

By email and by hand

28 December 2021

The Secretary General
The Law Society of Hong Kong
3/F Wing On House
71 Des Voeux Road Central
Hong Kong

Dear Madam,

**Invitation for Expression of Interest for
Provision of Legal Services to the Communications Authority**

We are writing to invite expressions of interest from your Members' firms which are interested in being instructed by the Communications Authority ("CA") to provide legal services to the CA through the Office of the Communications Authority ("OFCA"). We should be grateful if you would circulate this letter to your Members.

The CA, an independent statutory body established under the Communications Authority Ordinance (Cap. 616) ("CAO"), wishes to instruct on a non-exclusive basis solicitors' firms to advise the CA from time to time on matters in relation to the performance of its functions and exercise of its powers under different legislation including the Broadcasting Ordinance (Cap. 562), Broadcasting (Miscellaneous Provisions) Ordinance (Cap. 391), Telecommunications Ordinance (Cap. 106), Competition Ordinance (Cap. 619) ("CO"), Trade Descriptions Ordinance (Cap. 362) ("TDO"), Unsolicited Electronic Messages Ordinance (Cap. 593) and the CAO.

For the avoidance of doubt, this invitation does not constitute an offer or invitation to provide legal services to the CA, nor does it constitute the basis of any contract which may be concluded in relation to the provision of legal services to the CA. This invitation shall not bind the CA or OFCA to engage any firms, which have submitted applications in response to this invitation, for all or any of the services set out below.

Scope of Work

Legal services which are likely to be required by the CA are generally grouped under the following categories:

Job (A): Advisory work on matters in relation to the implementation and enforcement of different legislation within the remit of the CA

Firms are required to provide legal advice to the CA on matters relating to the CA's discharge of its functions and exercise of its powers as and when required. Such advice will include the following:

- (a) Advising the CA on legal issues concerning the interpretation, application, implementation and enforcement by the CA of different legislation as set out in the second paragraph on page 1 and other relevant legislation;
- (b) Advising the CA on legal issues concerning the administration and enforcement by the CA of different licences, codes of practice and other instruments issued under different legislation;
- (c) Advising the CA on legal issues in relation to unfair trade practices, anti-competitive conduct, mergers and acquisitions, and regulatory issues arising from shareholding change applications concerning broadcasting matters;
- (d) Assisting the CA in preparing different instruments such as licences, guidelines and codes of practice to be promulgated or issued under different legislation and OFCA's internal documents such as procedures and workflows for handling complaints and conducting investigations; and
- (e) Providing such other legal advice or services, as and when required by the CA ancillary or incidental to the discharge of the CA's statutory duties, including but not limited to attending meetings, giving briefings or oral presentations to the CA, reviewing and assisting in the preparation of draft documents/submissions to the CA and providing legal training to the staff of OFCA.

Job (B): Litigation work on matters in relation to legal proceedings concerning the implementation and enforcement of different legislation within the remit of the CA

Firms are required to provide legal advice to, and/or represent, the CA in legal proceedings or potential legal proceedings such as judicial review or appeal to the relevant court, any appeal boards established under TO and UEMO ("Appeal Boards"), the Competition Tribunal or any other adjudicative body in relation to the CA's performance of its functions and duties including any decision, determination, direction, opinion, enforcement notice, sanction, remedy or requirement, etc. made or to be made under different legislation, applications made to the relevant court for injunctions under the TDO, and bringing proceedings or otherwise representing the CA in the Competition Tribunal and other courts in relation to cases under the CO. Such advice and services will include the following:

- (a) Representing or instructing counsel to represent the CA to bring, defend, or otherwise attend proceedings in court, or before Appeal Boards or the Competition Tribunal;
- (b) Advising the CA on the merits of applying for warrants, orders (interim or otherwise) or injunctions, or bringing proceedings (including appeal proceedings) in relation to the relevant legislation under which the CA is conferred enforcement powers;
- (c) Advising the CA on the merits of the grounds of review or appeal arising from the legal challenge concerning the CA's decision, etc.;
- (d) Advising the CA on all interlocutory and evidential issues that relate to legal proceedings including preparation of witness statements, affidavits, applications and other documents which are necessary for the conduct of those legal proceedings;
- (e) Advising the CA on all strategic issues that relate to legal proceedings including significance and implications of legal issues concerning those legal proceedings that are relevant to the interpretation, application and enforcement by the CA of different legislation;
- (f) Obtaining counsel's advice and attending conference with counsel;
- (g) Conducting negotiations with other side's solicitors' firms incidental to the conduct and disposal of those legal proceedings;
- (h) Preparing all relevant documents and orders that relate to legal

- proceedings; and
- (i) Providing such other legal advice or services, as and when required by the CA, ancillary or incidental to legal proceedings.

Pre-qualification Criteria

- (a) Firms should have at least five partners. All partners must have been admitted as solicitors of the High Court of Hong Kong for at least five years at the time of application. A typical legal advisory team should include at least one solicitor at partner level who shall supervise the work of the team, at least one solicitor at senior solicitor level, at least one solicitor at junior solicitor level and at least one legal trainee. For the avoidance of doubt, it is not a must that team members of all four levels must be involved in any particular case assigned by the CA. Interested firms may indicate their specialised field(s) of legal services in their applications by specifying certain areas of law or a particular piece of legislation which they may wish to provide to the CA.
- (b) Firms with any member(s) of the team who previously has working experience in advising overseas regulatory body(ies) within common law jurisdictions in competition law, consumer protection law against unfair trade practices, telecommunications and/or broadcasting law will have an advantage.
- (c) For Job (A), firms should have extensive knowledge and experience in telecommunications and broadcasting law and the regulations concerned, with comprehensive understanding of telecommunications and broadcasting issues in Hong Kong, as well as an extensive knowledge and experience in handling cases and procedural matters in relation to consumer protection law against unfair trade practices and/or competition law.
- (d) For Job (B), firms should have acted at least once on behalf of regulators, licensees or other third parties in judicial reviews, appeal cases, or other legal proceedings concerning telecommunications, broadcasting, consumer protection against unfair trade practices and/or competition matters since 1 January 2016.

- (e) Firms should be able to complete the services within the timeframe as specified by the CA. In a simple case, the CA will normally expect the advice to be available within three working days from the receipt of instruction.

Selection Method

Application from firms who respond to this invitation will be assessed based on the information they supply in response to this invitation and any other information they provide in support of their applications. OFCA may contact or invite any firm which responds to this letter for verifying any information they provide. OFCA will put the firms which respond to this invitation and meet the pre-qualification criteria on a list to be kept for a term of three years. Only firms which are put on the list will be notified individually and may receive an invitation from OFCA to submit quotation for services from time to time within the term of three years. For the avoidance of doubt, OFCA may maintain a number of lists for different types of legal services which the CA would require if firms can demonstrate their strength in one or more specialised fields. Firms which do not receive our notification or are not invited to submit quotation may assume that their applications are unsuccessful.

Application Procedure

Interested firms should submit an application by completing the attached pro forma application and letter, to be enclosed in a sealed plain envelope and affixed with the attached Application Label on the envelope, and be placed by hand in **the Tender Box** located on the 29th Floor, Wu Chung House, 213 Queen's Road East, Wanchai, Hong Kong, Office of the Communications Authority during office hours from 9:00 am to 5:30 pm from Monday to Friday (excluding public holidays), or posted to reach OFCA using the Application Label not later than 4:00 pm on 17 February 2022 ("the closing date"). In case a black rainstorm warning signal or a typhoon signal no. 8 or above is issued between 9:00 am and 4:00 pm on the closing date, the closing time will be extended to 4:00 pm on the next working day. Late application

will not be considered.

Please send the application either by hand and placed in the Tender Box or by post to this office. A firm may make no more than one application.

Confidentiality

All information submitted will be treated as private and confidential and we will not disclose to any third party (including other government departments) such information unless we have been compelled or ordered to do so by a body with competent jurisdiction. All the information submitted in response to this invitation will be destroyed as soon as it is reasonably practicable upon completion of the selection. If a firm agrees that we can keep the information for future reference, it should indicate that in its application.

If there is any query, please contact Mr Arnold Chu at 2961 6426 or Ms Kaitlyn Ng at 2961 6652.

Yours faithfully,

A handwritten signature in blue ink, appearing to be 'Eddy Ng', written in a cursive style.

(Eddy Ng)

for Director General of Communications

CONFIDENTIAL

To: The Communications Authority
c/o Office of the Communications Authority

Date:

Expression of Interest to Provide Legal Services to the Communications Authority ("CA")

We refer to your letter of 28 December 2021.

Our firm is interested in providing legal services to the CA and enclose our application setting out the details in support of our application for your information.

Signature of partner authorized to sign
with the firm's chop

Name of partner:

Name of solicitors' firm:

Application*

A. Particulars

- (1) Firm's name: _____
- (2) Address: _____
- (3) Contact person: _____
- (4) Contact email address: _____
- (5) Telephone no.: _____
- (6) Fax no.: _____

B. Legal Advisory Team

Our firm has a team of legal advisers who fulfil the pre-qualification criteria as set out in your letter.

C. Scope of Work

- (1) For Job (A), our firm has the following experience in telecommunications and broadcasting laws in Hong Kong, consumer protection law against unfair trade practices and/or competition law:

- (2) For Job (B), our firm has acted at least once on behalf of regulators, licensees or third parties in connection with litigation (including potential litigation) concerning telecommunications, broadcasting, consumer protection against unfair trade practices and/or competition matters since 1 January 2016. Details are set out below:

- (3) For Jobs (A) or (B), our firm has member(s) who previously has working experience in advising overseas regulatory body(ies) within common law jurisdictions in competition law, consumer protection law against unfair trade practices, telecommunications law and/or broadcasting law. Details are set

out below:

- (4) Our firm specialises in the following legal practices in connection with the CA's functions and duties and is interested in offering those legal services:

D. Confidentiality

- (1) We agree that you can keep our submitted information for future reference.
- (2) Please destroy all our submitted information as soon as it is reasonably practicable after completion of the selection.

Please give a "✓" in the box indicating your preference.

Signature of partner authorized to sign

with the firm's chop

Name of partner:

Name of solicitors' firm:

* Please use separate sheet of paper if necessary.

Expression of Interest to Provide Legal Services to
the Communications Authority

Office of the Communications Authority
29/F Wu Chung House, 213 Queens' Road East, Wanchai, Hong Kong

File Ref.: OFCA/M/R/371C Pt. 5

Closing Date : 17 February 2022
(before 4:00 pm)

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NOTE :

1. The application **MUST** be placed in the Tender Box located at the address stated on the Application Label or posted to reach this Office **BEFORE 4:00 pm** on the closing date specified above. **Misplaced application will not be considered.**
2. The application must be returned in a properly sealed ENVELOPE with the Application Label affixed on the envelope.
3. The application may be lodged from 9:00 am to 5:30 pm daily, from Monday to Friday (excluding public holidays).
4. In case a black rainstorm warning signal or a typhoon signal no. 8 or above is issued between 9:00 am and 4:00 pm on the closing date specified above, the closing time will be extended to 4:00 pm on the next working day.
5. **Late application will not be considered.**