

立法會
Legislative Council

LC Paper No. CB(3) 503/11-12

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Tel : 3919 3302

Date : 23 February 2012

From : Clerk to the Legislative Council

To : All Members of the Legislative Council


Council meeting of 29 February 2012

**Proposed resolution under
the Criminal Procedure Ordinance and
the Interpretation and General Clauses Ordinance**

The Secretary for Home Affairs (“SHA”) has withdrawn the notice of his proposed resolution to be moved at the Council meeting of 29 February 2012 under section 9A of the Criminal Procedure Ordinance. That proposed resolution was issued to Members under LC Paper No. CB(3) 418/11-12 on 8 February 2012.

2. Having regard to the reasons provided by SHA in paragraphs 2 and 3 of his letter of 22 February 2012 (in English only) in **Appendix I**, the President has waived the required notice for SHA to move at the same Council meeting an amended version of the proposed resolution under section 9A of the Criminal Procedure Ordinance and section 35 of the Interpretation and General Clauses Ordinance (**Appendix II**). The amendments made, which are of technical nature, are set out in the Schedule to the amended version of the proposed resolution. As directed by the President, this proposed resolution will be “printed in the terms in which it was handed in” on the Agenda for the Council meeting of 29 February 2012.

3. The speech, in both Chinese and English, which SHA will deliver when moving this proposed resolution is in **Appendix III**.



(Ms Dora WAI)
for Clerk to the Legislative Council

Encl.

民政事務局局長
香港金鐘添美道二號
政府總部西翼十二樓



Secretary for Home Affairs

12th Floor, West Wing,
Central Government Offices,
2 Tim Mei Avenue,
Admiralty,
Hong Kong.

Our Ref.: HAB/CR 19/1/7

22 February 2012

Hon Jasper Tsang Yok-sing, GBS, JP
President of the Legislative Council
Legislative Council Complex
1 Legislative Council Road,
Central, Hong Kong

Dear President,

**Proposed amended resolution to be moved by
the Secretary for Home Affairs to approve
the Legal Aid in Criminal Cases (Amendment) Rules 2012
("Amendment Rules")**

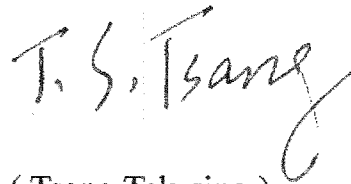
Further to my notice of 2 February 2012 proposing to move a resolution at the Legislative Council ("LegCo") meeting on 29 February 2012 to seek LegCo's approval of the Amendment Rules made by the Criminal Procedure Rules Committee ("Rules Committee"), I am writing to withdraw the notice of the original resolution and seek your agreement to waive the required notice for moving the amended resolution on 29 February 2012 as per attached.

The amended resolution has incorporated some minor technical amendments suggested by the Legal Service Division of the LegCo Secretariat to improve the drafting of the Amendment Rules. It contains no material change in the substance of the original resolution or the Amendment Rules.

The proposed motion for LegCo to approve the Amendment Rules was discussed at the LegCo House Committee meeting on 17 February 2012. Hon Margaret Ng proposed and the meeting agreed that no sub-committee should be formed to scrutinise the Amendment Rules so that they could be put into effect as soon as possible. The commencement date of the Amendment Rules would be 9 March 2012.

Most grateful if you would consider the above request and let me have your decision at your earliest convenience.

Yours sincerely,

A handwritten signature in black ink, appearing to read "T. S. Tsang". The signature is written in a cursive style with a long, sweeping tail on the final character.

(Tsang Tak-sing)
Secretary for Home Affairs

Encl.

**Criminal Procedure Ordinance
and
Interpretation and General Clauses Ordinance**

Resolution

(Under section 9A of the Criminal Procedure Ordinance (Cap. 221) and section 35 of the Interpretation and General Clauses Ordinance (Cap. 1))

Legal Aid in Criminal Cases (Amendment) Rules 2012

Resolved that the Legal Aid in Criminal Cases (Amendment) Rules 2012, made by the Criminal Procedure Rules Committee on 19 January 2012, be approved, subject to the amendments as set out in the Schedule.

Schedule

**Amendments to Legal Aid in Criminal Cases
(Amendment) Rules 2012**

1. **Rule 5 amended (rule 4 amended (legal aid for accused persons and appellants))**
 - (1) Rule 5(1), new rule 4(1)(c)—
Delete
“the offence”
Substitute
“any offence”.
 - (2) Rule 5(1), new rule 4(1)(c)(i)—
Delete
“in relation to that offence”
Substitute
“arising out of or connected with the charge”.
 - (3) Rule 5(4), new rule 4(1)(f)—
Delete
“the offence”
Substitute
“any offence”.
 - (4) Rule 5(4), new rule 4(1)(f)(i)—
Delete
“in relation to that offence”
Substitute
“arising out of or connected with the charge”.
 - (5) Rule 5(6), new rule 4(1)(h)—

Delete

“the offence”

Substitute

“any offence”.

(6) Rule 5(6), new rule 4(1)(h)(i)—

Delete

“in relation to that offence”

Substitute

“arising out of or connected with the charge”.

2. Rule 7 amended (rule 21 amended (solicitor and counsel fees))

Rule 7(1), Chinese text, new rule 21(1), after “實際”—

Add

“地”.

3. Rule 8 amended (Schedule added)

Rule 8, Chinese text, new Schedule, Part 1, section 3—

Delete

“獲被”

Substitute

“獲”.

Legal Aid in Criminal Cases (Amendment) Rules 2012

Contents

Rule	Page
1. Commencement.....	1
2. Legal Aid in Criminal Cases Rules amended	1
3. Rule 2 amended (interpretation)	1
4. Rule 3 amended (panels of counsel and solicitors).....	2
5. Rule 4 amended (legal aid for accused persons and appellants).....	2
6. Rule 13A amended (power of Director to make inquiries).....	4
7. Rule 21 amended (solicitor and counsel fees)	4
8. Schedule added.....	6
Schedule Solicitor and Counsel Fees.....	6
9. Transitional provisions	23

Legal Aid in Criminal Cases (Amendment) Rules 2012

(Made by the Criminal Procedure Rules Committee under section 9A of the Criminal Procedure Ordinance (Cap. 221) with the approval of the Legislative Council)

1. Commencement

These Rules come into operation on 9 March 2012.

2. Legal Aid in Criminal Cases Rules amended

The Legal Aid in Criminal Cases Rules (Cap. 221 sub. leg. D) are amended as set out in rules 3 to 8.

3. Rule 2 amended (interpretation)

(1) Rule 2(1), definition of *appellant*—

Repeal

“paragraph (c), (d), (e), (f), (g), or (h) of rule 4”

Substitute

“rule 4(1)(c), (f) or (h)”.

(2) Before rule 2(2)(c)—

Add

“(ba) any references to an appeal to the Court of First Instance includes any opposition to such an appeal;

(bb) any references to an appeal to the Court of Appeal includes proceedings before the Court of Appeal under Part IV of the Ordinance and proceedings before the Court of Appeal under section 84 of the District Court Ordinance (Cap. 336), and any references to such an appeal includes any opposition to the appeal;”.

(3) Rule 2(2)(c)—

Repeal

“proceedings relating to” (wherever appearing).

(4) Rule 2(3)(b)—

Repeal sub-subparagraph (iii)

Substitute

“(iii) rule 21(4)(a) and items 1 and 7 in the Table of Fees in Part 2 of the Schedule are to be read as if any reference to “the trial” or “any trial” were a reference to the proceedings instituted under section 67C of the Ordinance.”.

4. Rule 3 amended (panels of counsel and solicitors)

Rule 3—

Repeal paragraph (6)

Substitute

“(6) To avoid doubt, if a solicitor is assigned to an aided person for the purpose of any proceedings, any other solicitor in the same firm as the solicitor assigned may act for the aided person; however, this paragraph does not apply to the assignment of a solicitor described in item 6, 17 or 19 in the Table of Fees in Part 2 of the Schedule unless the Director gives prior consent.”.

5. Rule 4 amended (legal aid for accused persons and appellants)

(1) Rule 4(1)—

Repeal subparagraph (c)

Substitute

“(c) a person who is or was charged before the Court of First Instance or the District Court with any offence (whether or not the person has been convicted of the offence) may be granted legal aid under these rules for—

- (i) any appeal to the Court of Appeal in relation to that offence; and

(ii) any proceedings preliminary or incidental to the appeal;”.

(2) Rule 4(1)—

Repeal subparagraph (d).

(3) Rule 4(1)—

Repeal subparagraph (e).

(4) Rule 4(1)—

Repeal subparagraph (f)

Substitute

“(f) a person who is or was charged before a magistrate with any offence (whether or not the person has been convicted of the offence), or who is aggrieved by an order or determination of a magistrate in respect of or in connection with any offence, may be granted legal aid under these rules for—

- (i) any appeal to the Court of First Instance in relation to that offence; and
- (ii) any proceedings preliminary or incidental to the appeal;”.

(5) Rule 4(1)—

Repeal subparagraph (g).

(6) Rule 4(1)—

Repeal subparagraph (h)

Substitute

“(h) a person who is or was charged with any offence (whether or not the person has been convicted of the offence) may be granted legal aid under these rules for—

- (i) any appeal to, or any application for leave to appeal to, the Court of Final Appeal in relation to that offence; and

- (ii) any proceedings preliminary or incidental to the appeal or application for leave to appeal;”.

6. **Rule 13A amended (power of Director to make inquiries)**

Rule 13A—

Repeal

“paragraph (h) of rule 4”

Substitute

“rule 4(1)(h)”.

7. **Rule 21 amended (solicitor and counsel fees)**

(1) Rule 21—

Repeal paragraph (1)

Substitute

“(1) The fees payable to a solicitor or counsel described in column 2 of the Table of Fees in Part 2 of the Schedule is to be determined by the Director having regard to the work reasonably expected to be done or work actually and reasonably done and, subject to this rule and Part 1 of that Schedule, in accordance with the corresponding paragraph or paragraphs in column 3 of that Table.”.

(2) Rule 21—

Repeal paragraph (2).

(3) Rule 21—

Repeal paragraph (3).

(4) Rule 21(4)(a) and (b), Chinese text—

Repeal

“實際及合理”

Substitute

“在合理情況下實際”.

(5) Rule 21—

Repeal paragraph (5).

(6) Rule 21—

Repeal paragraph (6).

(7) After rule 21(7)—

Add

“(8) The Director may re-determine the fees determined under this rule in accordance with items 1(a) and (b)(i) and (ii), 2(a) and (b)(i) and (ii), 3(a) and (b)(i) and (ii), 4(a) and (b)(i) and (ii), 5(a) and (b)(i) and (ii), 6(a)(i) and (ii), 7(a)(i) and (ii), 8(a)(i) and (ii), 9(a)(i) and (ii), 10(a)(i) and (ii) and 11(a)(i) and (ii) in the Table of Fees in Part 2 of the Schedule, payable to a solicitor or counsel (other than Senior Counsel), in circumstances that the Director considers appropriate having regard to any change in the work reasonably expected to be done or work actually and reasonably done, and in accordance with the following rates—

(a) in respect of proceedings in the District Court—

(i) for a solicitor acting as an instructing solicitor, \$620 per hour in the case of item 5(a) and (b)(i) and (ii) in that Table;

(ii) for a solicitor acting as an advocate as well as an instructing solicitor, \$1,150 per hour in the case of item 6(a)(i) and (ii) in that Table; and

(iii) for counsel (other than Senior Counsel), \$960 per hour in the case of item 11(a)(i) and (ii) in that Table;

(b) in respect of proceedings in the Court of First Instance—

(i) for a solicitor acting as an instructing solicitor, \$740 per hour in the case of item

- 1(a) and (b)(i) and (ii) or 2(a) and (b)(i) and (ii) in that Table; and
- (ii) for counsel (other than Senior Counsel), \$1,170 per hour in the case of item 7(a)(i) and (ii) or 8(a)(i) and (ii) in that Table;
- (c) in respect of proceedings in the Court of Appeal—
- (i) for a solicitor acting as an instructing solicitor, \$1,000 per hour in the case of item 3(a) and (b)(i) and (ii) or 4(a) and (b)(i) and (ii) in that Table; and
- (ii) for counsel (other than Senior Counsel), \$1,170 per hour in the case of item 9(a)(i) and (ii) or 10(a)(i) and (ii) in that Table.”.

8. Schedule added

After rule 21—

Add

“Schedule [rr. 2, 3 & 21]

Solicitor and Counsel Fees

Part 1

Preliminary

1. In the Table of Fees in Part 2—

bundles (文件冊) means the trial or appeal bundles prepared by the prosecution or the court for an aided person’s case;

conference (會議) does not include a conference held on a day on which there is court attendance by the relevant solicitor or counsel for the relevant case;

solicitor or counsel (律師或大律師), in relation to item 21 in the Table of Fees in Part 2, includes a solicitor, counsel or person entitled to practise the law of a jurisdiction outside Hong Kong.

2. In the Table of Fees in Part 2, if a fee is payable on a time basis, the time reasonably and properly required for the relevant work is to be assessed by the Director.
3. To avoid doubt, if a solicitor or counsel (other than Senior Counsel) represents 2 or more accused persons or 2 or more appellants to whom the solicitor or counsel has been assigned under these rules and whose trials, pleas, sentences, appeals or other proceedings are heard together (whether in the same case or 2 or more cases grouped together), the fees described in the following items in the Table of Fees in Part 2 are to be payable in respect of 1 accused person or 1 appellant only, but subject to an increase of 10% for each additional accused person or appellant so represented up to a maximum of 50% if 6 or more accused persons or appellants are so represented—
- (a) item 1(d) and (e);
 - (b) item 2(d) and (e);
 - (c) item 3(d) and (e);
 - (d) item 4(d) and (e);
 - (e) item 5(d) and (e);
 - (f) item 6(b)(i) and (ii) and (c);
 - (g) item 7(b) and (c);
 - (h) item 8(b) and (c);
 - (i) item 9(b) and (c);
 - (j) item 10(b) and (c);

- (k) item 11(b) and (c);
- (l) item 17(a) and (b);
- (m) item 18(a) and (b);
- (n) item 19(a) and (b).

Part 2
Table of Fees

Column 1 Item	Column 2 Solicitor or counsel	Column 3 Fee
1.	Solicitor assigned under a legal aid certificate to act as an instructing solicitor in respect of proceedings in the Court of First Instance	<ul style="list-style-type: none"> (a) A fee for reading bundles at the rate of \$740 per hour. (b) <ul style="list-style-type: none"> (i) A fee of \$2,960 for preparation (other than the work described in paragraphs (a), (c) and (e)). (ii) Additionally, if more than 4 hours are required for the preparation, a fee at the rate of \$2,960 per unit for every additional 4-hour unit (or part of it). (c) A fee for conferences with counsel (including time for travelling to and from conference venues and waiting time) approved by the Director at the rate of \$740 per hour.

Column 1 Item	Column 2 Solicitor or counsel	Column 3 Fee
		<ul style="list-style-type: none"> (d) A fee of \$5,930 for every day of attendance at the Court of First Instance for the trial, plea or sentence (irrespective of the duration of the hearing on any day). (e) A fee for attendance at the Court of First Instance (other than for the trial, plea or sentence) at a rate that appears to the Director to be reasonable and proper.
2.	Solicitor assigned under an appeal aid certificate to act as an instructing solicitor in respect of an appeal from a magistrate to the Court of First Instance	<ul style="list-style-type: none"> (a) A fee for reading bundles at the rate of \$740 per hour. (b) <ul style="list-style-type: none"> (i) A fee of \$2,960 for preparation (other than the work described in paragraphs (a), (c) and (e)). (ii) Additionally, if more than 4 hours are required for the preparation, a fee at the rate of \$2,960 per unit for every additional 4-hour unit (or part of it). (c) A fee for conferences with counsel (including time for travelling to and from conference venues and

Column 1 Item	Column 2 Solicitor or counsel	Column 3 Fee
		waiting time) approved by the Director at the rate of \$740 per hour.
		(d) A fee of \$5,930 for every day of attendance at the Court of First Instance for the appeal hearing (irrespective of the duration of the hearing on any day).
		(e) A fee for attendance at the Court of First Instance (other than for the appeal hearing) at a rate that appears to the Director to be reasonable and proper.
3.	Solicitor assigned under an appeal aid certificate to act as an instructing solicitor in respect of an appeal from the Court of First Instance to the Court of Appeal, or in respect of an appeal, or any point in an appeal, reserved to be considered by or directed to be argued before the Court of Appeal	<p>(a) A fee for reading bundles at the rate of \$1,000 per hour.</p> <p>(b) (i) A fee of \$4,020 for preparation (other than the work described in paragraphs (a), (c) and (e)).</p> <p>(ii) Additionally, if more than 4 hours are required for the preparation, a fee at the rate of \$4,020 per unit for every additional 4-hour unit (or part of it).</p> <p>(c) A fee for conferences with counsel (including time for</p>

Column 1 Item	Column 2 Solicitor or counsel	Column 3 Fee
	under section 118 of the Magistrates Ordinance (Cap. 227)	travelling to and from conference venues and waiting time) approved by the Director at the rate of \$1,000 per hour.
		(d) A fee of \$8,040 for every day of attendance at the Court of Appeal for the appeal hearing (irrespective of the duration of the hearing on any day).
		(e) A fee for attendance at the Court of Appeal (other than for the appeal hearing) at a rate that appears to the Director to be reasonable and proper.
4.	Solicitor assigned under an appeal aid certificate to act as an instructing solicitor in respect of an appeal from the District Court to the Court of Appeal	<p>(a) A fee for reading bundles at the rate of \$1,000 per hour.</p> <p>(b) (i) A fee of \$4,020 for preparation (other than the work described in paragraphs (a), (c) and (e)).</p> <p>(ii) Additionally, if more than 4 hours are required for the preparation, a fee at the rate of \$4,020 per unit for every additional 4-hour unit (or part of it).</p>

Column 1 Item	Column 2 Solicitor or counsel	Column 3 Fee
		<p>(c) A fee for conferences with counsel (including time for travelling to and from conference venues and waiting time) approved by the Director at the rate of \$1,000 per hour.</p> <p>(d) A fee of \$8,040 for every day of attendance at the Court of Appeal for the appeal hearing (irrespective of the duration of the hearing on any day).</p> <p>(e) A fee for attendance at the Court of Appeal (other than for the appeal hearing) at a rate that appears to the Director to be reasonable and proper.</p>
5.	Solicitor assigned under a legal aid certificate to act as an instructing solicitor in respect of proceedings in the District Court	<p>(a) A fee for reading bundles at the rate of \$620 per hour.</p> <p>(b) (i) A fee of \$2,510 for preparation (other than the work described in paragraphs (a), (c) and (e)).</p> <p>(ii) Additionally, if more than 4 hours are required for the preparation, a fee at the rate of \$2,510 per unit</p>

Column 1 Item	Column 2 Solicitor or counsel	Column 3 Fee
		<p>for every additional 4-hour unit (or part of it).</p> <p>(c) A fee for conferences with counsel (including time for travelling to and from conference venues and waiting time) approved by the Director at the rate of \$620 per hour.</p> <p>(d) A fee of \$5,030 for every day of attendance at the District Court for the trial, plea or sentence (irrespective of the duration of the hearing on any day).</p> <p>(e) A fee for attendance at the District Court (other than for the trial, plea or sentence) at a rate that appears to the Director to be reasonable and proper.</p>
6.	Solicitor assigned under a legal aid certificate to act as an advocate as well as an instructing solicitor in respect of proceedings in the District Court	<p>(a) (i) A fee not exceeding \$9,240 for preparation (other than the work described in paragraph (c)) that appears to the Director to be reasonable and proper.</p> <p>(ii) Additionally, if more than 8 hours are</p>

Column 1 Item	Column 2 Solicitor or counsel	Column 3 Fee
		required for the preparation, a fee at a rate not exceeding \$4,610 per unit for every additional 4-hour unit (or part of it) that appears to the Director to be reasonable and proper.
	(b)	Irrespective of the duration of the hearing on any day—
	(i)	a fee not exceeding \$9,240 for attendance at the District Court for the trial, plea or sentence that appears to the Director to be reasonable and proper; and
	(ii)	additionally, if the trial, plea or sentence is not concluded on the day on which it started, a fee not exceeding \$10,240 for every subsequent day that appears to the Director to be reasonable and proper.
	(c)	A fee for attendance at the District Court (other than for the trial, plea or sentence) at a rate that appears to the

Column 1 Item	Column 2 Solicitor or counsel	Column 3 Fee
		Director to be reasonable and proper.
7.	Counsel (other than Senior Counsel) assigned under a legal aid certificate in respect of proceedings in the Court of First Instance	(a) (i) A fee not exceeding \$11,220 for preparation (other than the work described in paragraph (c) and item 13) that appears to the Director to be reasonable and proper. (ii) Additionally, if more than 8 hours are required for the preparation, a fee at a rate not exceeding \$4,710 per unit for every additional 4-hour unit (or part of it) that appears to the Director to be reasonable and proper.
		(b) A fee not exceeding \$11,220 for every day of attendance at the Court of First Instance for the trial, plea or sentence (irrespective of the duration of the hearing on any day) that appears to the Director to be reasonable and proper.
		(c) A fee for attendance at the Court of First Instance

Column 1 Item	Column 2 Solicitor or counsel	Column 3 Fee
		(other than for the trial, plea or sentence) at a rate that appears to the Director to be reasonable and proper.
8.	Counsel (other than Senior Counsel) assigned under an appeal aid certificate in respect of an appeal from a magistrate to the Court of First Instance	<p>(a) (i) A fee not exceeding \$11,220 for preparation (other than the work described in paragraph (c) and item 13) that appears to the Director to be reasonable and proper.</p> <p>(ii) Additionally, if more than 8 hours are required for the preparation, a fee at a rate not exceeding \$4,710 per unit for every additional 4-hour unit (or part of it) that appears to the Director to be reasonable and proper.</p> <p>(b) A fee not exceeding \$11,220 for every day of attendance at the Court of First Instance for the appeal hearing (irrespective of the duration of the hearing on any day) that appears to the Director to be reasonable and proper.</p>

Column 1 Item	Column 2 Solicitor or counsel	Column 3 Fee
		(c) A fee for attendance at the Court of First Instance (other than for the appeal hearing) at a rate that appears to the Director to be reasonable and proper.
9.	Counsel (other than Senior Counsel) assigned under an appeal aid certificate in respect of an appeal from the Court of First Instance to the Court of Appeal, or in respect of an appeal, or any point in an appeal, reserved to be considered by or directed to be argued before the Court of Appeal under section 118 of the Magistrates Ordinance (Cap. 227)	<p>(a) (i) A fee not exceeding \$14,960 for preparation (other than the work described in paragraph (c) and item 13) that appears to the Director to be reasonable and proper.</p> <p>(ii) Additionally, if more than 8 hours are required for the preparation, a fee at a rate not exceeding \$4,710 per unit for every additional 4-hour unit (or part of it) that appears to the Director to be reasonable and proper.</p> <p>(b) A fee not exceeding \$14,960 for every day of attendance at the Court of Appeal for the appeal hearing (irrespective of the duration of the hearing on any day) that appears to the Director</p>

Column 1 Item	Column 2 Solicitor or counsel	Column 3 Fee
		to be reasonable and proper.
		(c) A fee for attendance at the Court of Appeal (other than for the appeal hearing) at a rate that appears to the Director to be reasonable and proper.
10.	Counsel (other than Senior Counsel) assigned under an appeal aid certificate in respect of an appeal from the District Court to the Court of Appeal	<p>(a) (i) A fee not exceeding \$11,960 for preparation (other than the work described in paragraph (c) and item 13) that appears to the Director to be reasonable and proper.</p> <p>(ii) Additionally, if more than 8 hours are required for the preparation, a fee at a rate not exceeding \$4,710 per unit for every additional 4-hour unit (or part of it) that appears to the Director to be reasonable and proper.</p> <p>(b) A fee not exceeding \$11,960 for every day of attendance at the Court of Appeal for the appeal hearing (irrespective of the duration</p>

Column 1 Item	Column 2 Solicitor or counsel	Column 3 Fee
		of the hearing on any day) that appears to the Director to be reasonable and proper.
		(c) A fee for attendance at the Court of Appeal (other than for the appeal hearing) at a rate that appears to the Director to be reasonable and proper.
11.	Counsel (other than Senior Counsel) assigned under a legal aid certificate in respect of proceedings in the District Court	<p>(a) (i) A fee not exceeding \$7,470 for preparation (other than the work described in paragraph (c) and item 14) that appears to the Director to be reasonable and proper.</p> <p>(ii) Additionally, if more than 8 hours are required for the preparation, a fee at a rate not exceeding \$3,860 per unit for every additional 4-hour unit (or part of it) that appears to the Director to be reasonable and proper.</p> <p>(b) A fee not exceeding \$7,470 for every day of attendance at the District Court for the</p>

Column 1 Item	Column 2 Solicitor or counsel	Column 3 Fee
		trial, plea or sentence (irrespective of the duration of the hearing on any day) that appears to the Director to be reasonable and proper.
		(c) A fee for attendance at the District Court (other than for the trial, plea or sentence) at a rate that appears to the Director to be reasonable and proper.
12.	Senior Counsel assigned under a legal aid certificate in respect of proceedings in the Court of First Instance or District Court, or assigned under an appeal aid certificate	Fees at an hourly rate that appears to the Director to be reasonable and proper.
13.	Counsel (other than Senior Counsel) assigned under a legal aid certificate in respect of proceedings in the Court of First Instance, or assigned under an	Fees for conferences (including time for travelling to and from conference venues and waiting time) approved by the Director at a rate not exceeding \$1,170 per hour that appear to the Director to be reasonable and proper.

Column 1 Item	Column 2 Solicitor or counsel	Column 3 Fee
	appeal aid certificate	
14.	Counsel (other than Senior Counsel) assigned under a legal aid certificate in respect of proceedings in the District Court	Fees for conferences (including time for travelling to and from conference venues and waiting time) approved by the Director at a rate not exceeding \$960 per hour that appear to the Director to be reasonable and proper.
15.	Solicitor or counsel assigned under an appeal aid certificate in respect of appeals to, or applications for leave to appeal to, the Court of Final Appeal	Fees that appear to the Director to be reasonable and proper.
16.	Solicitor or counsel to whom an application or matter has been referred under rule 13A	Fees that appear to the Director to be reasonable and proper.
17.	Solicitor or counsel assigned under a legal aid certificate	(a) A fee not exceeding \$8,970 that appears to the Director to be reasonable and proper.

Column 1 Item	Column 2 Solicitor or counsel	Column 3 Fee
	to act as an advocate in respect of a preliminary inquiry	(b) Additionally, if the inquiry is not concluded on the day on which it started, a fee not exceeding one half of the fee allowed under paragraph (a) for every subsequent day that appears to the Director to be reasonable and proper.
18.	Solicitor assigned under a legal aid certificate to act as an instructing solicitor in committal proceedings (including a preliminary inquiry)	(a) A fee of \$2,420. (b) Additionally, if the proceedings are not concluded on the day on which they started, a fee not exceeding \$1,990 for every subsequent day that appears to the Director to be reasonable and proper.
19.	Solicitor or counsel assigned under a legal aid certificate to act as an advocate in committal proceedings otherwise than by way of a preliminary inquiry	(a) A fee not exceeding \$8,970 that appears to the Director to be reasonable and proper. (b) Additionally, if the proceedings are not concluded on the day on which they started, a fee not exceeding \$4,480 for every subsequent day that appears to the Director to be reasonable and proper.

Column 1 Item	Column 2 Solicitor or counsel	Column 3 Fee
20.	Solicitor or counsel assigned under an appeal aid certificate settling a notice of appeal, other than grounds of appeal settled under rule 9(a)	A fee not exceeding \$2,970 that appears to the Director to be reasonable and proper.
21.	Solicitor or counsel engaged under rule 7(1A)	Fees that appear to the Director to be reasonable and proper.”.


9. Transitional provisions

The Legal Aid in Criminal Cases Rules (Cap. 221 sub. leg. D) (*the principal Rules*) as amended by these Rules apply only in relation to a solicitor or counsel assigned under the principal Rules on or after the date on which these Rules come into operation.

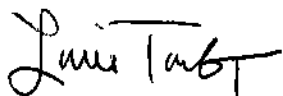
Made this 19th day of January 2012.



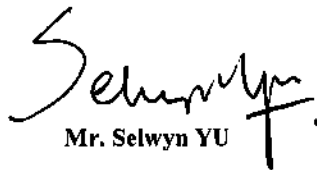
The Hon. Mr. Justice CHEUNG
Chief Judge of the High Court



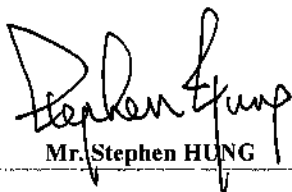
The Hon. Mr. Justice STOCK, VP



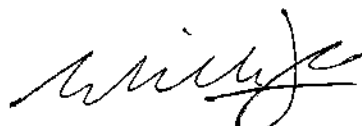
The Hon. Mr. Justice TONG



Mr. Selwyn YU



Mr. Stephen HUNG



Mr. William TAM Yiu-ho



Mr. Thomas E KWONG



Mr. Andy HO Chi-yin
Secretary

Explanatory Note

The purpose of these Rules is to amend rules 4 and 21 of the Legal Aid in Criminal Cases Rules (Cap. 221 sub. leg. D) (*the principal Rules*) so as—

- (a) to allow for legal aid to be granted in relation to appeal cases dealt with by the Court of First Instance (*CFI*), Court of Appeal (*CA*) and Court of Final Appeal (*CFA*) which do not involve a conviction; and
 - (b) to improve the structure of payment of criminal legal aid fees to solicitors and counsel.
2. Rule 3 amends rule 2 of the principal Rules—
 - (a) to clarify the meaning of references to an appeal; and
 - (b) to make consequential amendments.
 3. Rule 4 amends rule 3 of the principal Rules to make the sentence more readable and to make consequential amendments.
 4. Rule 5 amends rule 4(1) of the principal Rules to expand the scope of legal aid in criminal cases so that even if the accused person or defendant is not convicted, legal aid can still be granted in appeal cases dealt with by *CFI*, *CA* and *CFA*. The rule also repeals rule 4(1)(d), (e) and (g) of the principal Rules because cases under those subparagraphs are now covered by the amended rule 4(1)(c) and (f).
 5. Rule 6 amends rule 13A of the principle Rules to correct a minor error in cross-referencing.
 6. Rule 7(1) amends rule 21 of the principle Rules and rule 8 adds a new Schedule to the principal Rules. The amendments are for the purposes of improving the structure of payment of criminal legal aid fees to solicitors and counsel. The main changes implemented by the new structure include the following—
 - (a) to pay for preparation work on a time basis as opposed to a flat fee;
 - (b) to pay conference fees to solicitors.

7. Rule 7(2) and (3) repeals rule 21(2) and (3) of the principal Rules which provides for cases of exceptional length or complexity.
 8. Rule 7(5) and (6) repeals rule 21(5) and (6) of the principal Rules which provides for the fees payable to solicitors or counsel (other than Senior Counsel) who represent 2 or more accused persons or appellants if their proceedings are heard together. These matters under the new structure of payment are now provided for in the new Schedule.
 9. Rule 7(7) adds a new paragraph (8) to rule 21 of the principal Rules to allow the Director of Legal Aid to re-determine the fees payable to a solicitor or counsel (other than Senior Counsel) under certain circumstances having regard to any change in the work reasonably expected to be done or work actually and reasonably done.
 10. Rule 9 provides for transitional arrangements.
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DRAFT**(Translation)****Speech by the Secretary for Home Affairs
in the Legislative Council on 29 February 2012****Legal Aid in Criminal Cases (Amendment) Rules 2012**

President,

I move the Resolution standing in my name on the agenda.

The Legal Aid in Criminal Cases Rules (“LACCR”) are made under section 9A of the Criminal Procedure Ordinance (Cap. 221). Rule 4 of the LACCR sets out the list of circumstances in which legal aid in criminal cases may be granted but does not expressly cover appeal cases dealt with by the Court of First Instance (CFI), the Court of Appeal (CA) and the Court of Final Appeal (CFA) which do not involve a conviction. The Administration has decided to amend Rule 4 of the LACCR to expand the scope of legal aid in criminal cases so that even if the defendant is not convicted, legal aid can still be granted in appeal cases dealt with by CFI, CA or CFA if the applicant passes the means test and the merits test.

Rule 21 of the LACCR sets out the fees payable to lawyers in private practice engaged to undertake litigation work in respect of criminal cases on behalf of the Legal Aid Department. Having reached an agreement with the two legal professional bodies on the revised fee

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structure and the fees payable to assigned solicitors handling criminal legal aid cases, the Administration has decided to amend Rule 21 of the LACCR to introduce additional items of remuneration and set the fee level for work done by counsel and solicitor in criminal legal aid work, with a view to improving the payment structure of the criminal legal aid fee system.

We informed the Legislative Council Panel on Administration of Justice and Legal Services of the legislative amendments in April 2011. Under section 9A of the Criminal Procedure Ordinance, the Criminal Procedure Rules Committee has made the Legal Aid in Criminal Cases (Amendment) Rules 2012 in order to implement the legislative amendments. The Criminal Procedure Rules Committee was chaired by the Chief Judge of the High Court and its members comprised representatives from the Department of Justice, the Legal Aid Department, the Hong Kong Bar Association and the Law Society of Hong Kong. The amendment rules require the approval of this Council by resolution.

To improve the drafting of the amendment rules, we agree with the advice of the Legal Adviser of the Legislative Council Secretariat to make several technical amendments. Details of the amendments have been reflected in the resolution circulated to Members.

I invite Members to support the Resolution.