

LEGISLATIVE COUNCIL BRIEF

Legal Aid Ordinance (Chapter 91)

LEGAL AID (ASSESSMENT OF RESOURCES AND CONTRIBUTIONS) (AMENDMENT) REGULATION 2006

INTRODUCTION

At the meeting of the Executive Council on 13 June 2006, the Council ADVISED and the Chief Executive ORDERED that the Legal Aid (Assessment of Resources and Contributions) (Amendment) Regulation 2006 at **Annex A** should be made.

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JUSTIFICATIONS

Financial Eligibility Limit

2. At present, a person whose financial resources¹ do not exceed \$155,800 is financially eligible for legal aid under the Ordinary Legal Aid Scheme (OLAS). The limit is specified under section 5(1) of the Legal Aid Ordinance (Chapter 91) (the Ordinance).

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 between \$20,001 and \$40,000 are required to make a contribution of \$1,000; those with resources between \$40,001 and \$60,000,

B

¹ Financial Resources means the aggregate of an applicant's yearly disposable income and disposable capital. A person's **disposable income** is his gross income minus deductible items as allowed under the Legal Aid Ordinance. A person's **disposable capital** is the value of his resource of a capital nature, disregarding a number of items as allowed under the Legal Aid Ordinance.

\$2,000; and those with resources between \$60,001 and \$155,800, a contribution rate ranging from 5% to 25% of the aided persons' financial resources. A higher contribution rate, ranging from 30% to 67%, is applicable to those aided persons with financial resources exceeding the limit, and to whom legal aid is granted in the exercise of the Director of Legal Aid's discretion provided under statute.²

Review of the Financial Eligibility Limit

4. It is our policy to review the limit annually to take account of movements in the Consumer Price Index (C) [CPI(C)], so as to maintain the real value of the limit.

5. The limit was last adjusted in 2004 to reflect the change in CPI(C) pursuant to the 2001, 2002 and 2003 annual reviews, covering the three-year period up to July 2003. In the 2004 annual review, the CPI(C) change from July 2003 to July 2004 was +0.4%. Following consultation with the Administration of Justice and Legal Services Panel (the AJLS Panel) of the LegCo, no adjustment to the limit was made due to the small increase in the price level. The Administration undertook to reserve the +0.4% and consider it together with the outcome of the 2005 annual review.

6. Pursuant to the 2005 annual review, the increase in the CPI(C) from July 2004 to July 2005 is 1.3%. The change from July 2003 to July 2005 is +1.6%.

7. We moved, and LegCo passed on 3 May 2006, a resolution under section 7(a) of the Ordinance to adjust the limit in section 5(1) of the Ordinance upward by 1.6% from \$155,800 to **\$158,300**.

Consequential Amendments to the Scale of Contributions Payable by Aided Persons

8. Following the approved adjustment to the limit, we need to amend the existing scale of contributions in the Regulations to reflect the new limit. The Legal Aid (Assessment of Resources and Contributions) (Amendment) Regulation 2006 (the Amendment Regulation) at **Annex A** is to achieve this.

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² 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.

THE AMENDMENT REGULATION

9. The Amendment Regulation amends Part I of Schedule 3 to the Regulations by repealing references to \$155,800 and substituting them by \$158,300.

LEGISLATIVE TIMETABLE

10. The legislative timetable is as follows -

| | |
|------------------------------------|--------------|
| Publication in the Gazette | 16 June 2006 |
| Tabling at the Legislative Council | 21 June 2006 |

In order that the revised scale of contributions can be implemented as soon as possible for the benefit of the legally aided persons, the Amendment Regulation will take effect upon gazettal, i.e. 16 June. The Director of Administration will appoint the same day as the commencement day of the resolution as discussed in paragraph 7 above. The Commencement Notice will also be published in the gazette on 16 June.

IMPLICATIONS OF THE PROPOSAL

11. 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

12. We have briefed the AJLS Panel that, following LegCo's approval of the resolution, we would revise the scale of contributions payable by legally aided persons set out in the Regulations to reflect the new limit.

PUBLICITY

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

ENQUIRIES

14. Any enquiries on this brief can be addressed to Mrs Alice Cheung, Assistant Director (Administration) at 2810 2576.

**Administration Wing
Chief Secretary for Administration's Office
14 June 2006**

**LEGAL AID (ASSESSMENT OF RESOURCES AND
CONTRIBUTIONS)(AMENDMENT) REGULATION
2006**

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

1. 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
“\$155,800” wherever it appears and substituting “\$158,300”.

Clerk to the Executive Council

COUNCIL CHAMBER

2006

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). The Schedule specifies the maximum contribution payable by an aided person of legal aid to the Director of Legal Aid. Certain maximum contributions in subparagraphs (b) and (c) of that Part are determined by reference to the upper limit of the financial resources of an aided person under section 5 of the Legal Aid Ordinance (Cap. 91). Section 5 of the Ordinance has been amended by increasing the upper limit of the financial resources of an aided person under that section to \$158,300. The amendment in this Regulation is to consequentially reflect the amendment made to section 5 of the Ordinance.

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;
- (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 | \$155,800 | 25%; |

and

- (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 | \$155,800 | 25% |
| \$155,800 | \$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.