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.**

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

Under the current system, the fees payable to an assigned lawyer are assessed after the work is done and the cases 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 the bundle before accepting assignments, whenever circumstances permit, to facilitate their consideration. These measures will greatly enhance the transparency of the fee system.

4. The Administration reported to this Panel progress of the review on 25 February 2008. The Panel noted the request from the Law Society for an increase in rates¹ for the solicitors, and requested the Administration to negotiate with the Law Society with a view to resolving differences over the rates issue and report to the Panel on progress.

PROGRESS

5. The Administration has carefully examined the request of the Law Society. We have met with the Law Society and we are still negotiating on the rates for solicitors. We have also kept the Bar Association abreast of the latest developments.

¹ The Legal Aid Department 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 is set out in the Legal Aid in Criminal Cases Rules, a subsidiary legislation of the Criminal Procedure Ordinance (Cap. 221).

WAY FORWARD

6. As and when we have reached agreement with the Law Society on the rates issue, the Administration will seek approval from the Legislative Council for additional financial provision. Depending on the outcome of discussion with the Law Society, we aim to have the rules amended and implemented within 2009.

**Home Affairs Bureau
Legal Aid Department**

December 2008