立法會 Legislative Council

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- Tel : 3919 3300
- Date : 8 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

I forward for Members' consideration a proposed resolution which the Secretary for Home Affairs will move at the Council meeting of 29 February 2012 under the Criminal Procedure Ordinance. The President has directed that "it be printed in the terms in which it was handed in" on the Agenda of the Council.

2. The speech, in both Chinese and English, which the Secretary will deliver when moving the proposed resolution is also attached.

(Mrs Justina LAM) for Clerk to the Legislative Council

Encl.

Resolution of the Legislative Council

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Criminal Procedure Ordinance

Resolution

(Under section 9A of the Criminal Procedure Ordinance (Cap. 221))

Resolved that the Legal Aid in Criminal Cases (Amendment) Rules 2012, made by the Criminal Procedure Rules Committee on 19 January 2012, be approved.

Legal Aid in Criminal Cases (Amendment) Rules 2012

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Legal Aid in Criminal Cases (Amendment) Rules 2012

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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

Rule 1

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

Rule 4

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"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

Legal Aid in Criminal Cases (Amendment) Rules 2012

Rule 5

- (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

Rule 6

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(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".

- Rule 7
 - (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

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Legal Aid in Criminal Cases (Amendment) Rules 2012

Rule 8

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;

Rule 8

- *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);

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			8		Rule 8				9	
	(k) item 11(b) and (c);				Column 1	Column 2		Column 3	
	(1) item 17(a) and (b					Item	Solicitor or counsel		Fee	
(ii) item 17(a) and (b); (ii) item 18(a) and (b); (iii) item 19(a) and (b). Part 2					(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).				
Table of Fees Column 1 Column 2							(e)	A fee for attendance at the Court of First Instance (other than for the trial, plea		
	under a legal aid		Fee						or sentence) at a rate that	
		(a)	A fee for reading bundles at the rate of \$740 per hour.						appears to the Director to be reasonable and proper.	
		(b)	(i) A fee of \$2,960 for preparation (other than the work described in			2.	Solicitor assigned under an appeal aid	(a)	A fee for reading bundles at the rate of \$740 per hour.	
		proceedings in the paragraphs (a), (c) and certificate to an instructing solicitor in the destribution of the paragraphs (a), (c) and certificate to an instructing solicitor in the distribution of the preparation, a fee at the court of First preparation and the paragraphs (a), (c) and certificate to an instructing solicitor in the paragraphs (a), (c) and certificate to an instructing solicitor in the paragraphs (a), (c) and certificate to an instructing solicitor in the paragraphs (a), (c) and certificate to an instructing solicitor in the paragraphs (a), (c) and certificate to an instructing solicitor in the paragraphs (a), (c) and certificate to an instructing solicitor in the paragraphs (a), (c) and certificate to an instructing solicitor in the paragraphs (a), (c) and certificate to an instructing solicitor in the paragraphs (a), (c) and certificate to an instructing solicitor in the paragraphs (a), (c) and certificate to an instructing solicitor in the paragraphs (a), (c) and certificate to an instructing solicitor in the paragraphs (a), (c) and certificate to an instructing solicitor in the paragraphs (a), (c) and certificate to an instructing solicitor in the paragraphs (a), (c) and certificate to an instructing solicitor in the paragraphs (a), (c) and certificate to an instructing solicitor in the paragraphs (a), (c) and	eedings in the paragraphs (a), (rt of First (e)).	paragraphs (a), (c) and				certificate to act as an instructing	(b)	(i) A fee of \$2,960 for preparation (other than
			of an appeal from a magistrate to the		the work described in paragraphs (a), (c) and (e)).					
			preparation, a fee at the rate of \$2,960 per unit						(ii) Additionally, if more than 4 hours are	
			for every additional 4-hour unit (or part of it).						required for the preparation, a fee at the rate of \$2,960 per unit	
		(c)	A fee for conferences with counsel (including time for						for every additional 4-hour unit (or part of it).	
			travelling to and from conference venues and waiting time) approved by the Director at the rate of \$740 per hour.					(c)	A fee for conferences with counsel (including time for travelling to and from conference venues and	

11 Rule 8 10 Rule 8 Column 3 Column 1 Column 2 Column 3 Column 1 Column 2 Fee Solicitor or counsel Item Fee Solicitor or counsel Item travelling to and from under section 118 of waiting time) approved by conference venues and the Magistrates the Director at the rate of waiting time) approved by Ordinance (Cap. \$740 per hour. the Director at the rate of 227) (d) A fee of \$5,930 for every \$1,000 per hour. day of attendance at the (d) A fee of \$8,040 for every Court of First Instance for day of attendance at the the appeal hearing Court of Appeal for the (irrespective of the duration appeal hearing (irrespective of the hearing on any day). of the duration of the (e) A fee for attendance at the hearing on any day). Court of First Instance (e) A fee for attendance at the (other than for the appeal Court of Appeal (other than hearing) at a rate that for the appeal hearing) at a appears to the Director to be rate that appears to the reasonable and proper. Director to be reasonable and proper. (a) A fee for reading bundles at Solicitor assigned 3. the rate of \$1,000 per hour. under an appeal aid (a) A fee for reading bundles at Solicitor assigned 4. certificate to act as (i) A fee of \$4,020 for (b)the rate of \$1,000 per hour. under an appeal aid an instructing preparation (other than certificate to act as (b) (i) A fee of \$4,020 for solicitor in respect the work described in an instructing preparation (other than of an appeal from paragraphs (a), (c) and solicitor in respect the work described in the Court of First (e)). of an appeal from paragraphs (a), (c) and Instance to the (ii) Additionally, if more the District Court to Court of Appeal, or (e)). than 4 hours are the Court of Appeal in respect of an (ii) Additionally, if more required for the appeal, or any point than 4 hours are preparation, a fee at the in an appeal, required for the rate of \$4,020 per unit preparation, a fee at the reserved to be for every additional 4considered by or rate of \$4,020 per unit hour unit (or part of it). directed to be for every additional 4-A fee for conferences with argued before the (c) hour unit (or part of it). counsel (including time for Court of Appeal

13 Rule 8 12 Rule 8 Column 3 Column 2 Column 1 Column 2 Column 3 Column 1 Fee Solicitor or counsel Item Solicitor or counsel Fee Item for every additional (c) A fee for conferences with 4-hour unit (or part of counsel (including time for it). travelling to and from conference venues and (c) A fee for conferences with waiting time) approved by counsel (including time for the Director at the rate of travelling to and from \$1,000 per hour. conference venues and waiting time) approved by (d) A fee of \$8,040 for every the Director at the rate of day of attendance at the \$620 per hour. Court of Appeal for the appeal hearing (irrespective (d) A fee of \$5,030 for every of the duration of the day of attendance at the hearing on any day). District Court for the trial, plea or sentence (e) A fee for attendance at the (irrespective of the duration Court of Appeal (other than of the hearing on any day). for the appeal hearing) at a rate that appears to the (e) A fee for attendance at the Director to be reasonable District Court (other than for the trial, plea or sentence) at and proper. a rate that appears to the Director to be reasonable (a) A fee for reading bundles at 5. Solicitor assigned and proper. the rate of \$620 per hour. under a legal aid certificate to act as (b) (i) A fee of \$2,510 for (a) (i) A fee not exceeding an instructing Solicitor assigned 6. preparation (other than \$9,240 for preparation solicitor in respect under a legal aid the work described in (other than the work of proceedings in certificate to act as paragraphs (a), (c) and described in paragraph the District Court an advocate as well (e)). (c)) that appears to the as an instructing Additionally, if more (ii) Director to be solicitor in respect than 4 hours are reasonable and proper. of proceedings in required for the the District Court (ii) Additionally, if more preparation, a fee at the than 8 hours are rate of \$2,510 per unit

	www		14	Rule 8				1
Column 1	Column 2		Column 3		Column 1	Column 2		Column 3
Item	Solicitor or counsel		Fee		Item	Solicitor or counsel		Fee
			required for the preparation, a fee at a rate not exceeding					Director to be reasonable and proper.
		(b)	\$4,610 per unit for every additional 4-hour unit (or part of it) that appears to the Director to be reasonable and proper. Irrespective of the duration		7.	Counsel (other than Senior Counsel) assigned under a legal aid certificate in respect of proceedings in the Court of First	(a)	 (i) A fee not exceeding \$11,220 for preparatio (other than the work described in paragraph (c) and item 13) that appears to the Directo to be reasonable and
			of the hearing on any day—			Instance		proper.
			 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 more than 8 hours are required for the preparation, a fee at a rate not exceeding \$4,710 per unit for every additional 4-ho unit (or part of it) that appears to the Director
			(ii) additionally, if the trial, plea or sentence is not concluded on the day					to be reasonable and proper.
			on which it started, a fee not exceeding \$10,240 for every subsequent day that appears to the Director to be reasonable and proper.				(b)	A fee not exceeding \$11,22 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
		(c)	A fee for attendance at the District Court (other than for				(c)	to be reasonable and prope A fee for attendance at the
			the trial, plea or sentence) at a rate that appears to the				(-)	Court of First Instance

Column 1	Column 2	Column 3	Co	umn 1	Column 2		Column 3
Item	Solicitor or counsel	Fee]	tem	Solicitor or counsel		Fee
iciii		(other than for the trial, plea or sentence) at a rate that appears to the Director to be reasonable and proper.				(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 b 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	 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 appeal hearing (irrespective of the duration of the hearing on any day) that appears to the Director to be reasonable and proper.).	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)	(a) (b)	 (i) A fee not exceeding \$14,960 for preparatio (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-hou unit (or part of it) that appears to the Director to be reasonable and proper. A fee not exceeding \$14,960 for every day of attendance at the Court of Appeal for the appears to the Director to he appears to the Director the appear hearing (irrespective of the duration of the hearing on any day) that appears to the Director to be reasonable and proper.

19 Rule 8 18 Rule 8 Column 2 Column 3 Column 1 Column 3 Column 2 Column 1 Fee Solicitor or counsel Item Fee Item Solicitor or counsel of the hearing on any day) to be reasonable and proper. that appears to the Director (c) A fee for attendance at the to be reasonable and proper. Court of Appeal (other than (c) A fee for attendance at the for the appeal hearing) at a Court of Appeal (other than rate that appears to the for the appeal hearing) at a Director to be reasonable rate that appears to the and proper. Director to be reasonable and proper. (i) A fee not exceeding 10. Counsel (other than (a) \$11,960 for preparation Senior Counsel) Counsel (other than (a) (i) A fee not exceeding 11. (other than the work assigned under an \$7,470 for preparation Senior Counsel) described in paragraph appeal aid (other than the work assigned under a (c) and item 13) that certificate in respect legal aid certificate described in paragraph of an appeal from appears to the Director (c) and item 14) that in respect of to be reasonable and the District Court to appears to the Director proceedings in the proper. the Court of Appeal to be reasonable and District Court (ii) Additionally, if more proper. than 8 hours are (ii) Additionally, if more required for the than 8 hours are preparation, a fee at a required for the rate not exceeding preparation, a fee at a \$4,710 per unit for rate not exceeding every additional 4-hour \$3,860 per unit for unit (or part of it) that every additional 4-hour appears to the Director unit (or part of it) that to be reasonable and appears to the Director proper. to be reasonable and (b) A fee not exceeding \$11,960 proper. for every day of attendance (b) A fee not exceeding \$7,470 at the Court of Appeal for for every day of attendance the appeal hearing at the District Court for the (irrespective of the duration

		20	Rule 8			
Column 1	Column 2	Column 3	Colu	mn 1 Column	2	Column 3
Item	Solicitor or counsel	Fee	Ite	em Solicitor or c	ounsel	Fee
		trial, plea or sentence (irrespective of the duration of the hearing on any day) that appears to the Director		appeal aid certificate		
		to be reasonable and proper.	14	. Counsel (oth Senior Coun	erthan Fe sel) tin	Fees for conferences (including time for travelling to and from
		(c) A fee for attendance at the		assigned und	lera co	nference venues and waiting ne) approved by the Directo
		District Court (other than for the trial, plea or sentence) at		legal aid cert in respect of		rate not exceeding \$960 per
		a rate that appears to the Director to be reasonable and proper.		proceedings District Cou	in the ho	our that appear to the Director reasonable and proper.
			15	5. Solicitor or o		es that appear to the Directo
	Senior Counsel assigned under a legal aid certificate in respect of proceedings in the	Fees at an hourly rate that appears to the Director to be reasonable and proper.		assigned und appeal aid certificate in of appeals to applications	respect	reasonable and proper.
Court Instan Court, under	of First ce or District or assigned an appeal aid			leave to app the Court of Appeal	eal to,	
	certificate		10	5. Solicitor or to whom an		ees that appear to the Director e reasonable and proper.
3.	Counsel (other than	Fees for conferences (including		application		. reasonable and proper.
	Senior Counsel)	time for travelling to and from conference venues and waiting		matter has b referred und		
	assigned under a legal aid certificate	time) approved by the Director at		13A	erfule	
	in respect of proceedings in the	a rate not exceeding \$1,170 per hour that appear to the Director to) A C
Court of First	Court of First be reasonable and proper.	1	 Solicitor or assigned un 	· · · · · · · · · · · · · · · · · · ·	 A fee not exceeding \$8,9 that appears to the Direc 	
	Instance, or assigned under an			legal aid cer		to be reasonable and pro
	-					

Rule 9 22 Rule 8 Column 3 Column 1 Column 2 Fee Solicitor or counsel Item Additionally, if the inquiry to act as an (b) is not concluded on the day advocate in respect on which it started, a fee not of a preliminary exceeding one half of the fee inquiry allowed under paragraph (a) for every subsequent day that appears to the Director to be reasonable and proper. (a) A fee of \$2,420. Solicitor assigned 18. under a legal aid (b) Additionally, if the certificate to act as proceedings are not an instructing concluded on the day on 9. solicitor in which they started, a fee not committal exceeding \$1,990 for every proceedings subsequent day that appears (including a to the Director to be preliminary inquiry) reasonable and proper. A fee not exceeding \$8,970 Solicitor or counsel (a) 19. that appears to the Director assigned under a to be reasonable and proper. legal aid certificate to act as an (b) Additionally, if the advocate in proceedings are not committal concluded on the day on proceedings which they started, a fee not otherwise than by exceeding \$4,480 for every way of a subsequent day that appears preliminary inquiry to the Director to be reasonable and proper.

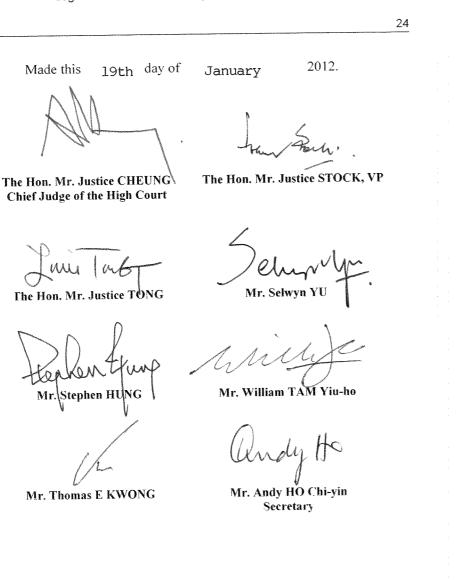
Column 3 Column 2 Column 1 Fee Solicitor or counsel Item A fee not exceeding \$2,970 that Solicitor or counsel 20.appears to the Director to be assigned under an reasonable and proper. appeal aid certificate settling a notice of appeal, other than grounds of appeal settled under rule 9(a) Solicitor or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

. 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.

Legal Aid in Criminal Cases (Amendment) Rules 2012

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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

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- (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—

6.

- (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.
 - 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.

Explanatory Note	
Paragraph 7	26

- 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.

(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 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 is chaired by the Chief Judge of the High Court and its members comprise 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.

I invite Members to support the Resolution.