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Prohibited Legal Fee Arrangements in Hong Kong
(香港禁制的律師費用安排)

Introduction (序言)

It is the duty of lawyers to provide good legal services to their clients. Solicitors in Hong Kong usually enter into fee arrangements with their clients on an “Agreed Fee” (協議收費) or “Time Costs” (按時收費) basis. Payment of legal fees to the solicitors is normally determined prior to the commencement of legal work and the amount will not be dependant on the result of the legal work.

Other types of result-oriented fee arrangements (按結果收費) exist in other countries, but most of them are banned in Hong Kong. Such prohibition aims at avoiding the opening of floodgate to litigation (濫用訴訟) and abuse of court process (影響司法). In this newsletter, we shall explore the common kinds of prohibited legal fee arrangements in Hong Kong.

A. Contingency Fee (標的費用)

As stipulated in *Principle 4.16 of the Solicitors’ Guide to Professional Conduct (Vol. 1)* and *section 64 of the Legal Practitioners Ordinance (Cap. 159)*, a solicitor may not enter into a contingency fee arrangement for acting in contentious proceedings (訴訟程序). Contingency Fee is an arrangement whereby a solicitor is to be awarded a payment of any sum (fixed, a percentage of the compensation proceeds or otherwise) only in the event of success in litigation.

Consistent with *Rule 5 of the Solicitors (General) Costs Rules (Cap. 159G)*, Contingency Fee is unlawful and unenforceable in contentious proceedings. Any solicitor entering into such an arrangement with their client will be penalized. This is evidenced in a recent solicitor disciplinary case in 2010 whereby a solicitor charged his client a sum of HK\$751,700 but a large portion of it was contingency fee. The Solicitors Disciplinary Tribunal ordered the solicitor to pay a sum of HK\$300,000 as penalty.

Under contingency fee arrangements, some solicitors may become too eager to act for clients in court cases with greater chance of success or may be awarded a substantial amount of damages (法院錢償). As a result, some solicitors may lose their integrity, independence, objectivity and proper standard of work when dealing with clients.

In some jurisdictions, the term “Contingency Fee” is used interchangeably with the term “Conditional Fee” (有條件收費). In other jurisdictions, Conditional Fee may have a different implication. It may refer to a case in which a client was asked by a lawyer to pay an agreed basic fee but in the case of court success, the lawyer will be rewarded with an extra “bonus fee” on top of the basic fee.

B. Maintenance (強行干預訴訟)

The term “Maintenance” is referred to as “an officious intermeddling with the disputes of others by someone who has no interest in the action nor any motive regarded in law as justification, by maintaining or assisting either party with money or otherwise, to prosecute or defend it” *British Cash and Parcel Conveyers Ltd v Lamson Store Service Co Ltd* [1908] 1 KB 1006 (CA).

In 2007, in *Unruh and Seeberger* [2007] 2 HKC 609, the Court of Final Appeal ruled that the prohibition of Champerty and Maintenance still applied in Hong Kong, the only common law jurisdiction where the two criminal offences still exist. To emphasize the gravity of these offences, *section 1011 of Criminal Procedure Ordinance* states that any person attempting to disregard such rules will be liable to imprisonment for 7 years and a fine.

In recent years, the Hong Kong courts however have taken a more relaxed approach in relation to Maintenance. In line with *Unruh and Seeberger* [2007] 2 HKC 609, it is now accepted that Maintenance could be tolerated provided that :-

- (i) a person supporting another’s litigation has a legitimate “common interest” (共同利益) in the outcome of the litigation, including a genuine commercial interest. An association formed to protect fisheries and to prevent the pollution of rivers was held to have sufficient common interest for it to lawfully support an action brought by its members who claimed that their fishery was being polluted by effluents from the defendant’s ironworks; and
- (ii) the act of supporting another’s litigation would advance the person’s “access to justice” (彰顯公義). Without such support, the plaintiff would have been unable to pursue a claim which is considered perfectly good in law. It must also be stressed that it is a fundamental right of any person to be allowed access to the courts in accordance with *article 35 of the Basic Law*.

C. Champerty (瓜分訴訟賠償)

Champerty is a special kind of Maintenance. However, Champerty only occurs when a person assists or encourages a litigant in a court action in return for a promise for a share in the compensation proceeds of the action. The “share” needs not be precisely calculated and therefore a mere claim for whatever amount in the outcome of the litigation would suffice.

In 2008, a former social worker Ms. Cheung Oi-ping was found guilty of the criminal offence of Champerty and was sentenced to 16-month imprisonment. The Court convicted Ms. Cheung on the ground that she assisted and encouraged the mother of a car crash victim, who suffered serious head injuries. She finally received 25% of the compensation proceeds as a “service charge” [DCCC610/2008].

Nothing shall constitute legal advice to any person by Messrs. Maurice WM Lee Solicitors (Tel: (852) 2537 5833) (Website: www.wmleehk.com)

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