

**For discussion  
on 19 December 2016**

**Legislative Council  
Panel on Administration of Justice and Legal Services**

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

**INTRODUCTION**

This paper briefs members on the outcome of the 2016 biennial review of the criminal legal aid fees<sup>1</sup>, the prosecution fees<sup>2</sup> and the duty lawyer fees<sup>3</sup> (collectively referred to as “the Fees” in the rest of the paper).

**PROPOSAL**

2. We propose to amend Rule 21 and Part 2 of the Schedule to the Legal Aid in Criminal Cases Rules (Cap. 221 sub. leg. D) (“LACCR”) to increase criminal legal aid fees by 4.0% to reflect the accumulated change in the Consumer Price Index (C) (“CPI(C)”) recorded between July 2014 and July 2016. The prosecution fees and duty lawyer fees will be adjusted administratively to reflect the +4.0% change in CPI(C).

**JUSTIFICATIONS**

**Biennial review mechanism**

3. Lawyers in private practice engaged to undertake litigation work

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<sup>1</sup> Fees payable to lawyers in private practice who undertake litigation work in respect of criminal cases on behalf of the Legal Aid Department.

<sup>2</sup> Fees payable to lawyers in private practice engaged by the Department of Justice to appear for the prosecution in criminal cases.

<sup>3</sup> Fees payable to duty lawyers providing legal assistance under the Duty Lawyer Service, which provides legal representation to eligible defendants who appear in Magistrates’ Courts, Juvenile Courts and the Coroners’ Court.

on behalf of Legal Aid Department (“LAD”) in respect of criminal cases are remunerated in accordance with the LACCR under the Criminal Procedure Ordinance (Cap. 221), which specifies the fees payable to counsel and solicitors for criminal cases in different levels of Court. The Department of Justice (“DoJ”) draws reference to the same scale of fees to engage counsel in private practice to appear for the prosecution in criminal cases. The duty lawyer fees are also determined with reference to the same scale of fees.

4. Pursuant to the report by the Secretary for the Treasury to the Legislative Council (“LegCo”) Finance Committee in October 1992, the Fees are subject to review on a biennial basis to take into account changes in CPI(C) during the reference period. In conducting the biennial reviews, the Government takes into account mainly general price movement during the reference period and whether there has been difficulty in engaging the services of counsel and solicitors.

5. In the previous biennial review of 2014, the Government proposed to increase the Fees by 7.7% in accordance with the movement in CPI(C) during the reference period from July 2012 to July 2014. The proposed 7.7% upward adjustment was incorporated in the proposed package of increases in criminal legal aid fees pursuant to the review commenced in March 2014<sup>4</sup>. We sought the support of the LegCo Panel on Administration of Justice and Legal Services in February 2016 and the proposed package of increases in criminal legal aid fees was approved by LegCo in June 2016. The new Fees came into effect on 14 November 2016.

### **2016 biennial review**

6. The Government has completed the 2016 biennial review. Noting that the CPI(C) for the reference period (i.e. July 2014 to July 2016) has increased by 4.0%, we propose to adjust the Fees upward by 4.0% accordingly. The impact of general price movement after July 2016 will be reflected in the next biennial review. The existing Fees and

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<sup>4</sup> The criminal legal aid fees was increased by the following percentages –  
(a) 50% for counsel;  
(b) 25% for instructing solicitors; and  
(c) 40% for solicitors acting as both advocate and instructing solicitor in the District Court.

A new category of criminal legal aid fees for High Court cases was introduced for Solicitor Advocates with higher rights of audience.

the proposed Fees, rounded down to the nearest ten dollars, are listed in the **Annex**.

7. The following table summarises the adjustment to the Fees in the past five biennial reviews and the adjustment proposed for the current review –

<b>Year</b>	<b>Adjustment</b>	<b>CPI(C) Movement</b>
2006 review	Nil <sup>5</sup>	+3.4%
2008 review	+8.3%	+8.3%
2010 review	+1.6%	+1.6%
2012 review	+9.3%	+9.3%
2014 review	+7.7%	+7.7%
2016 review	+4.0% (proposed)	+4.0%

8. When adjusting the level of criminal legal aid fees, the issue of parity between the defendant and the prosecution should also be taken into account. Currently, DoJ adopts the same fee scale as that of the LAD under the LACCR when engaging lawyers in private practice on a standard briefing-out basis to prosecute criminal cases on fiat, so as to ensure that neither LAD nor DoJ would have unfair advantage in competing for the same pool of lawyers. DoJ would administratively adjust its scale of fees for engaging lawyers in private practice on a standard briefing-out basis to prosecute criminal cases on fiat upon LAD's implementation of the increased criminal legal aid fees.

## **CONSULTATION**

9. We have informed the Legal Aid Services Council, the Hong Kong Bar Association and the Law Society of Hong Kong of the outcome of the 2016 biennial review of the Fees.

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<sup>5</sup> The fees were reduced by 4.3% pursuant to the 2002 biennial review, following the change in CPI(C). Pursuant to the 2004 biennial review, the Government decided not to reduce the fees to follow the 4.4% drop in CPI(C) and instead, reserved the 4.4% reduction and pledged to consider it together with the 2006 review. In the 2006 review, the Government reported to the LegCo Panel on Administration of Justice and Legal Services that the cumulative change in CPI(C) in the 2004 and 2006 reviews recorded a decrease of 1.0% (-4.4%+3.4%), and decided to freeze the fees.

## **FINANCIAL IMPLICATIONS**

10. The proposal to increase criminal legal aid fees and prosecution fees is estimated to incur an additional recurrent expenditure of around \$7.0 million each in a full year by LAD and DoJ. LAD and DoJ will include the necessary provisions in the 2017-18 draft Estimates to meet the costs of the proposed fee increases. The two departments will absorb the workload in effecting the changes in criminal legal aid fees and prosecution fees with their existing manpower resources.

## **WAY FORWARD**

11. We will submit the proposed amendments to the LACCR to the Criminal Procedure Rules Committee<sup>6</sup> (“Rules Committee”) chaired by the Chief Judge of the High Court for approval. Subject to the Rules Committee’s approval, we will move a resolution in LegCo to effect the legislative changes in the second quarter of 2017 and appoint the commencement date as soon as possible upon LegCo’s approval.

12. The prosecution fees and duty lawyer fees, although not specified in the LACCR, will be adjusted administratively by drawing reference to the updated set of criminal legal aid fees to reflect the +4.0% change in CPI(C).

## **BACKGROUND**

13. With LegCo’s support and the collaborative efforts of the Government and the two legal professional bodies, the payment structure of the criminal legal aid fees system was enhanced in March 2012 with the introduction of a “marked brief system” with a view to, inter alia,

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<sup>6</sup> Section 9(1) of the Criminal Procedure Ordinance (Cap. 221) provides that “Rules and orders regulating the practice and procedure under this Ordinance shall be made by the Criminal Procedure Rules Committee, which shall consist of - (a) the Chief Judge, who shall be chairman; (b) a Justice of Appeal appointed by the Chief Judge; (c) a judge of the Court of First Instance appointed by the Chief Judge; (d) the Secretary for Justice or a legal officer nominated by him; (e) the Director of Legal Aid or a legal aid officer nominated by him; (f) a barrister nominated by the Hong Kong Bar Association; (g) a solicitor nominated by The Law Society of Hong Kong; (h) the Registrar, or a Senior Deputy Registrar or Deputy Registrar of the High Court appointed by the Chief Judge, who shall be secretary.”

aligning the fees system between DoJ and LAD. Under the enhanced structure, the classification of a particular case and hence the rates, as well as the required preparation time are assessed by LAD beforehand and marked on the brief when making the assignment<sup>7</sup>. Where circumstances permit, solicitors and counsel are allowed to view the bundles before accepting assignments so that they may agree on the fees to be paid. They may also seek a re-determination of the agreed fees to reflect more accurately the actual preparation time spent.

14. The Government undertook to review the revised rates of criminal legal aid fees in two years' time upon the implementation of the enhanced system. A working group<sup>8</sup> was formed by HAB in March 2014 to review the rates of criminal legal aid fees as pledged. The Working Group recommended a package of increases in criminal legal aid fees and the introduction of a new category of fee rates for Solicitor Advocates for the higher courts. As mentioned in paragraph 5 above, the new Fees came into effect on 14 November 2016.

## **ADVICE SOUGHT**

15. Members are invited to note the outcome of the review.

**Home Affairs Bureau  
Legal Aid Department  
December 2016**

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<sup>7</sup> Under the original fees structure, payable items mainly consisted of the fixed brief fee which covered preparation (regardless of duration) and the first day of attendance in Court. Under the revised fees structure implemented in March 2012, the duration for preparation covered under the initial brief fee is specified (i.e. eight hours for counsel or four hours for instructing solicitors), with additional four-hour units of preparation fees payable as applicable. As such, lawyers can be paid more if additional preparation work is required.

<sup>8</sup> Members of the Working Group include representatives from the Hong Kong Bar Association and the Law Society of Hong Kong, as well as government representatives from LAD and DoJ.

**Comparison of Current and Proposed  
Criminal Legal Aid Fees and Prosecution Fees**  
(Current fees in force since 14 November 2016)

Fee item	Department/ Service	Current maximum fee (\$)	Proposed maximum fee (\$)
<b>1. Magistrates' Courts</b>			
(a) <u>Counsel or solicitor acting as advocate in committal proceedings</u>			
(i) Brief <sup>i</sup>	Legal Aid Department (LAD)/ Department of Justice (DoJ)	14,700	15,280
(ii) Refresher <sup>ii</sup>	LAD/DoJ	7,340 per day	7,630 per day
(iii) Conference	DoJ	1,180 per hour	1,220 per hour
(iv) Pre-trial Review (per review)	DoJ	2,040	2,120
(b) <u>Counsel or solicitor acting as advocate in preliminary inquiry</u>			
(i) Brief <sup>i</sup>	LAD	14,700	15,280
(ii) Refresher <sup>ii</sup>	LAD	7,350 per day	7,640 per day
(c) <u>Instructing solicitor in committal proceedings (including preliminary inquiry)</u>			
(i) Brief <sup>i</sup>	LAD	3,300	3,430
(ii) Refresher <sup>ii</sup>	LAD	2,710 per day	2,810 per day
(d) <u>Counsel or solicitor acting as advocate in place of court prosecutor in committal proceedings</u>			
(i) Brief	DoJ	7,020 per day	7,300 per day

	<b>Fee item</b>	<b>Department/ Service</b>	<b>Current maximum fee (\$)</b>	<b>Proposed maximum fee (\$)</b>
			3,490 half day	3,620 half day
(e)	<u>Counsel or solicitor acting as advocate in committal proceedings</u> (Newly qualified lawyers)			
(i)	Brief (for 2 weeks engagement)	DoJ	47,080	48,960
(ii)	Brief after 2 weeks engagement (part-heard case)	DoJ	7,020 per day 3,490 half day	7,300 per day 3,620 half day
(f)	<u>Counsel or solicitor acting as advocate in committal proceedings</u> (Newly qualified monolingual lawyers)			
(i)	Brief	DoJ	7,020 per day 3,490 half day	7,300 per day 3,620 half day

## 2. District Court (DC)

(a)	<u>Counsel</u>			
(i)	Preparation <sup>iii</sup>	LAD	12,240	12,720
(ii)	Additional preparation	LAD	6,320 per 4-hour unit	6,570 per 4-hour unit
(iii)	Court hearing	LAD/DoJ	12,240 per day	12,720 per day
(iv)	Conference	LAD/DoJ	1,560 per hour	1,620 per hour
(v)	Brief <sup>i</sup>	DOJ	24,480	25,450
(vi)	Pre-trial Review (per review)	DOJ	3,070	3,190
(vii)	Mention	DOJ	2,040	2,120

	<b>Fee item</b>	<b>Department/ Service</b>	<b>Current maximum fee (\$)</b>	<b>Proposed maximum fee (\$)</b>
	(viii) Plea	DOJ	2,040	2,120
	(ix) Sentence	DOJ	2,040	2,120
	(x) Plea & Sentence	DOJ	3,070	3,190
(b)	<u>Instructing solicitor</u>			
	(i) Reading	LAD	840 per hour	870 per hour
	(ii) Preparation	LAD	3,430 per 4-hour unit	3,560 per 4-hour unit
	(iii) Court hearing	LAD	6,860 per day	7,130 per day
	(iv) Conference	LAD	840 per hour	870 per hour
(c)	<u>Solicitor acting as both advocate and instructing solicitor</u>			
	(i) Preparation <sup>iii</sup>	LAD	14,130	14,690
	(ii) Additional preparation	LAD	7,040 per 4-hour unit	7,320 per 4-hour unit
	(iii) First day Court hearing	LAD	14,130 per day	14,690 per day
	(iv) Refresher <sup>iv</sup>	LAD	15,670 per day	16,290 per day
(d)	<u>Attendance at DC (other than for the trial, plea or sentence)</u>			
		LAD	At a rate that appears to the Director of Legal Aid (DLA) to be reasonable and proper	At a rate that appears to DLA to be reasonable and proper

	<b>Fee item</b>	<b>Department/ Service</b>	<b>Current maximum fee (\$)</b>	<b>Proposed maximum fee (\$)</b>
<b>3. Court of First Instance (CFI)</b>				
<b>(a) <u>Counsel</u></b>				
(i)	Preparation <sup>iii</sup>	LAD	18,390	19,120
(ii)	Additional preparation	LAD	7,710 per 4-hour unit	8,010 per 4-hour unit
(iii)	Court hearing	LAD/DoJ	18,390 per day	19,120 per day
(iv)	Conference	LAD/DoJ	1,910 per hour	1,980 per hour
(v)	Brief <sup>d</sup>	DoJ	36,780	38,250
(vi)	Pre-trial Review / other case management hearing, as appropriate (per hearing)	DoJ	3,630	3,770
(vii)	Mention	DoJ	5,500	5,720
(viii)	Plea	DoJ	5,500	5,720
(ix)	Sentence	DoJ	5,500	5,720
(x)	Plea & Sentence	DoJ	6,540	6,800
<b>(b) <u>Solicitor advocate with higher rights of audience (HRA) acting as both advocate and instructing solicitor</u></b>				
(i)	Preparation <sup>iii</sup>	LAD	21,240	22,080
(ii)	Additional preparation	LAD	8,600 per 4-hour unit	8,940 per 4-hour unit
(iii)	First day Court hearing	LAD	21,240 per day	22,080 per day

	<b>Fee item</b>	<b>Department/ Service</b>	<b>Current maximum fee (\$)</b>	<b>Proposed maximum fee (\$)</b>
	(iv) Refresher <sup>iv</sup>	LAD	23,540 per day	24,480 per day
(c)	<u>Instructing solicitor</u>			
	(i) Reading	LAD	1,000 per hour	1,040 per hour
	(ii) Preparation	LAD	4,040 per 4-hour unit	4,200 per 4-hour unit
	(iii) Court hearing	LAD	8,100 per day	8,420 per day
	(iv) Conference	LAD	1,000 per hour	1,040 per hour
(d)	<u>Attendance at CFI (other than for the trial, plea or sentence)</u>			
		LAD	At a rate that appears to DLA to be reasonable and proper	At a rate that appears to DLA to be reasonable and proper

#### 4. Appeals from a magistrate to CFI

Rates for counsel, solicitors and solicitor advocates with HRA are the same as those applicable to proceedings in CFI as set out in (3) above.

#### 5. Appeals to the Court of Appeal (CA)

(a)	<u>Counsel (appeals from magistrates<sup>v</sup> or CFI)</u>			
	(i) Preparation <sup>iii</sup>	LAD	24,530	25,510
	(ii) Additional preparation	LAD	7,710 per 4-hour unit	8,010 per 4-hour unit
	(iii) Brief <sup>f</sup>	DoJ	49,050	51,010

	<b>Fee item</b>	<b>Department/ Service</b>	<b>Current maximum fee (\$)</b>	<b>Proposed maximum fee (\$)</b>
(iv)	Court hearing	LAD/DoJ	24,530 per day	25,510 per day
(v)	Conference	LAD/DoJ	1,910 per hour	1,980 per hour
(b)	<u>Counsel (appeals from DC)</u>			
(i)	Preparation <sup>iii</sup>	LAD	19,610	20,390
(ii)	Additional preparation	LAD	7,710 per 4-hour unit	8,010 per 4-hour unit
(iii)	Brief <sup>i</sup>	DoJ	39,210	40,770
(iv)	Court hearing	LAD/DoJ	19,610 per day	20,390 per day
(v)	Conference	LAD/DoJ	1,910 per hour	1,980 per hour
(c)	<u>Solicitor advocate with HRA acting as both advocate and instructing solicitor (appeals from CFI)</u>			
(i)	Preparation <sup>iii</sup>	LAD	28,320	29,450
(ii)	Additional preparation	LAD	8,600 per 4-hour unit	8,940 per 4-hour unit
(iii)	First day Court hearing	LAD	28,320 per day	29,450 per day
(iv)	Refresher <sup>iv</sup>	LAD	31,400 per day	32,650 per day
(d)	<u>Solicitor advocate with HRA acting as both advocate and instructing solicitor (appeals from DC)</u>			
(i)	Preparation <sup>iii</sup>	LAD	22,640	23,540
(ii)	Additional preparation	LAD	8,600 per 4-hour	8,940 per 4-hour

	<b>Fee item</b>	<b>Department/ Service</b>	<b>Current maximum fee (\$) unit</b>	<b>Proposed maximum fee (\$) unit</b>
(iii)	First day Court hearing	LAD	22,640 per day	23,540 per day
(iv)	Refresher <sup>iv</sup>	LAD	25,100 per day	26,100 per day
(e)	<u>Instructing solicitor</u>			
(i)	Reading	LAD	1,360 per hour	1,410 per hour
(ii)	Preparation	LAD	5,490 per 4-hour unit	5,700 per 4-hour unit
(iii)	Court hearing	LAD	10,980 per day	11,410 per day
(iv)	Conference	LAD	1,360 per hour	1,410 per hour
(f)	<u>Attendance at CA (other than for the appeal hearing)</u>			
		LAD	At a rate that appears to DLA to be reasonable and proper	At a rate that appears to DLA to be reasonable and proper
(g)	<u>Counsel or solicitor settling notice of appeal<sup>vi</sup></u>			
		LAD	4,860	5,050

## 6. Appeals (or applications for leave to appeal) to the Court of Final Appeal

<u>Counsel and solicitor</u>	LAD	Fees that appear to DLA to be reasonable and proper	Fees that appear to DLA to be reasonable and proper
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<b>Fee item</b>	<b>Department/ Service</b>	<b>Current maximum fee (\$)</b>	<b>Proposed maximum fee (\$)</b>
<b>7. Proceedings in DC or CFI or appeals</b>			
<u>Senior Counsel</u>	LAD	Fees at an hourly rate that appears to DLA to be reasonable and proper	Fees at an hourly rate that appears to DLA to be reasonable and proper

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- i Covering preparation (regardless of duration) and the first day of attendance in Court.
  - ii For additional day(s) of attendance in Court subsequent to the first day as covered under the Brief fee.
  - iii Covering the first eight hours of preparation.
  - iv For additional day(s) of attendance in Court subsequent to the first day of Court hearing.
  - v In respect of an appeal, or any point in an appeal, reserved to be argued before CA under section 118 of the Magistrates Ordinance (Cap. 227).
  - vi That is, for preparing the notice of appeal for filing with the Court.