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Panel on Administration of Justice and Legal Services
Meeting on 28 January 2019

**Background brief on reviews of criminal legal aid fees,
prosecution fees and duty lawyer fees**

Purpose

This paper provides background information and a brief account of the past discussions of the Panel on Administration of Justice and Legal Services ("the Panel") on reviews of criminal legal aid fees, prosecution fees and duty lawyer fees (hereinafter collectively referred to as "the Fees").

Background

2. Criminal legal aid fees are fees payable to lawyers in private practice who undertake litigation work in respect of criminal cases on behalf of the Legal Aid Department ("LAD"). The scale of fees and the fee assessment mechanism are prescribed in Rule 21 of the Legal Aid in Criminal Cases Rules (Cap. 221 sub. leg. D), subsidiary legislation of the Criminal Procedure Ordinance (Cap. 221).
3. Prosecution fees are fees payable to lawyers in private practice engaged by the Department of Justice ("DoJ") to appear for the prosecution in criminal cases on behalf of the Government. While the scale of criminal legal aid fees only binds LAD legally, DoJ adopts the same fee scale for the prosecution fees on an administrative basis with a view to ensuring that neither LAD nor DoJ would have any advantage in competing for lawyers. The current criminal legal aid fees and the prosecution fees are set out in **Appendix I**.
4. Duty lawyer fees are fees payable to duty lawyers providing legal representation to eligible defendants who appear in Magistrates' Courts, Juvenile

Courts and the Coroners' Court under the Duty Lawyer Scheme¹. The duty lawyer fees are based on the brief fees payable to counsel engaged by DoJ to appear in the Magistrates' Courts as prosecuting counsel, and are currently categorized into whole-day fee of \$7,300, half-day fee of \$3,630 and pre-trial preparation fee of \$880 per hour.

5. Adjustment of criminal legal aid fees is to be approved by the Legislative Council ("LegCo") in accordance with section 9A of Cap. 221. For prosecution fees and duty lawyer fees which are currently adjusted administratively with reference to the rates of criminal legal aid fees, the adjustment would be made by the Director of Administration ("DoA") following the established mechanism.

Biennial review mechanism

6. In October 1992, the Finance Committee agreed that the Fees should be reviewed biennially in future. The Finance Committee also delegated in June 2003 the authority to approve future adjustments to the Fees to DoA, provided that the extent of adjustment is no greater than the movement of the Consumer Price Index (C) ("CPI(C)") during the reference period. In conducting the biennial reviews, the Administration 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. The following table summarizes the past adjustments to the Fees based on biennial reviews:

Year	Adjustment	CPI(C) movement
2002 review	-4.3%	-4.3%
2004 review	Nil	-4.4%
2006 review	Nil	+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%	+4.0%

Reviews of criminal legal aid fee system in 2012 and 2016

7. In response to the call for change by the two legal professional bodies, the Administration had reviewed the criminal legal aid fee system and discussed the

¹ The Duty Lawyer Scheme is one of the legal assistance schemes administered by the Duty Lawyer Service ("DLS"), which is a non-statutory organization subvented by the Government and independently managed and administered jointly by the Hong Kong Bar Association and The Law Society of Hong Kong through the Council of DLS.

relevant issues with the Panel at various meetings held between December 2005 and February 2016.

8. With the Administration and the two legal professional bodies working in collaboration, the payment structure of the criminal legal aid fee system was enhanced in March 2012 with the introduction of a "marked brief system" with a view to, inter alia, aligning the fee system between LAD and DoJ. Under the enhanced structure, the classification of a particular case and hence the rates, as well as the required preparation time were assessed by LAD beforehand and marked on the brief when making the assignment.² Where circumstances permitted, solicitors and counsel were allowed to view the bundles before accepting assignments so that they might agree on the fees to be paid. They might also seek a re-determination of the agreed fees to reflect more accurately the actual preparation time spent.

9. The Administration undertook to review the rates of criminal legal aid fees in two years' time upon the implementation of the enhanced system in 2012. A working group was formed by the Home Affairs Bureau in March 2014 to review the rates of criminal legal aid fees ("the review working group") as pledged.³ The review working group recommended a package of increases in criminal legal aid fees which had come into effect on 14 November 2016.⁴

10. The package of increases proposed by the review working group had incorporated the increase of 7.7% arising from the biennial review conducted in 2014, as mentioned in paragraph 6 above, in accordance with the movement in CPI(C) during the reference period from July 2012 to July 2014. On 1 November 2017, the Administration advised that it would keep in view the implementation of the new fees, and consider the need for another review as and when necessary.

² Under the original fee 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 fee 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.

³ Members of the review 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.

⁴ The criminal legal aid fees was increased by 50% for counsel; 25% for instructing solicitors; and 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.

Major views and concerns of members

11. The major views and concerns expressed by the Panel members in the recent discussions relating to reviews of the Fees are summarized in the ensuing paragraphs.

Duty lawyer fees

12. At the Panel meetings on 19 December 2016 and 23 January 2017, some members pointed out that the criminal legal aid fees had been increased by 50% for counsel and 25% for instructing solicitors as approved by LegCo in 2016, while the duty lawyer fees had not been reviewed since 1997 other than the adjustments made consequent to movements in CPI(C). In view of this, some members considered that the duty lawyer fees had actually been delinked from the criminal legal aid fees. They considered that the prevailing level of duty lawyer fees was too low to attract experienced counsel or solicitors to act as duty lawyers to provide legal representation for defendants appearing in the Magistrates' Courts, which greatly affected the liberty and the livelihood of Hong Kong citizens as around 80% to 90% of criminal cases in Hong Kong were tried in the Magistrates' Courts. Therefore, some members as well as the two legal professional bodies urged the Administration to expeditiously come up with a timetable on the comprehensive review of duty lawyer fees.

13. At the Panel meeting on 30 October 2017, the Administration informed members that it had decided to conduct a review of duty lawyer fees. The Home Affairs Bureau set up the Working Group on Review of Duty Lawyer Fees ("the DLF Review Working Group") and invited the two legal professional bodies, the Duty Lawyer Service, DoJ and LAD to join the working group.

14. At the Panel meeting on 29 October 2018, DoA briefed members on the relevant policy initiatives of the Chief Secretary for Administration's Office ("CSO") in the Chief Executive's 2018 Policy Address and Policy Agenda. Among other things, DoA informed members that CSO had completed the review of duty lawyer fees and briefly introduced the outcome and the recommendations of the DLF Review Working Group.⁵

15. The Hong Kong Bar Association welcomed the Administration's plan to significantly increase the duty lawyer fees but hoped that the Administration would review the duty lawyer fees more regularly in the future to maintain the

⁵ The Administration implemented the initiative as announced in the Chief Executive's 2017 Policy Address to transfer the responsibilities for formulating legal aid policy and housekeeping LAD from the Home Affairs Bureau to CSO. The transfer took effect on 1 July 2018.

fees at a reasonable level. Furthermore, the Administration should make reference to the established criminal legal aid fee system and the prosecution fees in determining the duty lawyer fees by assessing the required preparation time for the duty lawyers, and allowing the agreed fees to be re-determined with a view to reflecting more accurately the actual preparation time spent by the duty lawyers.

Criminal legal aid fees

16. During the deliberation on the Administration's proposed package of increases in criminal legal aid fees at the Panel meeting on 22 February 2016, some members considered that the fact that the civil legal aid fees prevailing at that time were higher than those of criminal legal aid had discouraged many young lawyers to pursue criminal work. As such, they urged the Administration to continue enhancing criminal legal aid fees so as to attract more young lawyers to take up criminal legal aid cases and retain experienced lawyers to stay on the Legal Aid Panel.

17. In response, the Administration explained that over 88% of counsel and 90% of solicitors on the Legal Aid Panel assigned with criminal legal aid cases had more than 10 years' post-qualification experience. The Administration hoped that the proposed increase in criminal legal aid fees would attract more young lawyers to take up criminal legal aid work.

18. At the Panel meeting on 19 December 2016, while expressing support for the Administration's proposal to adjust the criminal legal aid fees upward by 4% following the biennial review in 2016, some members considered that the criminal legal aid fees were out of tune with the market as the base for calculating the increase in criminal legal aid fees had been too low. Some members considered that the fees for criminal legal aid work should be on par with that for civil legal aid work as criminal cases required no less effort than civil cases. Therefore, the Administration should undertake a comprehensive review on the criminal legal aid fees to encourage more lawyers to take up criminal legal aid work.

19. The Administration advised that, since the systems for civil and criminal cases were different, it was of the view that differences between the rates for remunerating lawyers in different practices were justifiable and should continue to be allowed and, therefore, the review working group had focused on working out the reasonable fee rates for lawyers undertaking criminal legal aid cases. The Administration informed the Panel that it would continue to keep in view the implementation of the new rates for criminal legal aid fees.

20. Some members stressed that the average hourly effort spent by legal practitioners on preparing civil cases and criminal cases should be the same. Therefore, they did not subscribe to the view that the rates for remunerating lawyers undertaking civil and criminal legal aid cases should be different. In response, the Administration advised that in setting the rates of criminal legal aid fees, it would take into account the complexity of cases, including the levels of courts, to assess the time needed by the assigned-out lawyers to prepare for the case. For individual cases tried in the District Courts which were more complicated, a mechanism had been in place to remunerate the assigned-out lawyers as appropriate if additional preparation work was required.

Latest position

21. The Administration has completed the biennial review of the Fees which covers the reference period of July 2016 to July 2018, and will report the outcome to the Panel at its meeting scheduled for 28 January 2019. The Administration will also brief the Panel on the details of the outcome of the duty lawyer fees review, as mentioned in paragraph 14, with a view to implementing the proposed adjustments in 2019-2020.

Relevant papers

22. A list of the relevant papers is in **Appendix II**.

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22 January 2019

Current criminal legal aid fees and prosecution fees
(with effect from 3 April 2018)

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

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

2. District Court ("DC")

(a)	<u>Counsel</u>		
(i)	Preparation ³	LAD	12,720

	Fee item	Department/ Service	Current maximum fee (\$)
(ii)	Additional preparation	LAD	6,570 per 4-hour unit
(iii)	Court hearing	LAD/DoJ	12,720 per day
(iv)	Conference	LAD/DoJ	1,620 per hour
(v)	Brief ¹	DoJ	25,450
(vi)	Pre-trial review (per review)	DoJ	3,190
(vii)	Mention	DoJ	2,120
(viii)	Plea	DoJ	2,120
(ix)	Sentence	DoJ	2,120
(x)	Plea & Sentence	DoJ	3,190
(b)	<u>Instructing solicitor</u>		
(i)	Reading	LAD	870 per hour
(ii)	Preparation	LAD	3,560 per 4-hour unit
(iii)	Court hearing	LAD	7,130 per day
(iv)	Conference	LAD	870 per hour

	Fee item	Department/ Service	Current maximum fee (\$)
(c)	<u>Solicitor acting as both advocate and instructing solicitor</u>		
(i)	Preparation ³	LAD	14,690
(ii)	Additional preparation	LAD	7,320 per 4-hour unit
(iii)	First day Court hearing	LAD	14,690 per day
(iv)	Refresher ⁴	LAD	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

3. Court of First Instance ("CFI")

(a)	<u>Counsel</u>		
(i)	Preparation ³	LAD	19,120
(ii)	Additional preparation	LAD	8,010 per 4-hour unit
(iii)	Court hearing	LAD/DoJ	19,120 per day
(iv)	Conference	LAD/DoJ	1,980 per hour

	Fee item	Department/ Service	Current maximum fee (\$)
(v)	Brief ¹	DoJ	38,250
(vi)	Pre-trial review/ other case management hearing, as appropriate (per hearing)	DoJ	3,770
(vii)	Mention	DoJ	5,720
(viii)	Plea	DoJ	5,720
(ix)	Sentence	DoJ	5,720
(x)	Plea & Sentence	DoJ	6,800
(b)	<u>Solicitor advocate with higher rights of audience ("HRA") acting as both advocate and instructing solicitor</u>		
(i)	Preparation ³	LAD	22,080
(ii)	Additional preparation	LAD	8,940 per 4-hour unit
(iii)	First day Court hearing	LAD	22,080 per day
(iv)	Refresher ⁴	LAD	24,480 per day
(c)	<u>Instructing solicitor</u>		
(i)	Reading	LAD	1,040 per hour

	Fee item	Department/ Service	Current maximum fee (\$)
(ii)	Preparation	LAD	4,200 per 4-hour unit
(iii)	Court hearing	LAD	8,420 per day
(iv)	Conference	LAD	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

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 magistrates⁵ or CFI)</u>		
(i)	Preparation ³	LAD	25,510
(ii)	Additional preparation	LAD	8,010 per 4-hour unit
(iii)	Brief ¹	DoJ	51,010
(iv)	Court hearing	LAD/DoJ	25,510 per day
(v)	Conference	LAD/DoJ	1,980 per hour

	Fee item	Department/ Service	Current maximum fee (\$)
(b)	<u>Counsel (appeals from DC)</u>		
(i)	Preparation ³	LAD	20,390
(ii)	Additional preparation	LAD	8,010 per 4-hour unit
(iii)	Brief ¹	DoJ	40,770
(iv)	Court hearing	LAD/DoJ	20,390 per day
(v)	Conference	LAD/DoJ	1,980 per hour
(c)	<u>Solicitor advocate with HRA acting as both advocate and instructing solicitor (appeals from CFI)</u>		
(i)	Preparation ³	LAD	29,450
(ii)	Additional preparation	LAD	8,940 per 4-hour unit
(iii)	First day Court hearing	LAD	29,450 per day
(iv)	Refresher ⁴	LAD	32,650 per day
(d)	<u>Solicitor advocate with HRA acting as both advocate and instructing solicitor (appeals from DC)</u>		
(i)	Preparation ³	LAD	23,540
(ii)	Additional preparation	LAD	8,940 per 4-hour unit

	Fee item	Department/ Service	Current maximum fee (\$)
	(iii) First day Court hearing	LAD	23,540 per day
	(iv) Refresher ⁴	LAD	26,100 per day
(e)	<u>Instructing solicitor</u>		
	(i) Reading	LAD	1,410 per hour
	(ii) Preparation	LAD	5,700 per 4-hour unit
	(iii) Court hearing	LAD	11,410 per day
	(iv) Conference	LAD	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
(g)	<u>Counsel or solicitor settling notice of appeal</u> ⁶		
		LAD	5,050

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

¹ Covering preparation (regardless of duration) and the first day of attendance in Court.

² For additional day(s) of attendance in Court subsequent to the first day as covered under the Brief fee.

³ Covering the first eight hours of preparation.

⁴ For additional day(s) of attendance in Court subsequent to the first day of Court hearing.

⁵ 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).

⁶ That is, for preparing the notice of appeal for filing with the Court.

List of relevant papers

Committee	Date of meeting	Paper/Minutes
Finance Committee	13.6.2003 (Item No. 3)	<u>Agenda</u> <u>Minutes</u>
Panel on Administration of Justice and Legal Services	27.10.2003 (Item IV)	<u>Agenda</u> <u>Minutes</u>
Council meeting	11.5.2005	<u>Official Record of Proceedings</u> <u>Pages 14 to 20 (Oral question)</u>
Panel on Administration of Justice and Legal Services	--	<u>CB(2)1588/04-05(01)</u>
	--	<u>CB(2)2268/04-05(01)</u>
	--	<u>CB(2)260/05-06(01)</u> <u>CB(2)260/05-06(02)</u>
	15.12.2005 (Item VI)	<u>Agenda</u> <u>Minutes</u>
	--	<u>CB(2)2058/05-06(01)</u>
	--	<u>CB(2)563/06-07(01)</u>
	26.2.2007 (Item IV)	<u>Agenda</u> <u>Minutes</u>
	25.6.2007 (Item V)	<u>Agenda</u> <u>Minutes</u>
	25.2.2008 (Item IV)	<u>Agenda</u> <u>Minutes</u>
	20.10.2008 (Item I)	<u>Agenda</u> <u>Minutes</u>
16.12.2008 (Item V)	<u>Agenda</u> <u>Minutes</u>	

Committee	Date of meeting	Paper/Minutes
	--	<u>CB(2)1439/08-09(01)</u>
	22.6.2009 (Item V)	<u>Agenda</u> <u>Minutes</u>
	25.1.2010 (Item VI)	<u>Agenda</u> <u>Minutes</u>
	--	<u>CB(2)638/10-11(01)</u>
	19.4.2011 (Item IV)	<u>Agenda</u> <u>Minutes</u>
	--	<u>CB(4)849/12-13(01)</u>
	22.2.2016 (Item IV)	<u>Agenda</u> <u>Minutes</u>
	19.12.2016 (Item III)	<u>Agenda</u> <u>Follow-up paper</u> <u>Minutes</u>
	23.1.2017 (Item III)	<u>Agenda</u> <u>Minutes</u>
	30.10.2017 (Item IV)	<u>Agenda</u> <u>Minutes</u>
	29.10.2018 (Item IV)	<u>Agenda</u>

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