

**For information**

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

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

**INTRODUCTION**

This paper briefs members on the outcome of the 2020 biennial review of criminal legal aid fees, prosecution fees and duty lawyer fees (collectively referred to as “the Fees”).

**PROPOSAL**

2. We propose to adjust the Fees upwards by 2.7% to reflect the accumulated change in the Consumer Price Index (C) (“CPI(C)”) recorded between July 2018 and July 2020. The increase in criminal legal aid fees will be implemented by amending Rule 21 and Part 2 of the Schedule to the Legal Aid in Criminal Cases Rules (Cap. 221 sub. leg. D) (“LACCR”), while prosecution fees and duty lawyer fees will be adjusted administratively.

**JUSTIFICATIONS**

**The Fees**

3. The Legal Aid Department (“LAD”) provides legal aid for representation in committal proceedings in the Magistrates’ Courts (“MC”), civil and criminal proceedings in the District Court (“DC”) or courts at levels above in accordance with the Legal Aid Ordinance (Cap. 91) and the LACCR. LAD will pay criminal legal aid fees to counsel and solicitors in private practice undertaking criminal litigation work on behalf of it. The fee levels are prescribed in the LACCR under the Criminal Procedure Ordinance (Cap. 221).

4. To complement the legal aid services provided by LAD, the Duty Lawyer Scheme, administered by the Duty Lawyer Service (“DLS”),

provides legal representation to any defendant in the MC (except committal proceedings) where the interests of justice require, and without payment by the defendant in any such case if he/she does not have sufficient means to pay for it. The Scheme also provides, either with the agreement or at the request of the Government, other forms of legal assistance and advice, including assigning lawyers to advise and represent defendants facing extradition and persons who are at risk of criminal prosecution as a result of giving incriminating evidence in Coroner's inquest. Duty lawyer fees are the fees payable to duty lawyers engaged under the Duty Lawyer Scheme.

5. On the prosecution side, the Department of Justice ("DoJ") also engages lawyers in private practice to prosecute criminal cases on fiat and draws reference to the same scale of criminal legal aid fees as that of LAD, so as to ensure that neither LAD nor DoJ would have unfair advantage in competing for the same pool of lawyers. At the MC level, the briefing out rates of MC "A" List<sup>1</sup> counsel make reference to criminal legal aid fees, while the rates for fiat counsel on DoJ's MC "B" List is tied to that for duty lawyer fees to maintain equality of arms.

### **Biennial review mechanism**

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

7. In the previous biennial review of 2018, the Government proposed to increase the Fees by 4.0% in accordance with the movement in CPI(C) during the reference period from July 2016 to July 2018. The proposed adjustments to criminal legal aid fees were approved by LegCo in June 2020. The new Fees came into effect on 20 July 2020.

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<sup>1</sup> DoJ maintains two briefing-out lists for the magistracy level, i.e. the MC "A" List and MC "B" List. On the MC "B" List are counsel-on-fiat who substitute Court Prosecutors (CPs) to prosecute cases which are not on the list of "Scheduled Duties", whereas counsel-on-fiat on the MC "A" List are briefed to prosecute relatively more complicated cases which would otherwise be handled by Government Counsel.

## 2020 biennial review

8. The Government has completed the 2020 biennial review. Noting that the CPI(C) for the reference period (i.e. July 2018 to July 2020) increased by 2.7%, we propose to adjust the Fees upwards by 2.7% accordingly. The existing and proposed criminal legal aid fees and corresponding prosecution fees, rounded down to the nearest ten dollars, are listed in **Annex**.

9. For duty lawyer fees, the proposed adjustments are set out below –

| <b>Fees categories</b>        | <b>Existing fees</b> | <b>Proposed duty lawyer fees pursuant to the biennial review (to be adjusted upwards by 2.7%)</b> |
|-------------------------------|----------------------|---|
| (a) Whole-day fee             | \$11,850             | \$12,160  |
| (b) Half-day fee              | \$5,900              | \$6,050   |
| (c) Pre-trial preparation fee | \$1,420 per hour     | \$1,450 per hour  |

10. As explained in paragraph 5 above, the briefing out rate for fiat counsel on the MC “B” List maintained by DoJ is tied to that for duty lawyers for equality of arms. In this connection, the fees for MC “B” List counsel will be adjusted according to the corresponding upward adjustments to duty lawyer fees as set out in paragraph 9 above. The existing and proposed fees (also rounded down to the nearest ten dollars) are as follows –

| <b>Fees categories</b> | <b>Existing fees</b> | <b>Proposed prosecution fees (MC “B” list) pursuant to the biennial review (to be adjusted upwards by 2.7%)</b> |
|------------------------|----------------------|---|
| (a) Whole-day fee      | \$11,850             | \$12,160  |
| (b) Half-day fee       | \$5,900              | \$6,050   |

## **CONSULTATION**

11. We have informed the Legal Aid Services Council, the Hong Kong Bar Association and the Law Society of Hong Kong of the outcome of the 2020 biennial review of the Fees.

## **FINANCIAL IMPLICATIONS**

12. The proposed increase in criminal legal aid fees, prosecution fees and duty lawyer fees is estimated to incur an additional recurrent expenditure of around \$6.75 million each by LAD and DoJ on average and around \$2.7 million by DLS in a full year. The two departments and DLS will include the necessary provisions in the 2021-22 draft Estimates to meet the costs of the proposed fee increases and absorb the workload in effecting the changes in the Fees with their existing manpower resources.

## **WAY FORWARD**

13. As regards criminal legal aid fees, we will submit the proposed amendments to the LACCR to the Criminal Procedure Rules Committee<sup>2</sup> (“Rules Committee”) chaired by the Chief Judge of the High Court for approval. Subject to the Rules Committee’s approval, we will move a resolution in LegCo to effect the legislative changes in the second quarter of 2021. Prosecution fees and duty lawyer fees will be adjusted administratively on the same date as for the implementation of the increased criminal legal aid fees.

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<sup>2</sup> Section 9(1) of the Criminal Procedure Ordinance (Cap. 221) provides that “Rules and orders regulating the practice and procedure under this Ordinance shall be made by the Criminal Procedure Rules Committee, which shall consist of - (a) the Chief Judge, who shall be chairman; (b) a Justice of Appeal appointed by the Chief Judge; (c) a judge of the Court of First Instance appointed by the Chief Judge; (d) the Secretary for Justice or a legal officer nominated by him; (e) the Director of Legal Aid or a legal aid officer nominated by him; (f) a barrister nominated by the Hong Kong Bar Association; (g) a solicitor nominated by The Law Society of Hong Kong; (h) the Registrar, or a Senior Deputy Registrar or Deputy Registrar of the High Court appointed by the Chief Judge, who shall be secretary.”

**ADVICE SOUGHT**

14. Members are invited to note the outcome of the biennial review.

**Chief Secretary for Administration's Office  
Legal Aid Department  
February 2021**

## Annex

### Comparison of Current and Proposed Criminal Legal Aid Fees and Prosecution Fees (Current fees in force since 20 July 2020)

| Fee item  | Department/<br>Service  | Current<br>maximum fee<br>(\$) | Proposed maximum<br>fee<br>(\$) |
|---|---|--------------------------------|---------------------------------|
| <b>1. Magistrates' Courts</b>   |   |                                |                                 |
| <b>(a) <u>Counsel or solicitor acting as advocate in committal proceedings</u></b>                              |   |                                |                                 |
| (i) Brief <sup>i</sup>  | Legal Aid<br>Department<br>(LAD)/<br>Department of<br>Justice (DoJ) | 15,890                         | 16,310                          |
| (ii) Refresher <sup>ii</sup>  | LAD/DoJ   | 7,930<br>per day               | 8,140<br>per day                |
| (iii) Conference  | DoJ   | 1,260<br>per hour              | 1,290<br>per hour               |
| (iv) Pre-trial Review (per<br>review)   | DoJ   | 2,200                          | 2,250                           |
| <b>(b) <u>Counsel or solicitor acting as advocate in preliminary inquiry</u></b>                                |   |                                |                                 |
| (i) Brief <sup>i</sup>  | LAD   | 15,890                         | 16,310                          |
| (ii) Refresher <sup>ii</sup>  | LAD   | 7,940<br>per day               | 8,150<br>per day                |
| <b>(c) <u>Instructing solicitor in committal proceedings (including preliminary inquiry)</u></b>                |   |                                |                                 |
| (i) Brief <sup>i</sup>  | LAD   | 3,560                          | 3,650                           |
| (ii) Refresher <sup>ii</sup>  | LAD   | 2,920<br>per day               | 2,990<br>per day                |
| <b>(d) <u>Counsel or solicitor acting as advocate in place of court prosecutor in committal proceedings</u></b> |   |                                |                                 |
| (i) Brief   | DoJ   | 11,850<br>per day              | 12,160<br>per day               |

| Fee item  | Department/<br>Service | Current<br>maximum fee<br>(\$)         | Proposed maximum<br>fee<br>(\$)        |
|---|------------------------|--|--|
|   |                        | 5,890<br>half day                      | 6,040<br>half day                      |
| (e) <u>Counsel or solicitor acting as advocate in committal proceedings</u> (Newly qualified lawyers)             |                        |  |  |
| (i) Brief (for 2 weeks engagement)  | DoJ                    | 79,520                                 | 81,660                                 |
| (ii) Brief after 2 weeks engagement (part-heard case)   | DoJ                    | 11,850<br>per day<br>5,890<br>half day | 12,160<br>per day<br>6,040<br>half day |
| (f) <u>Counsel or solicitor acting as advocate in committal proceedings</u> (Newly qualified monolingual lawyers) |                        |  |  |
| (i) Brief   | DoJ                    | 11,850<br>per day<br>5,890<br>half day | 12,160<br>per day<br>6,040<br>half day |

## 2. District Court (DC)

|                                    |         |                          |                          |
|------------------------------------|---------|--------------------------|--------------------------|
| (a) <u>Counsel</u>                 |         |                          |                          |
| (i) Preparation <sup>iii</sup>     | LAD     | 13,220                   | 13,570                   |
| (ii) Additional preparation        | LAD     | 6,830<br>per 4-hour unit | 7,010<br>per 4-hour unit |
| (iii) Court hearing                | LAD/DoJ | 13,220<br>per day        | 13,570<br>per day        |
| (iv) Conference                    | LAD/DoJ | 1,680<br>per hour        | 1,720<br>per hour        |
| (v) Brief <sup>f</sup>             | DoJ     | 26,460                   | 27,170                   |
| (vi) Pre-trial Review (per review) | DoJ     | 3,310                    | 3,390                    |
| (vii) Mention                      | DoJ     | 2,200                    | 2,250                    |

|        | <b>Fee item</b>  | <b>Department/<br/>Service</b> | <b>Current<br/>maximum fee<br/>(\$)</b>                            | <b>Proposed maximum<br/>fee<br/>(\$)</b>   |
|--------|--|--------------------------------|--|--|
| (viii) | Plea   | DoJ                            | 2,200  | 2,250  |
| (ix)   | Sentence   | DoJ                            | 2,200  | 2,250  |
| (x)    | Plea & Sentence  | DoJ                            | 3,310  | 3,390  |
| (b)    | <u>Instructing solicitor</u>   |                                |  |  |
| (i)    | Reading  | LAD                            | 900<br>per hour  | 920<br>per hour  |
| (ii)   | Preparation  | LAD                            | 3,700<br>per 4-hour unit   | 3,790<br>per 4-hour unit   |
| (iii)  | Court hearing  | LAD                            | 7,410<br>per day   | 7,610<br>per day   |
| (iv)   | Conference   | LAD                            | 900<br>per hour  | 920<br>per hour  |
| (c)    | <u>Solicitor acting as both advocate and instructing solicitor</u>   |                                |  |  |
| (i)    | Preparation <sup>iii</sup>   | LAD                            | 15,270   | 15,680   |
| (ii)   | Additional preparation   | LAD                            | 7,610<br>per 4-hour unit   | 7,810<br>per 4-hour unit   |
| (iii)  | First day Court<br>hearing   | LAD                            | 15,270<br>per day  | 15,680<br>per day  |
| (iv)   | Refresher <sup>iv</sup>  | LAD                            | 16,940<br>per day  | 17,390<br>per day  |
| (d)    | <u>Attendance at DC (other than for the trial, plea or sentence)</u> |                                |  |  |
|        |  | LAD                            | At a rate that<br>appears to DLA to<br>be reasonable and<br>proper | At a rate that appears to<br>the Director of Legal<br>Aid (DLA) to be<br>reasonable and proper |

|           | <b>Fee item</b>  | <b>Department/<br/>Service</b> | <b>Current<br/>maximum fee<br/>(\$)</b> | <b>Proposed maximum<br/>fee<br/>(\$)</b> |
|-----------|--|--------------------------------|---|--|
| <b>3.</b> | <b>Court of First Instance (CFI)</b>   |                                |   |  |
| (a)       | <u>Counsel</u>   |                                |   |  |
| (i)       | Preparation <sup>iii</sup>   | LAD                            | 19,880                                  | 20,410                                   |
| (ii)      | Additional preparation   | LAD                            | 8,330<br>per 4-hour unit                | 8,550<br>per 4-hour unit                 |
| (iii)     | Court hearing  | LAD/DoJ                        | 19,880<br>per day                       | 20,410<br>per day                        |
| (iv)      | Conference   | LAD/DoJ                        | 2,050<br>per hour                       | 2,100<br>per hour                        |
| (v)       | Brief <sup>f</sup>   | DoJ                            | 39,780                                  | 40,850                                   |
| (vi)      | Pre-trial Review /<br>other case<br>management hearing,<br>as appropriate (per<br>hearing)                       | DoJ                            | 3,920                                   | 4,020                                    |
| (vii)     | Mention  | DoJ                            | 5,940                                   | 6,100                                    |
| (viii)    | Plea   | DoJ                            | 5,940                                   | 6,100                                    |
| (ix)      | Sentence   | DoJ                            | 5,940                                   | 6,100                                    |
| (x)       | Plea & Sentence  | DoJ                            | 7,070                                   | 7,260                                    |
| (b)       | <u>Solicitor advocate with higher rights of audience (HRA) acting as both advocate and instructing solicitor</u> |                                |   |  |
| (i)       | Preparation <sup>iii</sup>   | LAD                            | 22,960                                  | 23,570                                   |
| (ii)      | Additional preparation   | LAD                            | 9,290<br>per 4-hour unit                | 9,540<br>per 4-hour unit                 |
| (iii)     | First day Court<br>hearing   | LAD                            | 22,960<br>per day                       | 23,570<br>per day                        |
| (iv)      | Refresher <sup>iv</sup>  | LAD                            | 25,450<br>per day                       | 26,130<br>per day                        |

|       | <b>Fee item</b>   | <b>Department/<br/>Service</b> | <b>Current<br/>maximum fee<br/>(\$)</b>                            | <b>Proposed maximum<br/>fee<br/>(\$)</b>                        |
|-------|---|--------------------------------|--|---|
| (c)   | <u>Instructing solicitor</u>  |                                |  |   |
| (i)   | Reading   | LAD                            | 1,080<br>per hour  | 1,100<br>per hour   |
| (ii)  | Preparation   | LAD                            | 4,360<br>per 4-hour unit   | 4,470<br>per 4-hour unit  |
| (iii) | Court hearing   | LAD                            | 8,750<br>per day   | 8,980<br>per day  |
| (iv)  | Conference  | LAD                            | 1,080<br>per hour  | 1,100<br>per hour   |
| (d)   | <u>Attendance at CFI (other than for the trial, plea or sentence)</u> |                                |  |   |
|       |   | LAD                            | At a rate that<br>appears to DLA to<br>be reasonable and<br>proper | At a rate that appears to<br>DLA to be reasonable<br>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) Counsel (appeals from magistrates<sup>v</sup> or CFI)

|       |                            |         |                          |                          |
|-------|----------------------------|---------|--------------------------|--------------------------|
| (i)   | Preparation <sup>iii</sup> | LAD     | 26,530                   | 27,240                   |
| (ii)  | Additional preparation     | LAD     | 8,330<br>per 4-hour unit | 8,550<br>per 4-hour unit |
| (iii) | Brief <sup>f</sup>         | DoJ     | 53,050                   | 54,480                   |
| (iv)  | Court hearing              | LAD/DoJ | 26,530<br>per day        | 27,240<br>per day        |
| (v)   | Conference                 | LAD/DoJ | 2,050<br>per hour        | 2,100<br>per hour        |

|       | <b>Fee item</b>   | <b>Department/<br/>Service</b> | <b>Current<br/>maximum fee<br/>(\$)</b> | <b>Proposed maximum<br/>fee<br/>(\$)</b> |
|-------|---|--------------------------------|---|--|
| (b)   | <u>Counsel (appeals from DC)</u>  |                                |   |  |
| (i)   | Preparation <sup>iii</sup>  | LAD                            | 21,200                                  | 21,770                                   |
| (ii)  | Additional preparation  | LAD                            | 8,330<br>per 4-hour unit                | 8,550<br>per 4-hour unit                 |
| (iii) | Brief <sup>f</sup>  | DoJ                            | 42,400                                  | 43,540                                   |
| (iv)  | Court hearing   | LAD/DoJ                        | 21,200<br>per day                       | 21,770<br>per day                        |
| (v)   | Conference  | LAD/DoJ                        | 2,050<br>per hour                       | 2,100<br>per hour                        |
| (c)   | <u>Solicitor advocate with HRA acting as both advocate and instructing solicitor (appeals from CFI)</u> |                                |   |  |
| (i)   | Preparation <sup>iii</sup>  | LAD                            | 30,620                                  | 31,440                                   |
| (ii)  | Additional preparation  | LAD                            | 9,290<br>per 4-hour unit                | 9,540<br>per 4-hour unit                 |
| (iii) | First day Court<br>hearing  | LAD                            | 30,620<br>per day                       | 31,440<br>per day                        |
| (iv)  | Refresher <sup>iv</sup>   | LAD                            | 33,950<br>per day                       | 34,860<br>per day                        |
| (d)   | <u>Solicitor advocate with HRA acting as both advocate and instructing solicitor (appeals from DC)</u>  |                                |   |  |
| (i)   | Preparation <sup>iii</sup>  | LAD                            | 24,480                                  | 25,140                                   |
| (ii)  | Additional preparation  | LAD                            | 9,290<br>per 4-hour unit                | 9,540<br>per 4-hour unit                 |
| (iii) | First day Court<br>hearing  | LAD                            | 24,480<br>per day                       | 25,140<br>per day                        |
| (iv)  | Refresher <sup>iv</sup>   | LAD                            | 27,140<br>per day                       | 27,870<br>per day                        |

| <b>Fee item</b>   | <b>Department/<br/>Service</b> | <b>Current<br/>maximum fee<br/>(\$)</b>                            | <b>Proposed maximum<br/>fee<br/>(\$)</b>                        |
|---|--------------------------------|--|---|
| (e) <u>Instructing solicitor</u>  |                                |  |   |
| (i) Reading   | LAD                            | 1,460<br>per hour  | 1,490<br>per hour   |
| (ii) Preparation  | LAD                            | 5,920<br>per 4-hour unit   | 6,070<br>per 4-hour unit  |
| (iii) Court hearing   | LAD                            | 11,860<br>per day  | 12,180<br>per day   |
| (iv) Conference   | LAD                            | 1,460<br>per hour  | 1,490<br>per hour   |
| (f) <u>Attendance at CA (other than for the appeal hearing)</u>         | LAD                            | At a rate that<br>appears to DLA to<br>be reasonable and<br>proper | At a rate that appears to<br>DLA to be reasonable<br>and proper |
| (g) <u>Counsel or solicitor settling notice of appeal</u> <sup>vi</sup> | LAD                            | 5,250  | 5,390   |

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

|                              |     |  |   |
|------------------------------|-----|--|---|
| <u>Counsel and solicitor</u> | LAD | Fees that appear to<br>DLA to be<br>reasonable and<br>proper | Fees that appear to<br>DLA to be reasonable<br>and proper |
|------------------------------|-----|--|---|

## 7. Proceedings in DC or CFI or appeals

|                       |     |  |   |
|-----------------------|-----|--|---|
| <u>Senior Counsel</u> | LAD | Fees at an hourly<br>rate that appears to<br>DLA to be<br>reasonable and<br>proper | Fees at an hourly rate<br>that appears to DLA to<br>be reasonable and<br>proper |
|-----------------------|-----|--|---|

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