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Panel on Administration of Justice and Legal Services

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 27 February 2017**

Review of Solicitors' Hourly Rates – An Update

Purpose

This paper provides background information on the review of solicitors' hourly rates ("SHRs") for the purpose of taxation on a party and party basis. It also provides a summary of the major views and concerns expressed by members on the subject at the meeting of the Panel on Administration of Justice and Legal Services ("the Panel").

Background

Taxation of costs on a party and party basis

2. According to the information provided by the Judiciary,¹ the Court would normally award costs to the winning party at the conclusion of a court case. "Taxation of costs" by a taxing master will be required if the litigating parties cannot reach agreement on the quantum of costs. Unless otherwise ordered by the Court, the taxing master will tax the costs claimed by the winning party on a "party and party basis". For taxation on a party and party basis, a winning party is entitled to recover all such costs as are necessary or proper for the attainment of justice or for enforcing or defending the rights of such party whose costs are being taxed. It should be noted that one of the main components of costs to be taxed is the solicitors' costs.

3. The Judiciary advised that on the one hand the SHRs, for the purpose of assessing costs incurred by litigants during court proceedings, reflect in general the rates which taxing masters consider to be appropriate and reasonable for

¹ LC Paper No. CB(4)825/14-15(08)

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. On the other hand, the taxing masters are not bound by such SHRs in taxation of costs. Each taxation application will be considered on its own merit and the taxing masters, in exercising their judicial discretions, may make such adjustments as they see fit.

4. The SHRs were last reviewed in 1997. The Law Society of Hong Kong ("the Law Society") commissioned a review of the SHRs in 2013 and its consultant's report recommends, amongst others, that (i) the SHRs be raised to better reflect the current market conditions; and (ii) annual adjustments be made to the revised SHRs in accordance with an inflation linked index.

Setting up of a Working Party on Review of SHRs for Party and Party Taxation

5. Having regard to the importance and nature of the subject and taking into account the possible ramifications such matter may have on the access to justice and different stakeholders of the community, the Chief Justice appointed a Working Party on Review of SHRs for Party and Party Taxation ("the Working Party") to oversee the review and make recommendation on the matter.

6. The Working Party commenced work in January 2014 and was tasked to:
- (a) make recommendations to the Chief Justice on how a comprehensive and evidence-based review of the SHRs for the purpose of taxation on a party and party basis should be conducted;
 - (b) subject to the Chief Justice's acceptance in principle of the recommendations on the review mechanism at (a) above, conduct such review of the SHRs with a view to making recommendations to the Chief Justice on (i) whether any adjustments of SHRs are appropriate; and (ii) any other related matters; and
 - (c) make recommendations to the Chief Justice on whether regular review of the SHRs should be conducted, and if so, how.

Progress of work of the Working Party

7. The Judiciary Administration briefed the Panel on the progress of work of the Working Party on 27 April 2015. The Panel was informed that the Working Party deliberated on the broad context under which the review of the SHRs should be conducted and considered. The Working Party identified a number of issues which are relevant to the review, namely, recoverability gap, access to

justice, impact on law firms, impact on legal aid, competitiveness of Hong Kong in dispute resolution and sustainability.

8. An independent consultant has been engaged by the Working Party to conduct the review for which a two-stage approach is adopted: the first stage of the consultancy study is to study the approach and methodology for conducting the review and the mechanism for setting the SHRs; in the second stage another consultant would be commissioned to work out a new set of SHRs based on the methodology and mechanism endorsed in the first stage.

9. In undertaking the consultancy study, the consultant is required to take into account the following factors:

- (a) legislation regarding taxation on a party and party basis;
- (b) the views of major stakeholders which would include, amongst others, law firms of different sizes, the Judiciary's Judges and Judicial Officers and staff responsible for taxing matters, and other related Government departments or organizations;
- (c) the relevant experience of other common law jurisdictions on the subject;
- (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 the factors mentioned in paragraph 7 above.

Major views and concerns

10. During the Fifth Legislative Council, members of the Panel deliberated on the latest progress of the review of the SHRs at its meeting held on 27 April 2015. The major views and concerns expressed by members and the Law Society are summarized in the ensuing paragraphs.

11. The Law Society welcomed the progress that had been made and appreciated that the Judiciary was considering the desirability of having a regular review of the SHRs. The Law Society also stressed that whether the SHRs went up or down would not have any effect whatsoever on the fees which solicitors would charge their clients, as such fees charged by solicitors were matters agreed to between the solicitors and their clients. The reason why the Law Society considered it necessary to review SHRs was because SHRs for

party to party taxation reflected in general the amount which a successful party in litigation could recover from the losing side. In the Hong Kong system where successful litigants should be entitled to recover a significant part of their legal costs from the unsuccessful litigants, it would be unfair to the successful litigants if the gap between the SHRs and the amount of money which the successful litigants paid to their lawyer(s) was large.

12. In response to a member's enquiry on the need for the Working Party to engage a consultant to conduct review of the SHRs having regard to the fact that the Law Society had commissioned a consultant to review the SHRs in 2013 and the findings and recommendations of the consultant had been submitted to the Judiciary, the Judiciary Administration advised that given the various considerations set out in paragraph 7 above and the possible ramifications the review might have on the overall public interest in access to justice and on the different stakeholders in the community, the Working Party considered that any review of the SHRs should be objective and a structured approach should be adopted to tackle the matter. In this regard, the Working Party agreed that an independent consultant should be engaged to conduct an objective and comprehensive study to examine the subject and to make recommendations for the Working Party's considerations. The findings and recommendations of the consultant commissioned by the Law Society to review the SHRs would be taken into account by the consultant engaged by the Working Party.

13. A member expressed concern on whether the devising of the SHRs might be construed as an anti-competition conduct under the Competition Ordinance (Cap. 619). The Judiciary Administration advised that devising the SHRs should be not construed as an anti-competition conduct under the Competition Ordinance, as the SHRs did not prescribe or seek to prescribe the charge out rate solicitors/fee earners actually adopted in charging their clients for service rendered in litigation. SHRs were taken to generally refer to the reasonable hourly rates in respect of reasonably competent solicitors/fee earners in different bands of seniority that were allowable on party and party taxation.

14. In reply to a member's enquiry as to whether the review of the SHRs would cover the handling of taxation applications by the taxing masters, the Judiciary Administration responded in the negative because these were two entirely different matters. In handling each taxation application, taxing masters were not bound by the SHRs and they could exercise their discretion to adjust the legal costs awarded to the winning party based on the merits of each application.

15. Noting that the Working Party planned to make final recommendations to the Chief Justice by the end of 2015 or early 2016, a member was concerned why the Working Party needed such a long time to make final recommendations to the Chief Justice. The Judiciary Administration advised that the consultant

was recently engaged by the Working Party. It was expected that stage 1 of the consultancy study would be completed around mid 2015 and stage 2 would start immediately afterwards.

Latest position

16. The Judiciary Administration will brief and update the Panel on the review of solicitors' hourly rates at its meeting scheduled for 27 February 2017.

Relevant papers

17. A list of relevant papers is in the **Appendix**.

Council Business Division 4
Legislative Council Secretariat
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Appendix

Review of Solicitors' Hourly Rates – An Update

List of relevant papers

Date	Meeting	Paper
27 April 2015	Panel on Administration of Justice and Legal Services	Administration's paper on "Review of Solicitors' Hourly Rates" LC Paper No. CB(4)825/14-15(08) Minutes of meeting LC Paper No. CB(4)1283/14-15

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