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13 May 2015

Hon Dennis Kwok
Deputy Chairman of the
Panel on Administration of Justice and Legal Services
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong

Dear Mr. Kwok,

Review of Solicitors' Hourly Rates

Thank you for your letter dated 27 April 2015, requesting the Judiciary to provide some further information additional to the issuance of a paper on the captioned subject for discussion at the Panel on Administration of Justice and Legal Services ("AJLS Panel") on 27 April. The Judiciary is pleased to provide the requested information as follows.

(i) Stage 1 of the Consultancy Study

2. The terms of reference of stage 1 of the consultancy study are given in paragraph 22 of the LC Paper No. CB(4)825/14-15(08), which are generally reproduced below for your easy reference:

- (a) Recommending an approach for the review, including but not limited to, the measurement of solicitors' hourly rates ("SHRs") for the High Court and the District Court, the composition of SHRs and the factors that have to be taken into account in reviewing and revising the rates, and the weighting of each factor, if applicable. In making the recommendation,

the consultant would collect and analyse data and information obtained from relevant stakeholders;

- (b) Proposing the methodology for the above recommended approach, including the methodology for the collection and analysis of data, be it a survey, by use of a model firm, panel consultation or any other option, or a combination of some or all of them, with detailed deliberations and supporting rationale as well as cost implication;
- (c) Proposing the mechanism for setting the SHRs in accordance with the above recommended approach;
- (d) Considering the desirability of having a regular review of the SHRs and if so, how and the proposed frequency of the regular review; and
- (e) Proposing an assignment brief that would be suitable for use should the recommended approach, methodology and mechanism be implemented, which should include the approach and methodology for the collection and analysis of data for working out a new set of SHRs in the second stage of the study.

3. In performing the above tasks, the consultant is required to take the following into account:

- (a) legislation regarding taxation on a party and party basis;
- (b) the views of major stakeholders including law firms of different sizes; Judges and Judicial Officers responsible for taxing matters; related Government departments such as the Legal Aid Department, the Department of Justice, the Official Receiver's Office; the Law Society of Hong Kong; the Bar Association; the Consumer Council and the Law Costs Draftsman Association;
- (c) the relevant experience of other common law jurisdictions on the subject including that of England, Scotland, Australia, New Zealand and Singapore;

- (d) the reports previously submitted by the Law Society to the Judiciary for the purpose of proposing revisions to the hourly rates; and
- (e) changes in legal practices, financial and market conditions since 1997 (including inflation rates) and other relevant factors such as recoverability gap, access to justice, impact on law firms, impact on legal aid, competitiveness of Hong Kong in dispute resolution, sustainability, etc.

4. Upon receipt of the consultant's proposals, the Working Party on Review of Solicitors' Hourly Rates for Party and Party Taxation ("the Working Party"), comprising members from various stakeholders, will evaluate them and make appropriate recommendations to the Chief Justice.

(ii) Taxation Process

5. SHRs, for the purpose of assessing solicitors' costs incurred by litigants during court proceedings, reflect in general the rates which taxing masters consider being appropriate and reasonable for engaging solicitors of comparable experience in such proceedings. They however do not necessarily reflect the actual costs being charged by the solicitors for service rendered in litigation. Moreover, the taxing masters are not bound by such SHRs in taxation of costs. They may exercise their judicial discretions and make such adjustments as they see fit. It is *not* within the Working Party's purview to review the exercise of judicial discretion by the taxing masters. Nor is it considered appropriate to do so.

6. You may wish to note that the guidelines on the principles, practice and procedure applicable to taxation of costs in the High Court can be found in legal publications such as the Appendix to Order 62 of the Hong Kong Civil Procedure, 2015 Edition, Volume 1 at pp. 1205 to 1230. While they are not meant to be binding, they would assist taxing masters in the exercise of discretion when taxing costs.

(iii) Consultation with the Legal Profession

7. As mentioned in paragraph 3(b) above, the consultant is required to take into account the views of major stakeholders, which include law firms of different sizes. To this end, the consultant would organize meetings/focus group discussions with individual law firms of various sizes apart from meeting the representatives of the Law Society and

the Bar Association. This is to ensure that different views would be collected and reflected in the review. In this respect, the Law Society and the Bar Association have been duly informed and kept posted.

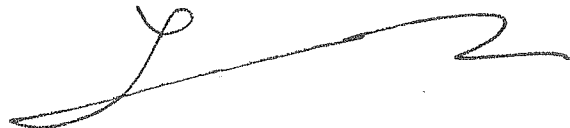
(iv) Consideration from 'Competition' Perspective

8. Since SHRs do not prescribe or seek to prescribe the charge out rates solicitors actually adopt in charging their clients for service rendered in litigation and firms are free to decide on their actual charge out rates, the setting of SHRs does not seem to have the object or effect of harming competition.

9. As agreed at the AJLS Panel meeting held on 27 April, the Judiciary Administration would revert to the Panel when findings of the review are available.

10. It is noted that at the AJLS Panel meeting on 27 April, the Clerk to the Panel had tabled your letter for Members' reference. I have therefore taken the liberty to copy this reply to the Clerk to the Panel.

Yours sincerely,



(Miss Emma Lau)
Judiciary Administrator

c.c. Mr Stephen W.S. Hung
President, The Law Society of Hong Kong

Ms Mary So
Clerk to the AJLS Panel