

## The Judiciary's Guide for Solicitors' Hourly Rates to Increase: Higher Costs Recoverable

### Overview

The Law Society of Hong Kong (“the Law Society”) announced to its member in a circular on 11 December 2017 that the Solicitors’ Hourly Rates (SHR) on party and party taxation in civil proceedings will be increased, effective from 1 January 2018 onwards. While the SHR does not govern the fees charged by solicitors to their clients (which is a matter to be agreed between them), this will mean that the winning party of an action can recover a higher sum of legal costs for work done by their solicitors from the losing party. The existing rates will continue to apply for work done by solicitors up to 31 December 2017.

### The SHR

The winning party of a case is usually awarded costs on a “party and party” basis by the court at the conclusion of a court case. Parties are required by Practice Direction 14.3 issued by the judiciary to attempt to reach an agreement on the sum of costs payable to the party entitled to the costs. Only if they are unable to do so should they proceed to “Taxation of costs” by a taxing master, whereby the court assesses the amount of costs payable at a sum it considers to be necessary or proper for the attainment of justice or for enforcing or defending the party’s rights.

The SHR is determined by the judiciary and serves as a guide to the hourly rates of solicitors of different seniority. While taxing masters are not bound by the SHR and may also take into account the merits of the case and parties’ conduct in the proceedings when assessing solicitors’ costs, they generally apply the SHR save for exceptional cases. The SHR is therefore

also typically used as the basis on which parties negotiate when trying to settle the costs claimed.

However, the existing SHR has not been reviewed since 1997, during which there have been increases to the hourly rates charged by solicitors. This means that there has been a widening gap between the sum of legal costs that successful litigants can ultimately recover and the amount that they had actually incurred. They are left having to bear a greater portion of legal costs despite successfully bringing or defending its rights.

### The Review of the SHR

Per the recommendation of the Law Society in 2013, the Chief Justice appointed a Working Party, who in turn engaged an independent consultant to review the SHR and also established an Advisory Group to provide support on the methodology of conducting surveys in relation to the review.

In their review, the Working Party mainly focused on the issue of the recoverability gap of winning parties in order to safeguard access to justice by potential litigating parties. They also took into account qualitative factors such as affordability of legal service and the level of fees regarded as acceptable by the public, views of stakeholders such as the Legal Aid Department, law firms of different sizes, the Department of Justice and consumers themselves, as well as the inflation rate.

Further, it was also recommended that the SHR be reviewed regularly every four years to take into account inflation, which shall be measured according to the Composite Consumer Price Index and monitored by the Judiciary.

## The Revised Rates

The revised rates, which will apply in the taxation of solicitors' costs starting from 1 January 2018, are compared and summarised as follows:

### HIGH COURT RATES

NO. OF YEARS OF PRACTICE	CURRENT SCALE RATES (HK\$)	PROPOSED REVISED SCALE RATES (HK\$)	AVERAGE PERCENTAGE INCREASE
<b>a. Solicitors practising in Hong Kong</b>			
<i>More than 15 Years</i>	Not applicable	5,800	N/A
<i>9 - 15 Years</i>	3,200 to 4,000	5,200	44.4%
<i>7 - 8 Years</i>	2,900 to 3,500	4,500	40.6%
<i>5 - 6 Years</i>	2,400 to 3,000	3,900	44.4%
<i>2 - 4 Years</i>	2,000 to 2,500	3,200	42.2%
<i>Newly Admitted</i>	1,600 to 2,000	2,600	44.4%
<i>Trainee Solicitor</i>	1,066 to 1,300	1,700	43.7%
<b>b. Litigation Clerk</b>	800 to 1,000	1,300	44.4%
<b>c. Law Costs Draftsman</b>	1,600	1,800	12.5%

### DISTRICT COURT RATES

NO. OF YEARS OF PRACTICE	CURRENT SCALE RATES (HK\$)	PROPOSED REVISED SCALE RATES (HK\$)	AVERAGE PERCENTAGE INCREASE
<b>a. Solicitors practising in Hong Kong</b>			
<i>More than 15 Years</i>	Not applicable	3,860	N/A
<i>9 - 15 Years</i>	2,100 to 2,600	3,460	47.2%
<i>7 - 8 Years</i>	1,900 to 2,300	3,000	42.8%
<i>5 - 6 Years</i>	1,600 to 2,000	2,600	44.4%
<i>2 - 4 Years</i>	1,350 to 1,650	2,130	42.0%
<i>Newly Admitted</i>	1,066 to 1,280	1,730	47.4%
<i>Trainee Solicitor</i>	700 to 860	1,130	44.8%
<b>b. Litigation Clerk</b>	533 to 660	860	44.1%
<b>c. Law Costs Draftsman</b>	1,600	1,800	12.5%

## Implications and Recommendations following the Revised SHR

As can be seen from the above table, the average percentage increase of SHR for solicitors of each level of seniority will increase by more than 40% starting from 1 January 2018. Accordingly, this will be reflected in parties' negotiations of the quantum of costs to be paid out to the winning party, or the costs to be allowed at taxation. This would mean that successful litigants would be able to recover a greater portion of legal costs they had incurred for defending their rights. At the same time, going forward, parties should also review their reserves for legal costs in civil litigations to take into account the revised standard by which costs will be assessed.

The practical impact of the above changes in SHR will need to be viewed in conjunction with the potential increases in jurisdictional limits of the District Court and Small Claims Tribunal in future.

As one may recall, in August 2015, the Judiciary issued a Consultation Paper on the Review of the Civil Jurisdictional Limits of the District Court and Small Claims Tribunal. In summary, the Judiciary proposed to increase the general financial limit of the civil jurisdiction of the District Court from HK\$1 million to HK\$3 million, and the limit for Small Claims Tribunal from HK\$50,000 to HK\$75,000.

The Law Society has in principle agreed to the proposed increases. If such increases of the Civil Jurisdictional Limits were to be implemented as proposed, that would mean some of the claims which are currently being brought in the High Court (and hence applying the High Court scale SHR) will then need to be brought in the District Court (and hence applying the District Court scale SHR). We will alert you when further updates are made in this regard.

---

## Contact Us

For enquiries related to this Legal Update, please contact the following persons or your usual contact at our firm.

### **Marina Fung**

Partner

T: +852 2843 4407

E: [marina.fung@mayerbrownjmsm.com](mailto:marina.fung@mayerbrownjmsm.com)

### **Derek Lee**

Senior Associate

T: +852 2843 2260

E: [derek.lee@mayerbrownjmsm.com](mailto:derek.lee@mayerbrownjmsm.com)

---

Mayer Brown JSM is part of Mayer Brown, a global legal services organisation advising many of the world's largest companies, including a significant portion of the Fortune 100, FTSE 100, CAC 40, DAX, Hang Seng and Nikkei index companies and more than half of the world's largest banks. Our legal services include banking and finance; corporate and securities; litigation and dispute resolution; antitrust and competition; employment and benefits; environmental; financial services regulatory & enforcement; government and global trade; intellectual property; real estate; tax; restructuring, bankruptcy and insolvency; and wealth management.

OFFICE LOCATIONS AMERICAS: Charlotte, Chicago, Houston, Los Angeles, Mexico City, New York, Palo Alto, San Francisco, Washington DC  
ASIA: Bangkok, Beijing, Hanoi, Ho Chi Minh City, Hong Kong, Shanghai, Singapore  
EUROPE: Brussels, Düsseldorf, Frankfurt, London, Paris  
MIDDLE EAST: Dubai  
TAUIL & CHEQUER ADVOGADOS in association with Mayer Brown LLP: São Paulo, Rio de Janeiro

Please visit [www.mayerbrownjmsm.com](http://www.mayerbrownjmsm.com) for comprehensive contact information for all our offices.

This publication provides information and comments on legal issues and developments of interest to our clients and friends. The foregoing is intended to provide a general guide to the subject matter and is not intended to provide legal advice or be a substitute for specific advice concerning individual situations. Readers should seek legal advice before taking any action with respect to the matters discussed herein. Please also read the Mayer Brown JSM legal publications [Disclaimer](#). A list of the partners of Mayer Brown JSM may be inspected on our website [www.mayerbrownjmsm.com](http://www.mayerbrownjmsm.com) or provided to you on request.

Mayer Brown is a global legal services provider comprising legal practices that are separate entities (the "Mayer Brown Practices"). The Mayer Brown Practices are: Mayer Brown LLP and Mayer Brown Europe-Brussels LLP, both limited liability partnerships established in Illinois USA; Mayer Brown International LLP, a limited liability partnership incorporated in England and Wales (authorized and regulated by the Solicitors Regulation Authority and registered in England and Wales number OC 303359); Mayer Brown, a SELAS established in France; Mayer Brown Mexico, S.C., a sociedad civil formed under the laws of the State of Durango, Mexico; Mayer Brown JSM, a Hong Kong partnership and its associated legal practices in Asia; and Tauil & Chequer Advogados, a Brazilian law partnership with which Mayer Brown is associated. Mayer Brown Consulting (Singapore) Pte. Ltd and its subsidiary, which are affiliated with Mayer Brown, provide customs and trade advisory and consultancy services, not legal services. "Mayer Brown" and the Mayer Brown logo are the trademarks of the Mayer Brown Practices in their respective jurisdictions.

© 2017 The Mayer Brown Practices. All rights reserved.