

TAXATION OF LEGAL FEES

Introduction

Legal fees charged by legal firms can vary based on factors such as the complexity of the case, the experience of a lawyer, the type of legal services hired, the duration of the proceedings and others. A common issue arises when a fixed fee arrangement is agreed upon, but after the matter has concluded, the pre-agreed fee is disputed as being too high. So, what happens next? Is there any taxation regime?

This article will examine the importance of upfront agreed legal fees and the procedures involved in the taxation of legal fees.

Non-contentious vs Contentious Matters

First and foremost, it is important to distinguish between non-contentious and contentious legal matters.[1]

In non-contentious matters, lawyers are governed by the Solicitors' Remuneration Order 2023 (“**SRO**”) which apply to transactions such as the sale and purchase of movable and immovable properties, financing, and tenancies. Legal fees for non-contentious matters are regulated based on the scale fee structure under the SRO.

Meanwhile, in contentious matters, lawyers and clients are advised to discuss a fee arrangement to understand the potential costs involved. The fee may depend on factors such as the complexity of the case, the lawyer's experience, the type of legal service required, and the duration of the proceedings. More complex cases or those involving larger sums of money may incur higher fees. If there is any disagreement over the fees, whether or not a pre-existing agreement exists, the bill of costs for contentious matters can be subjected to taxation.

Should there be a Legal Fee Agreement between Solicitor and Client?

In short, yes. It is essential to have a clear, written agreement on legal fees to avoid disputes. However, let us go back to the basics as to why it is necessary.

Section 116 of the Legal Profession Act 1976 ("**LPA**") allows an advocate and solicitor to enter into a written agreement with a client regarding the fees for contentious legal work, including the payment method and the rate. Such agreements can be enforced under Section 118 of the LPA.

It is well established that a valid agreement — free from issues of fraud, duress, coercion, undue influence, or misrepresentation — is binding on both parties. The Court's role is to enforce the terms and conditions agreed upon by the contracting parties without introducing new terms. The Court must interpret the agreement using the exact language of the contract, reflecting the original intent of the parties.[2]

Pre-agreed legal fees are crucial to minimise disputes and protect the legal firm's position. Furthermore, Section 117(3) of the LPA states "*... the costs of an advocate and solicitor in any case where there is any agreement as is referred to in section 116, shall not be subject to taxation, nor to section 124.*"

However, there are cases where a legal firm may charge additional fees even with an agreement, the Court has the statutory power to assess whether the agreement is fair and reasonable. If the agreement is found to be unfair or unreasonable, the Court can declare it void, cancel it, or order the costs, fees, charges, and disbursements to be taxed under Section 118(3) of the LPA.

In *Asbir, Hira Singh & Co v Supramaniam a/l Pitchaimuthu & Ors*[3] Abdul Hamid Embong J held that the Court has the discretionary power to ratify and enforce an agreement if it is fair and reasonable. If not, the Court may declare the agreement void and direct that costs, fees, charges, and disbursements be taxed. The Court may also amend the agreement if only parts of it are found to be unfair or unreasonable.

If no agreement exists, the client has the right to request a detailed itemization of the bill of costs under Section 121(1)(a) of the LPA. If there is a disagreement, subsequently, under Section 126 of the LPA, the bill of costs shall be assessed by taxation to determine the actual or reasonable amount of legal fees entitled to the legal firm.

Procedure of Taxation

(a) Delivery of bill of costs

Under Section 124 of the LPA, a bill of costs must be delivered to any client.

(b) Application for taxation within six months from the delivery of bill of costs

In the absence of any agreement in writing for legal fees in respect of a contentious matter or when there is a disagreement on the bill of costs, under Section 126 (1) of the LPA, any client may apply for the taxation of the bill of costs within six months from the delivery of the bill of costs.^[4]

Where there is consent by an advocate and solicitor for taxation, Section 126(3) of the LPA provides that the registrar then just proceeds to tax the bill even though there is no order to that effect.

Therefore, if an advocate & solicitor agreed to taxation of the bill under Section 126(3) of the LPA, he or she is now estopped from resiling from the position, objecting to the client's application for taxation.^[5]

(c) After lapse of six months: application for taxation can be done when there exist "special circumstances"

Undeniably, Section 128(1) of the LPA prescribes a time limit for an aggrieved party to refer a bill of costs for taxation and in particular provides that such order for taxation shall not in any event be made after the expiry of six months from the delivery of the bill of costs.

However, Section 128(1) of the LPA further provides an exception where an aggrieved party can still apply for taxation after six months, provided that:

- (i) Notice is given to the advocate and solicitor;
- (ii) Special circumstances are proven to the Court's satisfaction; and
- (iii) The order for taxation is made within one year from the delivery of the bill of costs.

In respect of special circumstance, the Court of Appeal in the case *Tan Tek Sin & Anor v Tetuan Nora Hayati & Assoc (sued as a firm)*^[6] referred to the Singapore Court of Appeal case of *Harry Lee Wee v Haw Par Brothers International Ltd*,^[7] where it was held that where a solicitor's bill did not have specific sums shown against each item as detailed, itemised, or narrated within the bill, but rather a final lump sum figure shown to represent the costs of all the items, this would in itself constitute special circumstances for the exercise of the court's discretion to order for the bill to be taxed. Relying on the said judgment, the Court of Appeal held as follows:

"[33] Even more to the point, *the defendant had set-out the particulars of the legal work done without any sum being shown against each item. The bill only just showed a lump sum of RM600,000 representing the costs of all the items (see pp 670–673 record of appeal, Vol V Part C). This would in itself be a special circumstance, which would be a ground for the court to exercise its inherent jurisdiction to allow the plaintiffs' extension of time and to refer the bill for taxation and determination.*"

Therefore, based on the aforementioned case, when there is a special circumstance present, justice of the case requires an order for taxation to be made, even when it is time-barred.

(d) Assessment of the Bill of Costs by the Court

Upon an application for taxation by an aggrieved party, the Court will assess the bill of costs to determine the reasonable amount owed. The Court will consider factors under Order 59 Rule 16 of the Rules of Court 2012, including the complexity of the case, the skill and effort required, the importance of documents, and the circumstances of the transaction.

Considerations when Charging Legal Fees for Lawyers

To avoid disputes and ensure fairness in charging legal fees, lawyers should consider the following:

- (a) Discuss the agreed fees and potential cost of the case with the client.
- (b) Itemise each work done with the costs agreed in the invoice.
- (c) Any change in legal strategy which requires legal fee restructuring should be discussed and agreed upon with the client.
- (d) Take into account the considerations as laid down in Rule 11 of Legal Profession (Practice and Etiquette) Rules 1978 and Order 59 Rule 16 of the Rules of Court 2012.

Conclusion

In conclusion, while the taxation process exists to assess the reasonableness of legal fees, it is advisable for clients to discuss and agree on the legal fees upfront. A written agreement takes precedence over a verbal agreement. Hence, it is recommended that clients sign a fee agreement or acceptance slip of the fee quotation to avoid any future disputes.

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1. Legal Profession Act 1976, Section 3; "contentious business" means business done by an advocate and solicitor, in or for the purpose of proceedings begun before a court of justice, tribunal, board, commission, council, statutory body or an arbitrator.
 2. Berjaya Times Square Sdn Bhd v M Concept Sdn Bhd [2010] 1 CLJ 269 (FC); CIMB Bank Bhd v Anthony Lawrence Bourke & Anor [2019] 2 CLJ 1
 3. [2000] 1 MLJ 83 (HC); page 91, paragraphs E-G.
 4. This mechanism is as stipulated in Rule 9.01(1) of BC Rules and Ruling.
 5. Lim Kien Seng & Anor v Tetuan K Mano & Assoc (suing as advocates and solicitors and sole proprietor) [2019] 5 MLJ 719 (COA); paragraph 35, page 730.

6. [2015] 2 MLJ 1 (COA), page 10.

7. [1980] 2 MLJ 228.

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