

**立法會**  
**Legislative Council**

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Date : 26 May 2020

From : Clerk to the Legislative Council

To : All Members of the Legislative Council

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**Council meeting of 10 June 2020**

**Three proposed resolutions under the Legal Aid Ordinance and  
the Criminal Procedure Ordinance**

The Chief Secretary for Administration will respectively move the three proposed resolutions in **Appendices 1 to 3** under sections 7(a) and 22A of the Legal Aid Ordinance (Cap. 91) and section 9A of the Criminal Procedure Ordinance (Cap. 221) at the above meeting. The President has directed that the proposed resolutions be printed in the terms in which they were handed in on the Agenda of the Council.

2. The speeches which the Chief Secretary for Administration will deliver when moving the three proposed resolutions are in **Appendices 4 to 6** respectively.

(Dora WAI)  
for Clerk to the Legislative Council

Encl.

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**Legal Aid Ordinance**

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**Resolution**

(Under section 7(a) of the Legal Aid Ordinance (Cap. 91))

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**Resolved** that the Legal Aid Ordinance (Cap. 91) be amended as set out in the Schedule.

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**Schedule****Amendments to Legal Aid Ordinance**

1. **Section 5 amended (persons eligible for legal aid)**  
Section 5(1)—  
**Repeal**  
“\$307,130”  
**Substitute**  
“\$420,400”.
2. **Section 5A amended (supplementary legal aid)**
  - (1) Section 5A(b)—  
**Repeal**  
“\$307,130”  
**Substitute**  
“\$420,400”.
  - (2) Section 5A(b)—  
**Repeal**  
“\$1,535,650”  
**Substitute**  
“\$2,102,000”.

## Legal Aid Ordinance

### Resolution

(Under section 22A of the Legal Aid Ordinance (Cap. 91))

**Resolved** that the Legal Aid Ordinance (Cap. 91) be amended as set out in the Schedule.

## Schedule

### Amendments to Legal Aid Ordinance

1. **Section 18A amended (charge on property recovered)**
  - (1) Section 18A(5)(b)—
    - Repeal**
    - “\$4,800”
    - Substitute**
    - “\$9,100”.
  - (2) Section 18A(5)(c)—
    - Repeal**
    - “\$4,800” (wherever appearing)
    - Substitute**
    - “\$9,100”.
2. **Section 19B amended (disposal by Director of moneys paid to him)**

Section 19B(1)(a), proviso—

  - Repeal**
  - “\$57,400”
  - Substitute**
  - “\$108,850”.

**Criminal Procedure Ordinance**

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**Resolution**

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

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**Resolved** that the Legal Aid in Criminal Cases (Amendment) Rules 2020, made by the Criminal Procedure Rules Committee on 21 February 2020, be approved.

## Legal Aid in Criminal Cases (Amendment) Rules 2020

(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

These Rules come into operation on 20 July 2020.

### 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, 4 and 5.

### 3. Rule 21 amended (solicitor and counsel fees)

(1) Rule 21(8)(a)(i)—

**Repeal**

“\$870”

**Substitute**

“\$900”.

(2) Rule 21(8)(a)(ii)—

**Repeal**

“\$1,830”

**Substitute**

“\$1,900”.

(3) Rule 21(8)(a)(iii)—

**Repeal**

“\$1,620”

**Substitute**

“\$1,680”.

(4) Rule 21(8)(b)(i)—

**Repeal**

“\$1,040”

**Substitute**

“\$1,080”.

(5) Rule 21(8)(b)(ia)—

**Repeal**

“\$2,230”

**Substitute**

“\$2,310”.

(6) Rule 21(8)(b)(ii)—

**Repeal**

“\$1,980”

**Substitute**

“\$2,050”.

(7) Rule 21(8)(c)(i)—

**Repeal**

“\$1,410”

**Substitute**

“\$1,460”.

(8) Rule 21(8)(c)(ia)—

**Repeal**

“\$2,230”

**Substitute**

“\$2,310”.

- (9) Rule 21(8)(c)(ii)—

**Repeal**

“\$1,980”

**Substitute**

“\$2,050”.

**4. Rule 24 added**

After rule 23—

**Add****“24. Transitional provision—Legal Aid in Criminal Cases (Amendment) Rules 2020**

If a solicitor or counsel is assigned to an aided person under these rules before 20 July 2020, these rules as in force immediately before that date continue to apply to the solicitor or counsel in respect of the assignment as if the Legal Aid in Criminal Cases (Amendment) Rules 2020 had not been made.”.

**5. Schedule amended (solicitor and counsel fees)**

- (1) The Schedule, Part 2, item 1(a)—

**Repeal**

“\$1,040”

**Substitute**

“\$1,080”.

- (2) The Schedule, Part 2, item 1(b)(i)—

**Repeal**

“\$4,200”

**Substitute**

“\$4,360”.

- (3) The Schedule, Part 2, item 1(b)(ii)—

**Repeal**

“\$4,200”

**Substitute**

“\$4,360”.

- (4) The Schedule, Part 2, item 1(c)—

**Repeal**

“\$1,040”

**Substitute**

“\$1,080”.

- (5) The Schedule, Part 2, item 1(d)—

**Repeal**

“\$8,420”

**Substitute**

“\$8,750”.

- (6) The Schedule, Part 2, item 2(a)—

**Repeal**

“\$1,040”

**Substitute**

“\$1,080”.

- (7) The Schedule, Part 2, item 2(b)(i)—

**Repeal**

“\$4,200”

**Substitute**

“\$4,360”.

- (8) The Schedule, Part 2, item 2(b)(ii)—

- Repeal**  
“\$4,200”  
**Substitute**  
“\$4,360”.
- (9) The Schedule, Part 2, item 2(c)—  
**Repeal**  
“\$1,040”  
**Substitute**  
“\$1,080”.
- (10) The Schedule, Part 2, item 2(d)—  
**Repeal**  
“\$8,420”  
**Substitute**  
“\$8,750”.
- (11) The Schedule, Part 2, item 3(a)—  
**Repeal**  
“\$1,410”  
**Substitute**  
“\$1,460”.
- (12) The Schedule, Part 2, item 3(b)(i)—  
**Repeal**  
“\$5,700”  
**Substitute**  
“\$5,920”.
- (13) The Schedule, Part 2, item 3(b)(ii)—  
**Repeal**

- “\$5,700”  
**Substitute**  
“\$5,920”.
- (14) The Schedule, Part 2, item 3(c)—  
**Repeal**  
“\$1,410”  
**Substitute**  
“\$1,460”.
- (15) The Schedule, Part 2, item 3(d)—  
**Repeal**  
“\$11,410”  
**Substitute**  
“\$11,860”.
- (16) The Schedule, Part 2, item 4(a)—  
**Repeal**  
“\$1,410”  
**Substitute**  
“\$1,460”.
- (17) The Schedule, Part 2, item 4(b)(i)—  
**Repeal**  
“\$5,700”  
**Substitute**  
“\$5,920”.
- (18) The Schedule, Part 2, item 4(b)(ii)—  
**Repeal**  
“\$5,700”

- Substitute**  
“\$5,920”.
- (19) The Schedule, Part 2, item 4(c)—  
**Repeal**  
“\$1,410”  
**Substitute**  
“\$1,460”.
- (20) The Schedule, Part 2, item 4(d)—  
**Repeal**  
“\$11,410”  
**Substitute**  
“\$11,860”.
- (21) The Schedule, Part 2, item 5(a)—  
**Repeal**  
“\$870”  
**Substitute**  
“\$900”.
- (22) The Schedule, Part 2, item 5(b)(i)—  
**Repeal**  
“\$3,560”  
**Substitute**  
“\$3,700”.
- (23) The Schedule, Part 2, item 5(b)(ii)—  
**Repeal**  
“\$3,560”  
**Substitute**

- “\$3,700”.
- (24) The Schedule, Part 2, item 5(c)—  
**Repeal**  
“\$870”  
**Substitute**  
“\$900”.
- (25) The Schedule, Part 2, item 5(d)—  
**Repeal**  
“\$7,130”  
**Substitute**  
“\$7,410”.
- (26) The Schedule, Part 2, item 5A(a)(i)—  
**Repeal**  
“\$22,080”  
**Substitute**  
“\$22,960”.
- (27) The Schedule, Part 2, item 5A(a)(ii)—  
**Repeal**  
“\$8,940”  
**Substitute**  
“\$9,290”.
- (28) The Schedule, Part 2, item 5A(b)(i)—  
**Repeal**  
“\$22,080”  
**Substitute**  
“\$22,960”.



- (29) The Schedule, Part 2, item 5A(b)(ii)—  
**Repeal**  
 “\$24,480”  
**Substitute**  
 “\$25,450”.
- (30) The Schedule, Part 2, item 5B(a)(i)—  
**Repeal**  
 “\$22,080”  
**Substitute**  
 “\$22,960”.
- (31) The Schedule, Part 2, item 5B(a)(ii)—  
**Repeal**  
 “\$8,940”  
**Substitute**  
 “\$9,290”.
- (32) The Schedule, Part 2, item 5B(b)(i)—  
**Repeal**  
 “\$22,080”  
**Substitute**  
 “\$22,960”.
- (33) The Schedule, Part 2, item 5B(b)(ii)—  
**Repeal**  
 “\$24,480”  
**Substitute**  
 “\$25,450”.
- (34) The Schedule, Part 2, item 5C(a)(i)—

- Repeal**  
 “\$29,450”  
**Substitute**  
 “\$30,620”.
- (35) The Schedule, Part 2, item 5C(a)(ii)—  
**Repeal**  
 “\$8,940”  
**Substitute**  
 “\$9,290”.
- (36) The Schedule, Part 2, item 5C(b)(i)—  
**Repeal**  
 “\$29,450”  
**Substitute**  
 “\$30,620”.
- (37) The Schedule, Part 2, item 5C(b)(ii)—  
**Repeal**  
 “\$32,650”  
**Substitute**  
 “\$33,950”.
- (38) The Schedule, Part 2, item 5D(a)(i)—  
**Repeal**  
 “\$23,540”  
**Substitute**  
 “\$24,480”.
- (39) The Schedule, Part 2, item 5D(a)(ii)—  
**Repeal**

- “\$8,940”  
**Substitute**  
 “\$9,290”.
- (40) The Schedule, Part 2, item 5D(b)(i)—  
**Repeal**  
 “\$23,540”  
**Substitute**  
 “\$24,480”.
- (41) The Schedule, Part 2, item 5D(b)(ii)—  
**Repeal**  
 “\$26,100”  
**Substitute**  
 “\$27,140”.
- (42) The Schedule, Part 2, item 6(a)(i)—  
**Repeal**  
 “\$14,690”  
**Substitute**  
 “\$15,270”.
- (43) The Schedule, Part 2, item 6(a)(ii)—  
**Repeal**  
 “\$7,320”  
**Substitute**  
 “\$7,610”.
- (44) The Schedule, Part 2, item 6(b)(i)—  
**Repeal**  
 “\$14,690”

- Substitute**  
 “\$15,270”.
- (45) The Schedule, Part 2, item 6(b)(ii)—  
**Repeal**  
 “\$16,290”  
**Substitute**  
 “\$16,940”.
- (46) The Schedule, Part 2, item 7(a)(i)—  
**Repeal**  
 “\$19,120”  
**Substitute**  
 “\$19,880”.
- (47) The Schedule, Part 2, item 7(a)(ii)—  
**Repeal**  
 “\$8,010”  
**Substitute**  
 “\$8,330”.
- (48) The Schedule, Part 2, item 7(b)—  
**Repeal**  
 “\$19,120”  
**Substitute**  
 “\$19,880”.
- (49) The Schedule, Part 2, item 8(a)(i)—  
**Repeal**  
 “\$19,120”  
**Substitute**

- “\$19,880”.
- (50) The Schedule, Part 2, item 8(a)(ii)—  
**Repeal**  
 “\$8,010”  
**Substitute**  
 “\$8,330”.
- (51) The Schedule, Part 2, item 8(b)—  
**Repeal**  
 “\$19,120”  
**Substitute**  
 “\$19,880”.
- (52) The Schedule, Part 2, item 9(a)(i)—  
**Repeal**  
 “\$25,510”  
**Substitute**  
 “\$26,530”.
- (53) The Schedule, Part 2, item 9(a)(ii)—  
**Repeal**  
 “\$8,010”  
**Substitute**  
 “\$8,330”.
- (54) The Schedule, Part 2, item 9(b)—  
**Repeal**  
 “\$25,510”  
**Substitute**  
 “\$26,530”.

- (55) The Schedule, Part 2, item 10(a)(i)—  
**Repeal**  
 “\$20,390”  
**Substitute**  
 “\$21,200”.
- (56) The Schedule, Part 2, item 10(a)(ii)—  
**Repeal**  
 “\$8,010”  
**Substitute**  
 “\$8,330”.
- (57) The Schedule, Part 2, item 10(b)—  
**Repeal**  
 “\$20,390”  
**Substitute**  
 “\$21,200”.
- (58) The Schedule, Part 2, item 11(a)(i)—  
**Repeal**  
 “\$12,720”  
**Substitute**  
 “\$13,220”.
- (59) The Schedule, Part 2, item 11(a)(ii)—  
**Repeal**  
 “\$6,570”  
**Substitute**  
 “\$6,830”.
- (60) The Schedule, Part 2, item 11(b)—

- Repeal**  
“\$12,720”  
**Substitute**  
“\$13,220”.
- (61) The Schedule, Part 2, item 13—  
**Repeal**  
“\$1,980”  
**Substitute**  
“\$2,050”.
- (62) The Schedule, Part 2, item 14—  
**Repeal**  
“\$1,620”  
**Substitute**  
“\$1,680”.
- (63) The Schedule, Part 2, item 17(a)—  
**Repeal**  
“\$15,280”  
**Substitute**  
“\$15,890”.
- (64) The Schedule, Part 2, item 18(a)—  
**Repeal**  
“\$3,430”  
**Substitute**  
“\$3,560”.
- (65) The Schedule, Part 2, item 18(b)—  
**Repeal**

- “\$2,810”  
**Substitute**  
“\$2,920”.
- (66) The Schedule, Part 2, item 19(a)—  
**Repeal**  
“\$15,280”  
**Substitute**  
“\$15,890”.
- (67) The Schedule, Part 2, item 19(b)—  
**Repeal**  
“\$7,630”  
**Substitute**  
“\$7,930”.
- (68) The Schedule, Part 2, item 20—  
**Repeal**  
“\$5,050”  
**Substitute**  
“\$5,250”.

Made this 21st day of February 2020.




The Hon. Mr. Justice POON  
Chief Judge of the High Court



The Hon. Mr. Justice MACRAE, V.P.



The Hon. Mrs. Justice BARNES



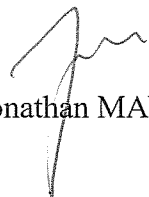
Andy HO  
Senior Deputy Registrar, High Court



Ms Charlotte DRAYCOTT, S.C.



Eric CHEUNG



Jonathan MAN



Ms Juliana CHAN, J.P.

**Explanatory Note**

The fees payable to solicitors or counsel assigned under the Legal Aid in Criminal Cases Rules (Cap. 221 sub. leg. D) (*principal Rules*) to represent legally aided persons are determined by the Director of Legal Aid (*Director*) according to the Table of Fees in the Schedule to the principal Rules. The Director may also re-determine some of the fees in certain circumstances under rule 21(8) of the principal Rules.

2. These Rules increase the fees payable under that rule and that Table (see rules 3 and 5). Rule 4 provides for transitional arrangements.

**Draft**

(Please check against final delivery)

**Speech by the Chief Secretary for Administration at the  
Legislative Council meeting on 10 June 2020  
(Translation)**

**Proposed Resolution under Section 7(a) of  
the Legal Aid Ordinance regarding  
the Financial Eligibility Limits**

President,

I move the Resolution standing in my name on the agenda.

2. Pursuant to section 7(a) of the Legal Aid Ordinance (“LAO”) (Cap.91), the Legislative Council (“LegCo”) may by resolution amend the financial eligibility limits (“FELs”) specified in sections 5 and 5A of the LAO.

3. Legal aid services form an integral part of the legal system in Hong Kong. The policy objective of legal aid is to ensure that all those who comply with the regulations of the LAO and have reasonable grounds for pursuing or defending a legal action in the courts of Hong Kong will not be denied access to justice due to a lack of means. To qualify for legal aid, a person must satisfy both the means test and merits test as provided by the LAO. FELs have been set respectively under the means tests of the Ordinary Legal Aid Scheme (“OLAS”) and Supplementary Legal Aid Scheme (“SLAS”).

## Review of the FELs

4. As announced in the Chief Executive's 2019 Policy Address Supplement, the Government proposes to increase the FELs of the legal aid applicants by about 30%.

5. First, we propose to increase the FEL for OLAS by 30% from \$307,130 to \$420,400. We have mainly taken into account the higher increase in legal costs than the cumulative increase in general price movement since the last one-off adjustment in 2011, as well as the affordability of the applicants concerned. We have also made reference to the average cumulative change of a series of indices relevant to legal professionals' expenses, such as civil litigation costs of legally aided cases, nominal wage indices and rental indices for private offices for comparison with that of Consumer Price Index (C) ("CPI(C)") for the purpose.

6. Regarding SLAS, we propose to increase the FEL by 30% from \$1,535,650 to \$2,102,000. Apart from having considered the higher increase in legal costs than the cumulative increase in general price movement, we also hope that the increase can provide a modest buffer for sandwich class applicants with financial resources marginally higher than the current FEL, particularly applicants of higher age who are living on savings (not regular income) and may otherwise need to exhaust all their assets to cope with tremendous legal costs for the more complicated cases.

7. Taking this opportunity of amending the subsidiary legislation, we will also process the outcome of the annual review of FELs under the regular mechanism, i.e. increasing the FELs of OLAS and SLAS by 5.1% in accordance with the change in CPI(C) for the period between July 2017 and

July 2019.

8. Making reference to the application statistics for 2019 from Legal Aid Department, the average and top 10% of the assessed financial resources (under the means test) for those approved legal aided cases under both OLAS and SLAS are way below the respective revised FELs. The proposed relaxation in FELs would enhance access to justice by rendering more people with greater economic means eligible for legal aid over a sustained period of time in the future.

9. The operation of the legal aid system in Hong Kong has been smooth. In the past three years, about 70% (around 2,600) of the legal aid applications for criminal cases and 40% (around 5,600) of those for civil cases in each year were approved. I wish to stress that the vast majority (around 80%) of the rejected applications (limited to civil cases and criminal appeal cases) had indeed failed the merits test but not the means test. The merits test is an established statutory mechanism to guard against possible abuse of the legal aid system following the proposed relaxation of the means test and ensure the prudent use of public resources.

10. We consulted the LegCo Panel on Administration of Justice and Legal Services about the above proposed increase on 27 April and Members raised no objection to the above proposal.

11. Subject to LegCo's approval of the Resolution, the adjusted FELs will come into effect upon gazettal. May I invite Members to support the Resolution so that those who are in need of legal aid can benefit from the above adjustments as soon as possible. Thank you, Mr President.

- End -



**Draft**

(Please check against final delivery)

**Speech by the Chief Secretary for Administration at the  
Legislative Council meeting on 10 June 2020  
(Translation)**

**Proposed Resolution under Section 22A of the Legal Aid Ordinance  
Pursuant to the Review of Director of Legal Aid's First Charge**

President,

I move the Resolution standing in my name on the agenda.

2. Pursuant to section 22A of the Legal Aid Ordinance (“LAO”) (Cap. 91), the Legislative Council (“LegCo”) may, by resolution, amend the rate of maintenance payments that is exempted from the Director of Legal Aid’s (“DLA”) first charge specified in section 18A(5), as well as the amount by which the money retained by DLA may be reduced in cases of serious hardship specified in section 19B(1)(a).

3. A legally aided person who is successful in recovering or preserving any money or property in the legally aided proceedings will be required to repay DLA the sums as required under section 18A(1) of the LAO out of the money or property recovered or preserved in such proceedings. The sum that the legally aided person has to pay DLA out of the money or property recovered or preserved is called DLA’s first charge. According to section 18A(5) of the LAO, DLA’s first charge does not apply to maintenance payment for spouse or former spouse. Separately, DLA may exercise discretion under section 19B(1)(a) of the LAO to reduce the amount to be retained by DLA in cases of serious hardship to any person, including statutory charges.

4. The Government has completed a review on the above two exempted amounts in 2018 and considers it necessary to adjust the two amounts to reflect the inflation since 1996 (i.e. the last adjustment) and the increase of 48% in financial eligibility limit (“FEL”) of the Ordinary Legal Aid Scheme in May 2011. We propose to adjust the amount specified in section 18A(5) upwards from \$4,800 to \$9,100 and the amount specified in section 19B(1)(a) upwards from \$57,400 to \$108,850, representing a proposed increase of 89.6%.

5. In addition, we also propose to introduce a mechanism for reviewing the above two amounts on an annual basis to take into account the general price movement as measured by Consumer Price Index (C), in conjunction with the annual review of FELs for legal aid in the future. The introduction of the annual review mechanism does not require amendments to the LAO.

6. The LegCo Panel on Administration of Justice and Legal Services was consulted about the outcome of the review and the way forward in April 2018 and raised no objection to the above proposal.

7. Subject to LegCo’s approval of the Resolution, we will implement the proposal upon gazettal of the Resolution. May I invite Members to support the Resolution so that the people concerned can benefit from the above adjustments as soon as possible. Thank you, Mr President.

- End -

**Draft**

(Please check against final delivery)

**Speech by the Chief Secretary for Administration at the  
Legislative Council meeting on 10 June 2020  
(Translation)**

**Legal Aid in Criminal Cases (Amendment) Rules 2020 made under  
Section 9A(1) of the Criminal Procedure Ordinance**

President,

I move the Resolution standing in my name on the agenda.

2. The Criminal Procedure Rules Committee makes the Legal Aid in Criminal Cases Rules (Cap. 221D) under section 9A(1) of the Criminal Procedure Ordinance (“CPO”) (Cap.221). It stipulates, among others, that the Legal Aid Department (“LAD”) will pay fees to counsel and solicitors in private practice engaged to undertake litigation work on behalf of it for criminal cases in different levels of courts (i.e. criminal legal aid fees). Pursuant to section 9A(1) of the CPO, the Amendment Rules are subject to the approval of Legislative Council (“LegCo”).

3. To ensure that neither LAD nor Department of Justice (“DoJ”) would have unfair advantage in competing for the same pool of lawyers, DoJ draws reference to the same scale of fees to engage counsel and solicitors in private practice to appear for the prosecution in criminal cases (i.e. prosecution fees). Duty lawyer fees will be paid to lawyers who provide legal representation to defendants in Magistrates’ Courts and Juvenile Courts through the Duty Lawyer Service.

4. Since the Government reported to the then LegCo Finance Committee in October 1992, the fees mentioned above (or “the Fees”, i.e. criminal legal aid fees, prosecution fees and duty lawyer fees) are subject to review on a biennial basis to take into account changes in Consumer Price Index (C) (“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. Regarding the biennial review completed in 2018, as the CPI(C) for the reference period (i.e. July 2016 to July 2018) increased by 4.0%, we propose to adjust the Fees upwards by 4.0% accordingly. The general price movement after July 2018 will be reflected in the next biennial review.

6. The LegCo Panel on Administration of Justice and Legal Services was consulted about the outcome of this biennial review in January 2019 and raised no objection to the proposed increase.

7. While LAD implements the increased criminal legal aid fees, DoJ will also adjust the scale of prosecution fees administratively. The Administration Wing will also adjust the duty lawyer fees through administrative means accordingly.

8. Subject to LegCo’s approval of the Resolution, we will implement the Amendment Rules on 20 July this year. Thank you, Mr President.

- End -