



THE

LAW SOCIETY
OF HONG KONG

香港律師會

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Index Reference :

Law Society: General

CIRCULAR 18-469 (PA)

19 June 2018

CONVEYANCING FEES

1. The Council has reviewed Circular 97-270(SG) dated 1 September 1997 on Conveyancing Fees in light of the experience of its application in the last 20 years and the introduction of the Competition Ordinance (Cap.619).
2. The Council wishes to re-affirm the paramount principle of freedom of fee negotiation under Section 56 of the Legal Practitioners Ordinance (Cap.159). Following the above review, the Council has decided to repeal Circular 97-270(SG).

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CIRCULAR 97-270 (SG)

1 September 1997

CONVEYANCING FEES

For some time doubts have been expressed as to the mandatory effect of the conveyancing fee scale in circumstances to which section 56 (1) of the Legal Practitioners Ordinance applied. In 1994 the Council expressed the view that while recognising the existence of arguments to the contrary, section 56 on its proper construction does not allow solicitors to circumvent the statutory rules which are expressed to be mandatory. In 1996 the Law Society Council sought and obtained from the general membership of the Society authority to pursue a policy of retaining a system of mandatory scale fees in respect of conveyancing transactions. Once the Legal Services Legislation (Miscellaneous Amendments) Bill was introduced into the Legislative Council the Law Society initiated an amendment the effect of which was to prevent contracting out of the mandatory scale. Unfortunately this proposal was defeated on the casting vote of the President of the Legislative Council and although the Government's proposals to abolish scale fees were defeated nevertheless section 56 remains in force.

It is the Council's view that the retention of section 56 at the same time as the existence of a mandatory fee scale perpetuates an anomaly and it has seriously considered seeking a reversal of the decision of the former Legislative Council. However this is considered unrealistic for two reasons. First it would probably take two years to obtain a decision by the Legislative Council as the Provisional Legislature will not enact laws that are not essential for the normal operation of the HKSAR and secondly, it has been widely publicised by the Consumer Council, the former Administration and some politicians that unrestricted "contracting out" is allowed. In light of the above the Council has come to the conclusion that it is now unrealistic to resist public expectation by reintroducing our amendment to section 56 (1) to the Legislative Council for debate. Accordingly the Council, after taking into consideration the debate in the Legislative Council on the true construction of section 56, now considers that a solicitor and client may negotiate a fee, either upward or downward, under section 56.

Notwithstanding this view the Council of the Law Society is of the opinion that it would not be in the public interest for scale fees to be abolished and it is essential to maintain a scale even though contracting out is permitted. The purpose of such a scale would be to set a benchmark establishing a reasonable level of remuneration commensurate with the provision of legal services of an acceptable and recognised standard and to enable both the public and practitioners to know that level when negotiating fees.

Equally it is not in the interests of either the public or the profession for there to be widespread undercutting of fees leading to a diminution in the quality of service. The Law Society will not hesitate to take appropriate steps against any solicitor whose standard of work is found to have been compromised by excessively low charges.

Members' attention is also drawn to Rule 6 (b) of the Solicitors' Practice Promotion Code which provides that practice promotion must not contain any comparison of fees against other solicitors.

Members shall continue to apply the existing scale in respect of transactions unless there is a section 56 agreement or where the solicitor has elected under Rule 3 (5) of the Solicitors (General) Costs Rules.



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Law Society: General

CIRCULAR 18-468 (PA)

19 June 2018

STANDARD OF PRACTICE IN CONVEYANCING

1. The Law Society notes that conveyancing remains one of the top three areas of practice attracting the highest number of claims notified to the Professional Indemnity Scheme over the last five years. Members should take note that although a solicitor and a client may negotiate a fee under section 56 of the Legal Practitioners Ordinance (Cap. 159) ("LPO"), members should ensure that the quality of advice and legal service rendered shall adhere to the professional guidelines and standard regardless of the level of fees to be charged.
2. Members should note that, irrespective of the fee levels they are charging, they owe their clients a duty to be competent to perform any legal services undertaken on the client's behalf ([Principle 6.01 \(a\)](#), The Hong Kong Solicitors' Guide To Professional Conduct).

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