**[English & Chinese Versions (中、英文版)]**

# Views of the Legal Aid Services Council on the Proposal for Conditional Fee Arrangements by the Sub-committee on Conditional Fees, Law Reform Commission

## Introduction

In its consultation paper issued on 14 September 2005, the Sub-committee on Conditional Fees of the Law Reform Commission proposes to introduce conditional fee arrangements for civil cases. The proposal will have immense impact on legal aid, insurance and professional services in Hong Kong , but more importantly, there will be a radical change in a common law principle which is basic and fundamental to Hong Kong's legal system. This principle of public policy demands that a lawyer should not be placed into a position where his direct personal financial interest conflicts with or may conflict with that of his client or with his duty to the Court. This legal safeguard is part of our common law for good reason and should not be weakened or removed. The Legal Aid Services Council, having considered the proposal in length, has the following comments.

## Terms of Reference

2. The Sub-committee is asked to consider whether conditional fee arrangements are feasible, and to proceed accordingly. The Terms of Reference are too narrow to be comprehensive for a policy change of such significance. When fundamental change in public policy is contemplated, it is logical and sensible that only when there is established general consensus and acceptance of change should the issue of feasibility and implementation be considered. This is the guiding rule underlying any reform. The Sub-committee seems to assume that fundamental principles are agreed and that there is a need for the change to conditional fees. The crucial issue of change in principle is not evaluated. The public will be misled into confusing feasibility and necessity, and that examining feasibility before necessity is to put the cart before the horse.

**Need for Change**

3. The consultation paper states that the increase in unrepresented litigants is one of the major problems confronting the civil justice system in Hong Kong and produces some percentages to illustrate the point. The percentages of such hearings for interlocutory hearings in the High Court before Masters and civil trials in the District Court remain at about 34% and 49% from 2001 to 2004 respectively. Only the civil trials and civil appeals in the High Court rose from 37% in 2001 to 42% in 2004. Then it goes on to use an Australian Law Reform Commission research paper in 1996 to draw a conclusion about the situation in Hong Kong.

4. We are not aware of there being any research to ascertain the reasons of such increase in Hong Kong, which may be due to a variety of reasons other than inability to afford legal representation. We doubt if there is any causal relationship between the increase and the justification for introducing conditional fees. There is no evidence to show that conditional fees can bring down unrepresented litigation.

5. The consultation paper suggests that the barrier of legal costs, which dissuades certain persons from bringing or continuing with claims, can be removed by adopting conditional fee arrangements. Without this barrier, there can then be increased access to Court. It appears that the proposal is put forward for the benefit of a limited group of persons, and lawyers' cost is taken as the sole deterrent to those in this group not to proceed to litigation.

6. The consultation paper draws the conclusion that there is an unmet legal need in Hong Kong with the courts no longer accessible to a significant proportion of the community. In the context of legal aid, most criminal cases are eligible for representation through the Duty Lawyer Scheme, the Legal Aid Department and/or under Court's direction. The Ordinary Legal Aid Scheme (OLAS) or the Supplementary Legal Aid Scheme (SLAS), takes care of the lower income groups and some of the "sandwich" class for certain types of civil cases. The consultation paper's proposal only deals with those whose income is beyond the financial limits of

SLAS to the very rich. This could be a limited group and not necessarily a significant proportion of the community as claimed. Willingness to pay for access to Court as against affordability also needs to be examined.

7. It is the current trend to use alternative dispute resolutions in contrast to resorting to the courts for civil matters, such as arbitration and mediation. To encourage access to Court through conditional fee arrangements goes against this very trend.

8. An analysis of the consultation paper reveals an interesting clash between expediency which is the real basis for conditional fee arrangements as against principle. The principle against conflict of interest, which is fundamental to our justice system, has not been properly addressed. Instead, conditional fee schemes are dressed up as another principle in themselves, stressing that they will widen access to the courts. Hence a means for expediency emerges as a principle and a necessity. The consultation paper has not considered other means for wider access, without major changes in law and principle, and gives the impression that conditional fees are the only option.

9. The case for change has not been established.

**Fundamental Principles**

Public policy and common law principle

10. Champerty or giving of assistance, encouragement or support to litigation by a person who has no legitimate interest in the litigation is currently against public policy and is unlawful in common law. Though discussed in the consultation paper which makes reference to trade unions and insurance companies having a justifiable and legal interest in litigation, it is not clear if it is the intention to change the law to permit champerty and maintenance in Hong Kong. This is an important principle in common law having extensive implications should it be changed and should be discussed thoroughly before any change is to be implemented. If it is abolished, it will open the door to speculators and claims recovery intermediaries having only

an interest in litigation cases for financial returns. The proposed introduction of conditional fees will permit legal practitioners, a specific group of people to have interests in the outcome of litigation. No reason has been given as to why only this group is permitted. Further legal complication arises if champerty is not abolished but a specific group of people or litigation under specific arrangements is allowed for potential financial rewards.

Conflict of interest and professional ethics

11. The consultation paper proposes that certain money recovery cases should come under conditional fee arrangements. The effect of a conditional fee agreement is that a lawyer will charge no fee if the client's court case is conducted unsuccessfully, i.e. "no win, no fee". In the event of success, the lawyer charges his usual fee plus a percentage "uplift" on the usual fee. This fee arrangement changes the lawyer–client relationship which is predicated on professional and objective advice and paid for by the client, to that of an investment model where the lawyer takes a financial interest from the outcome, i.e. his return on investment, into the client's case. Logic indicates that it is far more likely than not that the conduct of a lawyer with a financial interest in the result of a litigation will be influenced by that financial interest. Lord Benson, in the Royal Commission on Legal Services Final Report 1979 has this to say on contingency fees (contingency and conditional fees are similar, being only separated by a question of degree as to the extent of the sharing of financial interest in the outcome of the case) :

> " The overwhelming weight of evidence that we have received is opposed to the introduction of contingency fees. It was pointed out the arrangements of this kind encourage lawyers to concentrate only on strong cases and on cases which, without real merits, have a high nuisance value which makes them worth pursuing. The fact that the lawyer has a direct personal interest in the outcome of the case may lead to undesirable practices including the construction of evidence, the improper coaching of witnesses, the use of professionally partisan expert witnesses, especially medical witnesses,

> improper examination and cross-examination, groundless legal arguments designed to lead the courts into error, and competitive touting. A client may lose by this arrangement in two ways : a proportion - often substantial - of any damages recovered goes to the lawyer; and as the lawyer pays all the costs of the case in return for this proportion of the damages, he is exposed to strong temptation to settle the claim before incurring the heavy expense of preparing for trial and of trial itself, although it may not be in his client's interest to do so. Alternatively, the client, having nothing to lose, may insist that a hopeless or irresponsible claim be pursued to litigation in the hope that some profit will result."

12. The risk is obvious. The Benson Report reflects the well-established principles of common law, and any deviation would require introduction of complex regulations to control abuse. Quality and integrity of the legal service will be affected. Any conditional fee arrangement which departs from the simple, strong and easy to enforce rules of conduct for lawyers must provide evidence for the need of change, as a matter of policy and as an issue of principle. The proposal will fail to provide a better system.

13. Furthermore, introduction of conditional fees will benefit claims recovery intermediaries, but unlike lawyers they are unregulated. These claims recovery agents may become bankrupt leaving the litigants to bear the entire costs.

Costs indemnity rule

14. The costs indemnity rule requires the losing party to bear the legal costs of the other side. According to the Sub-committee's report, this is to deter vexatious claims, encourage settlement and compensate successful litigants in part. This fundamental principle of litigants paying for their own risk of litigation has been well accepted and practised. Conditional fees will work against this fundamental principle of determining vexatious, frivolous and unmeritorious claims. While conditional fees may benefit those who want to go to the law with legal costs shared by lawyers and insurance, it is

essential that, a proven case of deficiency in our legal system that cannot be recompensed or improved, other than resorting to conditional fees, has to be established first. The tempted move to conditional fees without regard to the basic principle of indemnity is ill-conceived.

15. Recommendation 6 of the consultation paper asks that the use of conditional fees be disclosed to the other party and that the court should have discretionary power to require security for costs in appropriate cases. The Recommendation aims to safeguard or protect defendants from nuisance and irresponsible claims. Again it serves to illustrate a recognition that nuisance and irresponsible claims are inherent in conditional fee schemes. Further, it is not clear which party is to bear the security for costs ordered by the court. Where both lawyers and insurance companies are reluctant to provide that security, there will be no access to justice. If the lawyer shoulders that cost he will be tied to the outcome of the case and his conflict of interest will increase. The Recommendation will aggravate the degree of conflict.

Selective versus wider access to Court

16. The proposal for conditional fees claims it will bring wider access to Court. Financial viability being the prime consideration would limit access to Court to those cases that have good financial returns. Cases with merits but without high returns on investment will remain inaccessible to Court. Conditional fee arrangements will therefore only provide selective access and only to some types of cases.

Equality of arms

17. The aim of conditional fees, according to the consultation paper, is that filing a civil claim should not be the preserve of the wealthy or the poor, but open to all with good cause.

18. Truly with conditional fees, people of whatever means can file a claim without worrying too much about legal costs, particularly with the introduction of after-the-event insurance. But will this wider access work to

the benefit of society as a whole ? The fact that claimants can irresponsibly litigate with less, or practically no concern on costs, will create a more litigious society as the barrier of legal costs which dissuades many people from bringing or continuing with claims is removed by using conditional fees.

19. While conditional fee arrangements will remove from the plaintiff the risk he currently has to bear, the defendant will often be left alone to defend himself. There will not be damages out of which a defendant can pay the uplift or success fees, not to mention the difficulty in securing after-the-event insurance. Surely access to justice requires fairness on both sides of the equation. Under conditional fees, the balance is tilted in favour of the plaintiff.

20. The consultation paper recommends that conditional fees be permitted for commercial cases in which award of damages is the primary remedy sought, for product liability cases and in professional negligence claims. Conditional fee arrangements in these cases impose pressure on the defendant to settle, even when they might have a reasonable defence, for fear of threat of the uplifted legal costs when the case is lost. With the "no win, no fee" mechanism, large corporations and professionals will become targets of more lawsuits. The discharge of the plaintiff's liability from legal costs will encourage vexatious or irresponsible litigation, leaving the defendant to suffer. Conditional fees will upset equality of arms, and hamper fair access to justice.

**Direct fiscal impact on legal aid**

21. Contributions from winning cases to support other cases is the principle underlying SLAS. Legalizing conditional fees and the introduction of a privately-run contingency legal aid fund will result in the easier and more lucrative cases being creamed off by the private sector thereby leaving the Legal Aid Department (LAD) and the public purse with the more problematic cases and their costs. Currently the LAD generates surpluses from winning cases and this works to the advantage of the public generally. Under current arrangements SLAS can grow and subsidize more

deserving but not necessarily surplus generating cases. However, the conditional fee arrangements, by removing such cases, will deprive SLAS of a ready source of income. In the end, it will be left with the more problematic cases and will be unable to support deserving cases. Consequently the balance will be upset and this could lead either to losses or cessation of the SLAS. Similarly it may increase the public funding cost of the Ordinary Legal Aid Scheme as higher success rate cases or cases with prospect of generating more surpluses may be taken up under conditional fee arrangements in the private sector.

**Other considerations**

Malpractice

22. Arguments in favour of conditional fees in the consultation paper take the line that as there is insufficient evidence or only anecdotal evidence of malpractice, introduction of conditional fees is justified. The consultation paper downplays this risk by saying that unethical conduct can be avoided if the conditional fee regime is properly structured. With the problem of client confidentiality, gathering of evidence would be difficult, and individual cases will be hard to detect. The very nature of the abuses will probably mean that mostly they will be hidden, and cases which may illustrate the problem will be hidden from effective scrutiny. This strained argument is inadequate and unsatisfactory to justify such a major change in policy and to the legal system. It is certainly not desirable to encourage risk-taking or investing on litigation in Hong Kong. The ethical objections ought to be further analysed, thoroughly considered, and be brought to the public's attention before embarking on whether conditional fee arrangements are desirable as opposed to merely feasible. Currently many sectors of the community are placing greater emphasis on ethical principles and good governance but the consultation paper's proposal goes against that desirable trend.

23. To justify introducing conditional fees, the consultation paper assumes legislation will create a properly structured conditional fees regime. It also relies on the legal professional bodies to police professional standards.

The Court of Appeal in Awwad v Geraghty (2000) 3 WLR 1041 at page 1062H considered that it would be inappropriate to leave the enforcement of this sort of a policy purely to the disciplinary processes of the professional bodies. We are uncertain if the issue is purely a matter of professional standard, and we should like to know the extent of the risk, and the complexity of the conditional fee structure. The input from the legal professional bodies will be helpful.

After-the-event (ATE) insurance

24. The viability of the conditional fees proposal will essentially depend on the availability of ATE insurance. Recommendation 11 of the consultation paper shows that conditional fee schemes are inherently risky to such an extent that insurance is most essential to make them work. The insurance will likely be very expensive, uncertain or simply unavailable, and if available, will lead to spiralling cost in conditional fees cases. Further, Recommendation 3 of the consultation paper can result in the plaintiff's entire recovered damages being eaten up because the insurance premium and the success fee will have to come out of his damages. In a modest case, his damages will be wiped out. Instead of conducting an in-depth study of the viability of ATE insurance in Hong Kong as per Recommendation 11 of the consultation paper, it will be more worthwhile to look into the feasibility of providing cover for the expanded SLAS scheme.

Cost increase

25. The Sub-committee's proposals will result in unsatisfactory or restricted access to justice and could adversely affect the legal system and the prospects for its improvements. Significant expenses will be added into the legal system by introducing conditional fee schemes. It will add to the total cost of litigation without significant gain in productivity or access to justice because of a number of services and features to be paid for. These extra expenses include high ATE insurance premium, administrative costs in setting up the arrangements, success fees or uplift and extra cost in paying claims recovery agents or middlemen. Conditional fee arrangements will also induce disputes over legal costs. Taxation, which is bound to escalate, will take up even more judicial time and resources.

26. The inevitable consequence of conditional fee arrangements is the added expenses being generated from all these extra activities. Little of these extra expenses will go towards productive and good quality legal work. It will cause a considerable amount of satellite activities instead.

Capping success fees

27. Recommendation 4 of the consultation paper proposes that success fees be fixed by legislation. Recommendation 5 further suggests that success fees should be capped at a prescribed percentage of the damages recovered. Both recommendations will lead to a situation where rules will artificially constrain lawyers so much so that they cannot adequately provide for the true risk they bear. As a result of capping, a balanced reward for lawyers may never be found, especially in a small community like Hong Kong. It also reveals the fact that because conditional fee arrangements are faulty the level of fees has to be decided by arbitrary capping. In the absence of capping, the court has to adjudicate after-the-event with more litigation and cost.

Contingency arrangement and legal aid in the United States

28. Contingency arrangement in the United States is known to be controversial and not practised in substantially the same form in any other country. Medical and insurance costs have increased substantially as a result. Without a well tried and successful model, there is no urgent need for Hong Kong to introduce conditional fees.

29. The consultation paper mentions the absence of a legal aid system in the United States. We notice however, that a Federal government funding of US$330 million was provided to the Legal Services Corporation (LSC) of the United States for 2005. The LSC funds local organizations throughout the US that provide civil legal assistance to the poor. If contingency fee arrangements had indeed provided access to justice for all, LSC funding should not have been necessary.

Supplementary Legal Aid Scheme (SLAS)

30. Hong Kong has a well-developed legal aid system in operation for over 35 years providing access to justice to the lower middle class and below who cannot afford litigation because of limited means. This is commonly known as the Ordinary Legal Aid Scheme (OLAS). SLAS has provided legal aid to those of the "sandwich" class since 1984 in respect of certain types of civil cases and has expanded legal aid to a wider spectrum of society. The SLAS fund is very well managed and it has been possible for a reduction of the aided person's contribution rate from 15/7.5% to 12/6% in July 2000, and a further reduction from the current 12/6% to 10/6% has just been announced. These reductions reflect the prudent management of the Scheme. The proven success of SLAS is undenied.

31. Wider access to justice, which is the paramount concern and which leads the Sub-committee to propose conditional fees, can in fact be equally and fruitfully achieved by modifying and expanding SLAS. The benefit of this is that SLAS does not involve basic change in public policy or in the fundamentals of the legal system, and is less complicated and risky than conditional fee arrangements. Indeed the consultation paper commends SLAS being a successful scheme meeting the needs of the middle class. Recommendation 12 of the consultation paper says, "Given the success of the Supplementary Legal Aid Scheme in widening access to justice by using event-triggered fees on a self-financing basis, consideration should be given to expanding SLAS on a gradual incremental basis, by raising the financial eligibility limits and by increasing the types of cases which can be taken up by SLAS." The Sub-committee is certain on SLAS but not on conditional fees. The way forward is clear. If SLAS can be prudently expanded, there will clearly be no necessity or justification for conditional fee arrangements with all the inherent risks and associated complexity, and requiring a fundamental change in public policy and the common law system. SLAS can readily accommodate wider access. The Administration's recent announcement on 14 December 2005 to allow additional expenses to be deducted when calculating the disposable income of a legal aid applicant, which has the effect of widening access, well demonstrates this flexibility.

32. Conditional fees will eliminate cases of principle and merits but with no financial surplus to be made from them, nor any large sum of damages from which money can be extracted to pay the uplift, such as judicial reviews and cases with a public law element. These cases are usually important to the development of law and the social fabric of Hong Kong and its environment. The consultation paper makes no mention on how conditional fee arrangements will help develop this crucial jurisprudence and provide protection and adequate access to the courts for persons with such cases. It is with the expanded SLAS that cases of principle and merits, where benefit cannot be measured in purely monetary terms, may be considered by their merits and aid granted. Recommendation 2 misses out cases involving public law principles. The expanded SLAS will be more comprehensive in this regard.

33. Expenses on insurance brought about by conditional fee arrangements will discourage access to justice for small cases. The high cost of the ATE insurance premium and other expenses aforementioned will mean that the damages will be seriously depleted. Cases will not be worth taking on. It will be unjust as it will mean that only high damage claims will be attractive. This would disadvantage the public who currently derive subsidy from winning cases which is used to increase the SLAS fund to support more deserving cases which have public interest elements. Conditional fees lawyers will be unwilling to take on difficult cases which involve important and developing areas of the law because these may be riskier, more expensive, may not settle and may even need to be taken to the Court of Appeal or the Court of Final Appeal. Conditional fees would cream off the more financial rewarding cases leaving the more deserving but difficult cases to be unrepresented or sending them to the legal aid system. For this additional reason, Recommendation 13 is objected to.

**Recommendation**

34. Hong Kong should keep with the common law position, as is promised in the Joint Declaration and the Basic Law, as a matter of public policy and principle which has a sound practical and ethical governance basis.

35. In many aspects of the law, the fundamental concept is that not only must justice be done, it must be seen to be done. Perceptions are as important as substance. This means that lawyers must not actually have a conflict of interest. This means too that they must not put themselves into a position where they are seen to have a conflict of interest. Lawyers who allow themselves to be in such a conflict are in a position to do injustice which inevitably can taint and corrupt the system. Hong Kong has pioneered the SLAS fund, a method of financing litigation for the sandwiched class. One of the main strengths of the SLAS is that it eliminates the ethical problem inherent in conditional fee arrangements. It insulates lawyers from having a direct investment interest in the outcome of a case. Lawyers are remunerated for the work which they reasonably do, irrespective of whether their clients win or lose.

36. To provide wider access to Court, the solution is to expand SLAS and for it to cover more types of civil cases. Given the increase in activities and caseload to be expected of the expanded SLAS, the public is concerned that legal aid should be independent of the government and devoid of any bureaucratic connotation. A statutory body with responsibility for the full operation of the new scheme, preferrably with LAD as the executive arm with administrative costs continued to be kept low is an alternative to the conditional fee arrangements proposed in the consultation paper.

37. The expanded SLAS will not operate for profit. It will take a share in the compensation awarded in successful cases to pay the defendants' legal cost in unsuccessful ones. It will however require additional seed funding from the government to provide the necessary coverage for it to take on more cases. It will not be unduly constrained as to the type of cases as private conditional fee arrangements would be. The expanded SLAS will have adequate funding to take on more deserving cases with public interest elements, and will not have to concentrate only on cases "with good damages to costs ratio", and surpluses from cases of high success rates will provide funds to subsidise cases which may have public interest and hence "good public benefit to costs ratio". This new scheme allows greater access to justice, and provides an additional choice enabling claimants access to the court, at relatively little or no cost to the public purse.

38. SLAS is efficient and cost effective. More importantly, it is fully tested and assured. It safeguards professional ethics and is not financially centered on conflict of interest as are conditional fees. It helps balance equality of arms. It is simple, safe, and more importantly, affordable by society and the individual.

39. SLAS is a form of contingency fee arrangement but it will remove conflict of interest from lawyers. To widen access to justice, the expanded SLAS itself can also take on higher risk cases with a more creative structure which could be looked into in more detail. As an example, a scheme could be established for cases which do not come under the expanded SLAS to allow the authority to enter into a conditional fee arrangement with the applicant. In return, the authority could obtain its ordinary or normal costs plus a capped success fees. The assigned lawyer would not be part of this arrangement and there will be no ethical disadvantage. Under this arrangement, there should be provisions for assigned lawyers to be reimbursed for the extra costs incurred in doing such higher risk cases.

40. Genuine access to justice is of paramount importance. Something as valuable as legal representation providing access to justice must be provided ethically and in conformity with existing principles of law and public policy. To continue to command the confidence of the public it must be seen to be ethical. This can now be done using the expanded model of SLAS per Recommendations 12 of the consultation paper, and not private conditional fee arrangements. The focus should be commencing further studies on expanding SLAS as a priority. It is proposed that the Law Reform Commission should prepare a consultation paper on expansion of SLAS and the setting up of the corresponding statutory body for further deliberation.

41. The Legal Aid Services Council (LASC) is a statutory body set up in 1996 to advise the Chief Executive, Hong Kong Special Administrative Region on legal aid policy, to oversee the administration of the legal aid services provided by the Legal Aid Department and to advise on the feasibility and desirability of establishing an independent legal aid authority. SLAS naturally comes under our consideration regularly. With our

background and experience, LASC will be pleased to offer assistance in exploring further such a body.

42. While the expanded SLAS may provide wider access to Court, it will not cater to the needs of all who choose to litigate in person. Please refer to paragraphs 3 and 4 of this paper.

**Summary of Comments to the Recommendations**

43. Recommendation 1 to lift the restriction against the use of conditional fees is opposed. If the Law Reform Commission has considered the principles and ethical problems and the common law system and public policy, it should have been concluded that conditional fee arrangements are not in the public interest of Hong Kong. Conditional fee arrangements are complicated. They require a complex control mechanism to make it work and all the rules to guard against abuse. This leads to higher administrative and enforcement costs and because of the relationship of clients, lawyers and claims recovery agents, enforcement will be difficult. The robust common law has the benefit of a simple principle which outlaws it.

44. Recommendation 2 includes types of cases most of which are already included in SLAS.

45. Recommendation 3 is opposed as it can result in the plaintiff's entire recovery being eaten up.

46. Recommendation 4 and 5 on capping of lawyers' fees contradict with conditional fees working under market forces, and may not allow reasonable fees to lawyers for work done and the risks taken.

47. Recommendation 6 proposes security for costs to be determined by the court. This would increase costs and reduce access to Court as against the original intention of conditional fees. It does not protect the litigants from incurring high legal costs before litigation.

48. Recommendation 7 which requires there shall be simple conditional fee agreements simply reflects wishful thinking. It is probably

not possible to have simple agreements, as conditional fees are fraught with difficulty, uncertainty and risk. The various options over different types of conditional fee arrangements in Recommendation 10 reflect the complications.

49. Recommendation 8 urges the professional bodies to put in place effective disciplinary measures to deal with abuse/breaches of the relevant conduct rules. We note that five of the thirteen Recommendations in the consultation paper focus on control mechanism, indicating to a large extent the vulnerability of conditional fees. The issues involved and the problems to be faced should be clearly spelt out and the input from the legal professional bodies will be helpful too.

50. Recommendation 9 on provision or purchase of legal services *en masse* further complicates the conditional fee agreements. The various options over different types of conditional fee arrangements in Recommendation 10 reflect the complications which will evolve. They are therefore opposed.

51. Recommendation 11 clearly shows the vulnerability of conditional fees, and indirectly lends support to the desirability of studying an expanded SLAS we propose.

52. Recommendation 12 acknowledges the usefulness of expanding SLAS, and we agree as set out in paragraphs 34 to 40 of this paper. On that basis we do not see the necessity of a privately-run contingency legal aid fund or the adoption of conditional fees generally.

53. Recommendation 13 – The hybrid system of a privately-run contingency legal aid fund and the conditional fee arrangements will lead to failure of SLAS and will adversely affect OLAS, placing greater fiscal burden on the public purse.

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# 法律援助服務局
# 對法律改革委員會按條件收費小組委員會的按條件收費安排建議所提出的意見

## 引言

在法律改革委員會按條件收費小組委員會於2005年9月14日發表的諮詢文件中，小組委員會建議為民事案件引入按條件收費安排。該建議方案對香港的法律援助、保險及專業服務有莫大影響，但更重要者則是香港法律制度根基及基礎的普通法原則將會出現急劇變化。此項公共政策原則要求不可使律師處於其個人直接經濟利益與其客戶的個人經濟利益或與其對法院承擔的責任產生衝突的境況。此項法律保障措施有充分理由成為普通法的一部分，不應予以削弱或清除。在詳細審議有關建議方案之後，法律援助服務局提出以下意見。

## 職權範圍

2. 小組委員會的任務是審議按條件收費安排是否可行，以及按此進行有關安排。對於如此重要的政策改革，小組委員會的職權範圍過於狹窄，不夠全面。在擬定對公共政策作出根本改革時，如要審議可行性及落實政策議題，必須能確立改革獲得普遍共識及接受，才屬合情合理。這是任何改革的指導原則。小組委員會看來假設基本原則已然同意，並有需要改用按條件收費。原則變更的決定性議題則並未檢討。公眾將會因可行性及必要性混淆而被誤導，而研究可行性先於必要性，令事件本末倒置。

## 改革的需要

3. 諮詢文件說明無法律代表的訴訟人的個案上升，是香港民事司法制度面對的主要問題之一，並提出一些百分率數字，藉以證明該項論點。在高等法院聆案官席前的非正審聆訊及區域法院民事案件審訊中，有關聆訊在2001年至2004年所佔百分率分別約為34%及49%，僅有高等法院的民事審訊及民事上訴案件從2001年的37%升至2004年的42%。然後，諮詢文件使用澳洲法律改革委員會的一份1996年研究文件為香港的情況作出結論。

4. 本局並不得悉有任何研究可確定香港有關上升的原因。上升可能由於各種不同原因所致，而非僅僅是無能力負擔法律代表的開支。本局對有關上升及引入按條件收費的理據之間有任何因果關係存疑。現時並無證據證明有條件收費可減少無法律代表的個案。

5. 諮詢文件建議，如採用按條件收費安排，將可清除成為若干人士提出或繼續申索障礙的法律費用。如果沒有此項障礙，向法庭提出申訴的個案將會增加。這樣看來，所提出的建議方案，只會讓有限組別人士獲益，而律師費用被當作唯一可阻止該組別人士進行訴訟的因素。

6. 諮詢文件所得結論是香港存在未能滿足的法律服務需求，社會上有大比例的人士不能向法院提出申訴。但因法律援助關係，大部分刑事案件則可通過當值律師計劃、法律援助署及／或根據法庭指示獲得法律代表。在若干類別民事案件中，普通法律援助計劃（「普通法援計劃」）或法律援助輔助計劃（「法援輔助計劃」）照顧較低收入組別人士及部分「夾心階層」人士。諮詢文件的建議方案，只處理收入超逾法援輔助計劃經濟限額以至非常富有人士的事宜。這些人士可以是有限度的組別，但不一定如聲稱般佔社會的相當大比例。是否願意付費向法院申訴與承擔能力之間的關係，亦須進行研究。

7. 就民事訴訟事宜而言，採用其他解決爭議的方法（如仲裁及調解等）而非向法院申訴是現在大勢所趨。通過按條件收費安排鼓勵向法院申訴，實與大勢相悖。

8. 對諮詢文件作出的分析，透露便利（按條件收費安排的真正根基）與原則之間存在有趣的衝突。利益衝突的原則（亦是本港法司法制度的基礎）並未妥善解決。反而，按條件收費計劃則自行裝扮成另一原則，強調可擴大向法院申訴的途徑。因此，便利的方法卻搖身一變成為一項原則，一項需要。諮詢文件並未考慮其他擴大向法院申訴的途徑的方法，且並無對法律及原則作出任何重要變更，反讓人們以為按條件收費是唯一選擇。

9. 變更的理據並未被確立。

**基本原則**

公共政策與普通法原則

10. 在訴訟中並無合法權益的人士包攬訴訟或提供援助、鼓勵或支援訴訟，現時有違公共政策，而根據普通法亦屬違法。雖然諮詢文件指出工會及保險公司在訴訟中具有正當及法律權益而作出討論，但並未清楚表明是否有意更改法例，藉以准許在香港包攬訴訟及維持有關行為。這是普通法的一項重要原則，如予以變更，將會產生廣泛影響，故須經過詳盡討論，方可予以落實。若將有關原則廢除，將會為只有興趣利用訴訟案件追逐經濟回報的投機者及申索追討中介人廣開門路。該項引入按條件收費的建議，將會准許法律執業者（即一個特定組別人士）對訴訟結果具有權益。對於為何只有此類別人士獲得許可，小組並無提出任何理由。此外，若並無廢除包攬訴訟，而某一個組別人士或訴訟卻可根據特定安排獲得經濟酬賞，則會引起錯綜複雜的法律問題。

利益衝突與專業道德

11. 諮詢文件提出建議，若干金錢追討案件可列入按條件收費安排之中。按條件收費協議的效用，便是如未能成功辦理客戶的法庭案件，律師將不收費，即「不成功，不收費」。若成功辦理，律師將收取正常收費，另加一筆基於正常收費額以「額外」百分率計算的收費。此項收費安排改變了律師與客戶之間關係，由取決於專業及客觀意見及由客戶承擔費用方式改為投資模型，當中律師將會從客戶案件的結果獲取經濟利益，即律師的投資回報。必然的結果便是由於律師對訴訟結果具有經濟利益，他的行為受到有關經濟利益影響的機會大於不受影響。在 1979 年皇家法律服務委員會最後報告（Royal Commission On Legal Services Final Report 1979）中，班信勳爵（Lord Benson）對於按判決金額收費有以下意見（按判決金額收費及按條件收費兩者相似，分別只在於分享案件結果的經濟利益上的程度有所不同）：

> 「 委員會所收到的絕大部分證據顯示，均反對引入按判決金額收費。有關證據顯示，此類安排將鼓勵律師只須專注相當大成功機會的案件及並無真正成功機會但由於具有高滋擾價值而值得進行的案件。事實上，如律師對案件的結果具有直接個人利益，可引致不良行為，包括證據詮釋、不當引導證人、任用專業上有所偏袒的專家證人（尤

其是醫學證人）、不當訊問及盤問、專為引領法庭犯錯而設的毫無根據的法律論點及競相招徠。客戶在兩方面可能因此等安排蒙受損失：追討所得損害賠償的一部分（通常是重大部分）將落入律師手中；由於律師須支付案件的全部訟費，藉此謀取損害賠償的有關部分，他須承受因審訊準備工作及審訊本身而招致沉重支出之前和解申索的極大誘惑，雖則此舉並非對客戶有利。或然，由於客戶並無任何顧慮，客戶可能會堅持將毫無成功機會或不負責任的申索進行訴訟，寄望可以獲取一絲利益。」

12. 有關風險顯而易見。班信報告反映出該源遠流長的普通法原則，如欲偏離原則，便須引入複雜的規例，藉以遏止濫用情況。法律服務的質素及行事持正方面，將會受到影響。基於政策及原則問題，任何偏離簡明、穩固及易於執行律師操守規則的按條件收費安排，必須提供有需要作出變更的證據。建議方案未有提供一個更完善的制度。

13. 此外，引入按條件收費，將會讓申索追討的中介人獲益，但與律師不同，他們不受任何監管。有關申索追討代理人可能會破產，訴訟人因而須承擔全部訟費。

訟費彌償規則

14. 訟費彌償規則要求敗訴一方承擔對方的訟費，按小組委員會諮詢文件所說，這是在於阻嚇無理纏擾的申索，促成和解及部分補償成功訴訟人。訴訟人承擔本身訴訟風險的基本原則，獲得廣泛接受及執行。按條件收費則與此項終止無理纏擾、瑣碎無聊及並無成功機會申索的基本原則相悖。雖則按條件收費可讓根據法律提出申訴並由律師及保險方面分擔法律費用的人獲益，但必須首先能確立除使用按條件收費用外，將不能補償或改善本土的法律制度中已證實不足之處。在未經考慮彌償規則的基本原則而對按條件收費躍躍欲試，只會是項有欠周詳的安排。

15. 諮詢文件的第 6 項建議要求，如使用按條件收費安排，須向他方披露，而法庭具有酌情決定權，可對適當案件要求提供訟費保證。該項建議旨在保障及保護被告人免受滋擾及不負責任申索影響。此舉再次顯示承認滋擾及不負責任申索是按條件收費計劃的固有特質。此外，並不清楚哪方承擔法庭命令的訟費保證。若律師及保險公司均不願提供該項保證，將不能獲得司法服務。若律師承擔訟費，他將會與案件的結

果拉上關係，他的利益衝突將會加深。該項建議將會加深衝突的程度。

向法院申訴的途徑有選擇性還是更廣闊

16. 按條件收費的建議方案聲稱向法院申訴的途徑將更廣闊。財務可行性是主要考慮因素，這將會使只有可觀經濟回報的案件，方可向法院進行申訴。有成功機會但並無高投資回報的案件，依然不能向法院提出申訴。因此，按條件收費安排只會提供有選擇性的申訴途徑，亦只適合於某類案件。

地位平等

17. 根據諮詢文件，按條件收費的目標是提出民事訴訟並非富人或窮人的專利，如有充分理據，人人皆可提出申訴。

18. 就按條件收費而言，任何人不論其經濟能力如何，均可提出申索，無須過於憂慮法律費用，尤其在引入事後保險之後。但是，更廣闊的申訴途徑是否意味社會整體上可以獲益？申索人事實上可不負責任的提出訴訟，不用多大或實際上無須擔心訟費，這將會步上訴訟社會之路，因為使用按條件收費將可掃除可勸阻不少人士提出或繼續申索的法律費用障礙。

19. 雖則按條件收費安排將可為原告人清除現時須承擔的風險，被告人將須自行為自己抗辯。被告人並無損害賠償可供支付額外或成功費用，還須解決獲取事後保險的難題。無疑，司法服務必須對訴訟雙方公平。根據按條件收費，有關平衡已向原告人傾斜。

20. 諮詢文件建議，按條件收費可獲准在尋求判給損害賠償作為主要補償的商業案件、產品責任案件及專業疏忽申索中採用。在有關案件作出按條件收費安排，將會對被告人施加壓力，由於憂慮敗訴時須承擔額外法律費用，迫使被告人謀求和解，即使被告人有合理抗辯理由亦然。由於「不成功，不收費」的機制，大企業及專業人士將會成為更多訴訟的目標。在解除原告人的法律費用責任後，將會鼓勵無理纏擾及不負責任訴訟，讓被告人承擔苦果。按條件收費將會動搖平等地位，成為公平司法服務的障礙。

**法律援助的直接財政沖擊**

21. 利用勝訴案件的供款支援其他案件，是法援輔助計劃的基本原則。按條件收費合法化及引入私營按判決金額收費的法律援助基金，將會令較容易處理及較有利可圖的案件流入私營部門，讓法律援助署（「法援署」）及公共財政承擔問題複雜的案件及其訟費。現時，法援署從勝訴案件獲得盈餘，而這項安排概括上對公眾有利。根據現有安排，法援輔助計劃將可擴展，並可補助更值得辦理但不一定可提供盈餘的案件。然而，按條件收費安排將會使有關案件流失，剝奪法援輔助計劃的現成收入來源。最終，將會留下問題複雜的案件，亦不能支援更值得辦理的案件。結果，將會動搖有關平衡，引致法援輔助計劃蒙受虧損或告終。同樣，由於有機會提供較多盈餘的較高成功率案件將會因按條件收費安排而流入私營部門，普通法律援助計劃的公共融資成本亦告增加。

**其他考慮因素**

<u>行為失當</u>

22. 諮詢文件支持按條件收費的論點，取態是由於行為失當的證據不足或只屬傳聞證據，引入按條件收費實有理由支持。諮詢文件對此項風險不以為然，並聲言如按條件收費制度具有完善結構，將可避免發生不道德行為。但由於客戶保密問題，收集證據將成難題，個別案件將難以偵測。有關弊端的本質，是大部分情況均會隱藏，可顯示問題的案件將會避過有效的審查。此項論點頗為牽強，並不充分，亦不能作為政策及法律制度的如此重大改革的完滿理由。在香港鼓勵在訴訟方面進行冒險或作為投資，肯定不宜。從道德角度提出的反對理由，須作進一步分析，詳加考慮及讓公眾關注，然後才可著手研究按條件收費安排是否可取而非僅僅在於可行。現時，社會上不少行業更為注重道德原則及良好管治，但諮詢文件的建議方案卻與該項令人嚮往的趨向背道而馳。

23. 作為引入按條件收費的理由，諮詢文件假設立法將可創造具備妥善結構的按條件收費制度。有關制度亦依賴法律專業團體負責監督專業標準。上訴法院在 Awwad v Geraghty (2000) 3 WLR 1041 at page 1062H 一案中認為，將此類政策完全交由專業團體的紀律程序執行，實屬不適當。對於有關議題是否純屬專業標準事宜，本局無法肯定，但本局須認識有關風險的情況，以及按條件收費結構的複雜性。如法律專業

團體提供意見，將會有所幫助。

事發後投購的法律開支保險（簡稱“事後保險”）

24. 按條件收費建議方案是否可行，實際取決於能否提供事後保險。諮詢文件第 11 項建議顯示，按條件收費計劃存在高固有風險，以致必須有保險方能運作。有關保險將會非常昂貴、不明朗甚或無法提供，如若提供，將會使按條件收費案件的訟費急遽增加。此外，諮詢文件第 3 項建議可能導致原告人追討所得損害賠償全被吞噬，因為保險費及成功收費須用損害賠償支付。在一般賠償的案件，原告人的損害賠償將被用光。與其按照諮詢文件第 11 項建議對事後保險的可行性進行深入研究，擴大為法援輔助計劃提供保障的可行性將更值得研究。

訟費上升

25. 小組委員會的建議方案將會限制司法服務或令其不理想，並對法律制度及改善制度的前景造成不良影響。如引入按條件收費計劃，法律體制須顯著增加開支。因為須支付一些服務及功能的開支，將會使訴訟費用總額上升，但對於生產力或司法服務並無任何實質得益。有關額外開支包括事後保險費、設立有關安排的行政費用、成功收費或額外收費，以及付給申索追討代理人或中間人的額外費用。按條件收費安排亦會引發法律費用的爭議。訟費評定將必然上升，這將會佔用更多司法時間及資源。

26. 按條件收費安排的必然後果，便是開支隨著一切有關額外活動而上升。有關額外開支中，只有少部分用於有建設性及優質法律工作上。反而，這樣只會造成大量的附屬活動。

對成功收費設置上限

27. 諮詢文件第 4 項建議提出須根據法例釐定成功收費。第 5 項建議進一步建議成功收費須以追討所得損害賠償的訂明百分率作為上限。該兩項建議將會引致有關規則對律師設置人為限制，使律師不能為所需承擔的真正風險作出充分準備。由於設置上限，律師所能取得的回報失衡，這種情況在香港這般的細小社區尤其顯著。同時，由於按條件收費安排不完美，收費水平將由武斷的上限決定。如沒有設置上限，法院須作出事後判決，便產生更多訴訟及訟費。

美國的按判決金額收費及法律援助

28. 美國的按判決金額收費安排，以充滿爭論馳名，這樣形式的安排，不曾在其他國家採用。醫療及保險費用因而大幅上升。由於並無經得起考驗及成功的模式，香港並不急需引入按條件收費安排。

29. 諮詢文件提及美國並無法律援助制度。然而，本局得悉美國法律服務機構（Legal Services Corporation）於 2005 年獲得聯邦政府提供 3.30 億美元資助。法律服務機構資助美國各地的地方組織，對低收入人士提供民事法律援助。若按判決金額收費安排確然能為人們提供司法服務，將無需法律服務機構的資助。

法律援助輔助計劃（「法援輔助計劃」）

30. 香港設有發展完備的法律援助體制，迄今已運作逾 35 年，為因能力有限而不能負擔訴訟開支的中下階層人士提供司法服務，一般稱為普通法律援助計劃（「普通法援計劃」）。法援輔助計劃於 1984 年開始就若干類別案件為「夾心階層」人士提供法律援助，並已將法律援助擴及社會不同階層。法援輔助計劃基金的管理非常完善，因而得以將受助人士的供款率於 2000 年 7 月由 15/7.5%降至 12/6%，亦剛公佈將現時的 12/6%進一步削減至 10/6%。有關削減供款反映該項計劃的謹慎管理作風。法援輔助計劃確實成功，無容置疑。

31. 如需擴大司法服務（此事受到最大關注，亦導致小組委員會提出按條件收費安排），事實上可藉修改及擴大法援輔助計劃同樣達致，並可取得更豐碩成果。此舉的好處在於法援輔助計劃並不涉及公共政策或法律制度根基的基本改革，複雜性及風險亦較按條件收費安排為低。事實上，諮詢文件已將法援輔助計劃評為成功的計劃，滿足中等階層人士的需要。諮詢文件第 12 項建議聲言「法律援助輔助計劃利用按結果收費，達至財政上自給自足，並成功地擴大了市民尋求司法公正的渠道。有見及此，小組委員會建議當局考慮逐步擴大這計劃，包括透過提高申請人的財務資格上限，及增加這計劃所適用的案件類別。」。小組委員會對法援輔助計劃是肯定的，對按條件收費則不然。發展前景明確。若法援輔助計劃能審慎地加以擴大，顯然無須按條件收費安排，亦無理由支持有關安排，因其存在各項固有風險及相關的複雜性，亦須對公共政策及普通法體制進行根本改革。法援輔助計劃即時可提供更廣闊的司法服務。政府剛於 2005 年 12 月 14 日公佈，在計算法律援助申請人的可支配收入時，將可扣減項目增加，令服務範圍擴大，正好表現出法援輔

助計劃的靈活彈性。

32. 按條件收費將會清除符合原則及有成功機會但並無經濟盈餘可圖或並無大額損害賠償可供支付額外收費的案件，例如司法覆核及包含公法成分的案件等，但有關案件通常對香港法律及社會組織及其環境的發展相當重要。諮詢文件並無提及按條件收費安排如何協助發展如此重要的法律體系，以及保障有關案件人士及向有關人士提供向法院提出申訴的充分途徑。因此，只有擴大法援輔助計劃，符合原則及有成功機會的案件（有關利益不能純粹以金錢衡量）才能會按其成功機會考慮，並獲批援助。第 2 項建議遺漏涉及公法原則的案件。在擴大法援輔助計劃後，在此方面可更為全面。

33. 按條件收費安排所帶來的保險開支，將會阻礙小案件獲得的司法服務。前文所述事後保險費及其他開支的費用高昂，損害賠償將被耗盡，案件將不值得進行訴訟。這樣並不公平，因為只有巨額損害賠償申索才具吸引力。這樣對現時從勝訴案件獲取補貼的公眾不利，有關補貼可用於增加法援輔助計劃基金，藉以支持具有公法原則成分並更值得進行訴訟的案件。按條件收費的律師將不願涉及重大法律及處於發展階段的法律部分的難題案件，因為有關案件風險較大、費用高昂、不能和解，甚至須提交上訴法院或終審法院審理。按條件收費將會搾取較高經濟回報的案件，留下更值得進行訴訟但困難的案件無法獲得法律代表，或被送往法律援助體制處理。基於此項附加理由，對第 13 項建議現提出反對。

**建議**

34. 香港應維持普通法地位，因為聯合公佈及基本法均已作出保證，亦基於公共政策及原則，均具備健全、切實可行及道德管治基礎。

35. 在法律廣泛層面來說，基本概念是不單要伸張正義，還要彰顯正義。知覺與實質內容同樣重要。這表示律師實際上不得存在利益衝突，亦即他們不可處於已覺知有利益衝突的境況。律師讓其處於有關衝突境況，將出現不公平情況，無可避免令體制敗壞及腐化。香港是法援輔助計劃基金的先驅，是一種為夾心階層進行訴訟的融資方法。法援輔助計劃的一項主要強項，是清除按條件收費安排的固有的道德問題，隔斷律師對案件的結果具有直接投資利益。律師將按其合理完成的工作取得報酬，不論客戶勝訴還是敗訴亦然。

36. 如需提供向法院申訴的更廣途徑，擴大法援輔助計劃正是解決辦法，因為該計劃可兼顧更多類別的民事案件。鑑於擴大法援輔助計劃後預計活動及案件數量將會增加，公眾對法律援助須從政府獨立開來，免除官僚作風的關注，設立一法定機構，負責新計劃的全部營運工作，及以法援署作為行政部門較為妥當，並可將行政費用維持在低水平，這應作為諮詢文件所提出按條件收費安排的另一選擇。

37. 擴大後的法援輔助計劃不會謀取利潤。該計劃將會分享成功案件所獲判的補償，用於支付敗訴案件中被告人的法律費用。然而，政府須提供額外種子基金藉以提供所需保障，讓計劃可接受更多案件。在接受案件的類別方面，不會像私營的按條件收費安排受到不當的制肘。法援輔助計劃擴大後，將有充足資金接受一些更值得及更具公眾利益的案件，而無須只專注「具有高損害賠償訟費比率」的案件，而高成功比率的案件所提供的盈餘，將可提供資金，藉以補貼那些具公眾利益的案件，因而有「高公眾利益訟費比率」。此項新計劃提供更廣闊司法服務，提供額外選擇，在較低甚或無須公共財政承擔下，讓申索人獲得向法院申訴的途徑。

38. 法援輔助計劃有效，亦具成本效益。更重要者，經得起考驗亦有保證。計劃堅守專業道德，不會像按條件收費般以利益衝突作為財政核心。這樣有助維持地位平等。計劃簡明、安全及更重要的是社會及個人均能負擔。

39. 法援輔助計劃是一種按判決金額收費的安排，卻可免除律師的利益衝突。基於提供更廣司法服務，經擴大的法援輔助計劃，其結構可更具創造性，亦可承接較高風險案件，這方面可作更詳細研究。例如，設立接受不屬於擴大後法援輔助計劃案件的計劃，讓有關機構與申請人訂立按條件收費安排。有關機構因而便可獲取普通或一般訟費另加設有上限的成功收費。獲指派的律師不會屬於此項安排的一部分，固不會產生任何道德問題。根據此項安排，須設有機制金，藉以償付辦理較高風險案件所產生的額外訟費。

40. 真正的司法服務最為重要。提供司法服務的法律代表如斯重要，必須以道德上可行的方式提供，並須符合現有法律原則及公共政策。如欲繼續獲得公眾信任，必須使人覺得合符道德。此事可使用諮詢文件第 12 項建議所載的擴大法援輔助計劃的模式而非按條件收費安排達成。焦點在於對優先擴大法援輔助計劃進行進一步研究。現建議法律

改革委員會編製一份有關擴大法援輔助計劃並成立相應法定機構的諮詢文件，以供進一步審議。

41. 法律援助服務局（「法援局」）是一所法定機構，於 1996 年成立，在法律援助政策方面向香港特別行政區行政長官提供意見，監管法律援助署提供的法律援助服務，並對建立一個獨立的法律援助管理局的可行性及可取性提供意見。自然地，本局亦經常審視法援輔助計劃，以本局的背景及經驗，我們樂於對成立一個獨立機構以營運建議的擴大法援輔助計劃一事提供協助。

42. 雖然擴大的法援輔助計劃可提供向法院申訴的更廣途徑，該計劃並不迎合那些選擇在法院自辯的人士。請參閱本文第 3 及 4 段。

**建議的評論概要**

43. 對於第 1 項建議提出解除採用按條件收費的限制，現提出反對。若法律改革委員會已考慮原則及道德問題、普通法制度及公共政策，應得結論是按條件收費安排不符合香港的公眾利益。按條件收費安排非常複雜。該項安排要求有複雜的管控機制，方能成事，亦須訂立各種規則，藉以防止濫用。因此，需要更高的行政及執行費用，亦由於客戶、律師與申索追討代理人之間關係，執行上將會困難重重。普通法具穩固及簡明原則的優點，且已明令禁止有關安排。

44. 第 2 項建議所包含的案件類別，大部分已列入法援輔助計劃內。

45. 對於第 3 項建議，現提出反對，因為可導致原告人的全部追討所得被吞噬。

46. 第 4 及 5 項建議將律師收費設置上限，與市場動力下運作按條件收費互相矛盾，對於律師完成的工作及所承擔風險並無准予合理收費。

47. 第 6 項建議提出由法庭釐定訟費的保證。此舉將會增加訟費及削減向法院申訴的途徑，與按條件收費的原意相悖。這樣不能為訴訟人免除訴訟前的高昂法律費用。

48. 第 7 項建議要求訂立簡單按條件收費協議，這只反映願意

思維。這事不可能有簡單協議，因為按條件收費充滿難題、不明朗因素及風險。第 10 項建議列出各種不同按條件收費安排的選擇，反映其複雜性。

49. 第 8 項建議敦促專業團體制訂有效紀律措施，藉以處理濫用／違反有關操守準則事宜。本局留意到諮詢文件 13 項中 5 項建議集中處理管控機制，表示按條件收費有大程度的弱點。所涉論點及需面對的問題須清楚提出，而法律專業團體所提供意見亦有所幫助。

50. 第 9 項建議提出整批形式提供或採購法律服務，使按條件收費協議更形複雜。第 10 項建議所載各種不同按條件收費安排的各項選擇，反映將會出現的複雜情況。因此對有關建議提出反對。

51. 第 11 項建議清楚顯示按條件收費的弱點，亦間接表示本局所提出擴大法援輔助計劃的研究可取。

52. 第 12 項建議確認擴大法援輔助計劃有用，本局對此表示同意，如本文第 34 至 40 段所述。在此基礎下，本局認為不需有私營按判決金額收費的法律援助基金，亦無須採用按條件收費。

53. 第 13 項建議－私營按判決金額收費的法律援助基金與按條件收費安排混合而成的制度，將會使法援輔助計劃失效，亦對普通法援計劃產生不利影響，使公共財政承受更沉重財政負擔。

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