

## **Guideline**

### **Types of Attorneys' Fees**

#### **1. Overview of the Various Types of Attorneys' Fees**

In Switzerland, the following main types of attorneys' fees are customary:

- ◇ computation of the fee on a time spent basis;
- ◇ mutual agreement on a fixed and firm lump sum fee;
- ◇ computation according to a an official tariff of a court or public authority.

#### **2. Computation of the Attorneys' Fee on a Time Spent Basis**

The computation of the fee on a time spent basis is applicable provided it is customary or expressly agreed between the parties. In absence of mandatory rules on the computation of the attorneys' fees, the parties will agree on hourly rates, whereby the parties are free to agree on the level of the hourly rates. Among others, customs may be used as a bench mark. Customary hourly rates in St. Gallen may range between CHF 250.- and CHF 520.- depending on various factors, including, without limitation, the circumstances of the case, the size of the financial amounts involved, the level of complexity, the personal and financial situation of the client etc. In special cases such as, but not limited to, particularly complex or urgent cases or cases involving a high level of liability, the hourly rates may be increased by as much as one half. Based on a revision of the schedule of official tariffs by the Cantonal Court of St. Gallen per 1 July 2007, the minimum customary rate may be estimated at CHF 250.- an hour. There are no indications that customs have changed since then. The minimal time unit for billing purposes is typically 5 minutes.

#### **3. Fixed and firm lump sum fee**

The prerequisite for a lump sum agreement is a clearly defined and limited mandate. In Switzerland, lump sum agreements are permitted but seldom applied in practice. Fees that are entirely dependent on the success of a case are, unlike to the USA, not allowed in this country.

#### **4. Computation of the fee according to a schedule of official tariffs**

The schedule of official tariffs for attorneys' fees and expenses will apply to all matters that are brought forward to a court or a public authority unless the parties mutually agreed to a different fee structure.

The relevant schedule of official tariffs is the schedule of the court in every Canton or on federal level before which the case is brought. For the Canton of St. Gallen, the most relevant schedule of fees is the schedule of official tariffs for attorneys issued by the Cantonal Court on 22 June 1994 (as amended on 2 July 2007). The amounts in the schedule of official tariffs are average amounts that may, in certain cases, be too low compared to the actual level of work involved (e.g. in complex criminal cases with a low level of penalties or in civil cases with small financial amounts involved) or plenty (e.g. in simple civil cases with very high financial amounts involved).

#### **5. Combination of the above fee structures with a success fee**

The Parties may agree on a combination of any of the above fee structures with a success fee, whereby such success fee is due in addition to the base fee when certain pre-determined objectives have been achieved. According to the St. Gallen bar association, the minimum base fee shall not be less than the official tariff for a defence lawyer appointed and paid by the court in cases were the defendant has insufficient financial means to employ a lawyer of its choice. The success fee shall not be more than double that official tariff.