

香港特別行政區政府
The Government of the Hong Kong Special Administrative Region

政府總部
環境運輸及工務局
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Environment, Transport and Works Bureau
Technical Circular (Works) No. 37/2002

Use of Legal Consultants
In Connection with Works-related Consultancy Studies

Scope

This Circular sets out the policy on the use of legal consultants and related matters in connection with works-related consultancy studies.

Effective Date

2. This Circular takes immediate effect.

Effect on Existing Circulars

3. This Circular has no effect on existing Circulars.

Background

4. In some consultancy studies, there may be substantial emphasis in the Brief, which forms part of the Consultancy Agreement, for the Consultants to provide advice on legal matters. Examples include assignments requiring the Consultants to review existing legislation, to propose changes to the legislation or to provide special contract drafting services. Given that the Consultants are not lawyers themselves, the Consultants will not be in a position to provide the legal input unless they are allowed to engage legal sub-consultant.

5. The drawbacks of permitting the Consultants to engage legal sub-consultant are that

- (a) the Government's ability to monitor the overall provision of legal services from the private sector, including aspects concerning the quality of the services provided, fairness of the method of appointment and appropriateness of the level of fees charged will be hindered; and
- (b) a legal sub-consultant arrangement could be viewed as a "back-door" briefing out for which the Department of Justice and/or the Legal Advisory Division, Environment, Transport and Works Bureau (LAD/ETWB) could be criticized for failing to monitor and control the provision of legal services from the private sector.

Policy

6. In view of paragraphs 4 and 5 above, it is considered inappropriate for departments to engage legal sub-consultants through their works-related consultants to carry out services which involve substantial legal input and cases involving special contract drafting services where the Government's standard contract forms are not applicable. The relevant parts of the Brief which involve legal issues should accordingly be excluded from the Brief and the LAD/ETWB shall be consulted at an early stage of the project on the appropriate way forward to avoid any delay to the progress of the consultancy study. The LAD/ETWB may consider that in the first instance legal input may be provided by the LAD/ETWB directly or if appropriate, legal consultants should be appointed with the assistance of the LAD/ETWB.

7. In case that a department is not sure if a project involves substantial legal input, it may address its queries to the LAD/ETWB. It should however be clarified that in meeting the Consultants' obligations under Government projects, there may be situations where the Consultants have to decide issues on their own without influence from the Employer and in so deciding, legal advice may be required by the Consultants. For instance, whether or not certain activities fall within the scope of services to be provided by the Consultants under a consultancy study. In those circumstances, the Consultants should take their own independent legal advice as necessary.

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