

LEGISLATIVE COUNCIL BRIEF

Legal Aid Ordinance
(Chapter 91)

LEGAL AID (ASSESSMENT OF RESOURCES AND CONTRIBUTIONS) (AMENDMENT) REGULATION 2004

INTRODUCTION

At the meeting of the Executive Council on 11 May 2004, the Council ADVISED and the Chief Executive ORDERED that, under section 28 of the Legal Aid Ordinance, the Legal Aid (Assessment of Resources and Contributions) (Amendment) Regulation 2004, at **Annex A**, should be made.

A

JUSTIFICATIONS

Adjustment to the Financial Eligibility Limit

2. On 17 March 2004, the Legislative Council (LegCo) passed a resolution under section 7(a) of the Legal Aid Ordinance (the Ordinance) to adjust the financial eligibility limit for the Ordinary Legal Aid Scheme from \$169,700 to \$155,800, to take into account the cumulative reduction in consumer prices of 8.2% recorded during July 2000 to July 2003. The resolution will become effective on a day to be appointed by the Director of Administration.

Scale of Contributions Payable by Aided Persons

3. All legally aided persons are required to contribute towards the costs of litigation, according to their financial capacity. Part I of Schedule 3 to the Legal Aid (Assessment of Resources and Contributions) Regulations (the Regulations) at **Annex B** stipulates a scale of contributions payable by legally aided persons. Aided persons with financial resources exceeding \$20,000 but below \$40,000 are required to

B

make a fixed contribution of \$1,000; \$2,000 in the case of those with financial resources exceeding \$40,000 but below \$60,000. A contribution rate ranging from 5% to 25% of an aided person's financial resources is applicable if his financial resources do not exceed the financial eligibility limit of \$169,700. A higher contribution rate, ranging from 30% to 67% is applicable to those aided persons with financial resources exceeding the financial eligibility limit, to whom legal aid is granted in the exercise of the Director of Legal Aid's discretion provided under statute.¹

Consequential Amendments to the Scale of Contributions Payable by Aided Persons

4. As the Administration has briefed the LegCo Subcommittee set up to scrutinize the resolution mentioned in paragraph 2 above, following LegCo's approval of the new financial eligibility limit, there is a need to amend the existing scale of contributions to reflect the new limit. The Legal Aid (Assessment of Resources and Contributions) (Amendment) Regulation 2004 (the Amendment Regulation) seeks to achieve this.

THE AMENDMENT REGULATION

5. There are references to the existing financial eligibility limit of \$169,700 in the scale of contributions stipulated under the Regulations. To reflect the new financial eligibility limit of \$155,800 in the Regulations, we have to make consequential amendments to the Regulations through the Amendment Regulation at **Annex A**. The Amendment Regulation seeks to amend Part I of Schedule 3 to the Regulations by repealing any references to \$169,700 and substituting them by \$155,800.

LEGISLATIVE TIMETABLE

6. The legislative timetable is as follows: -

Publication in the Gazette

14 May 2004

¹ For civil cases, the Director of Legal Aid (DLA) has the discretion under section 5AA of the Ordinance to waive the financial eligibility limit in cases where a breach of the Hong Kong Bill of Rights Ordinance or an inconsistency with the International Covenant on Civil and Political Rights as applied to Hong Kong is an issue. For criminal cases, DLA may also exercise his discretion under rule 15(2) of the Legal Aid in Criminal Cases Rules to waive the limit if he considers that it is desirable in the interests of justice to do so.

Tabling in LegCo

19 May 2004

The Amendment Regulation will come into effect on 12 July 2004. The Director of Administration has appointed the same day as the commencement day of the resolution as discussed in paragraph 2 above.

IMPLICATIONS OF THE PROPOSAL

7. The proposal is in conformity with the Basic Law, including provisions concerning human rights. It does not affect the existing binding effect of the Ordinance. The proposal should also have no financial, civil service, economic, productivity, environmental or sustainability implications.

PUBLIC CONSULTATION

8. We have briefed the LegCo Subcommittee set up to scrutinize the resolution that, following LegCo's approval of the resolution, we intend to revise the scale of contributions payable by legally aided persons to reflect the new limit by means of the Amendment Regulation.

PUBLICITY

9. A spokesman will be available to answer media and public enquiries.

ENQUIRIES

10. Any enquiries on this brief can be addressed to Mr. Andy Lam, Assistant Secretary (Administration) at 2810 2783.

Administration Wing
Chief Secretary for Administration's Office

13 May 2004

**LEGAL AID (ASSESSMENT OF RESOURCES AND
CONTRIBUTIONS) (AMENDMENT)
REGULATION 2004**

(Made by the Chief Executive in Council under section 28 of the
Legal Aid Ordinance (Cap. 91))

1. Commencement

This Regulation shall come into operation on 12 July 2004.

2. Contributions

Part I of Schedule 3 to the Legal Aid (Assessment of Resources and Contributions) Regulations (Cap. 91 sub. leg. B) is amended, by repealing “\$169,700” wherever it appears and substituting “\$155,800”.

Clerk to the Executive Council

COUNCIL CHAMBER

11 May 2004

Explanatory Note

This Regulation amends Part I of Schedule 3 to the Legal Aid (Assessment of Resources and Contributions) Regulations (Cap. 91 sub. leg. B) consequential to certain amendments made to sections 5 and 5A of the Legal Aid Ordinance (Cap. 91), which reduce the limit of financial resources for a person to be eligible for legal aid.

Annex B**Schedule 3 to the Legal Aid (Assessment of Resources and Contributions) Regulations (Cap. 91, Sub. Leg.)**

PART I

The maximum contribution of an aided person under section 18(1)(b) of the Ordinance shall-

- (a) if his financial resources do not exceed \$20,000, be nil; (L.N. 148 of 2000)
- (b) except as provided in subparagraph (c), if his financial resources exceed the amount indicated in column A but do not exceed the amount indicated opposite in column B, be the amount or, as the case may be, the percentage of his financial resources indicated opposite in column C as follows-

A	B	C
If his financial resources exceed	But do not exceed	Then, in relation to his financial resources, his maximum contribution is
\$20,000	\$40,000	\$1,000
\$40,000	\$60,000	\$2,000
\$60,000	\$80,000	5%
\$80,000	\$100,000	10%
\$100,000	\$120,000	15%
\$120,000	\$144,000	20%
\$144,000	\$169,700	25%;

and (L.N. 148 of 2000)

- (c) if his certificate is for proceedings in which a breach of the Hong Kong Bill of Rights Ordinance (Cap 383) or an inconsistency with the International Covenant on Civil and Political Rights as applied to Hong Kong is an issue and-
- (i) if his financial resources exceed the amount indicated in column A but do not exceed the amount indicated opposite in column B, be the amount or, as the case may be, the percentage of his financial resources indicated opposite in column C as follows-

A	B	C
If his financial resources exceed	But do not exceed	Then, in relation to his financial resources, his maximum contribution is
\$20,000	\$40,000	\$1,000
\$40,000	\$60,000	\$2,000
\$60,000	\$80,000	5%
\$80,000	\$100,000	10%
\$100,000	\$120,000	15%
\$120,000	\$144,000	20%
\$144,000	\$169,700	25%
\$169,700	\$269,700	30%
\$269,700	\$369,700	35%
\$369,700	\$469,700	40%
\$469,700	\$569,700	45%
\$569,700	\$669,700	50%
\$669,700	\$769,700	55%
\$769,700	\$869,700	60%
\$869,700	\$1,200,000	65%; or

- (ii) if his financial resources exceed \$1,200,000, be 67% of his financial resources. (L.N. 148 of 2000)

(L.N. 85 of 1997)