

**For discussion on
26 March 2007**

LegCo Panel on Administration of Justice and Legal Services

**Five-yearly Review of the Criteria for
Assessing the Financial Eligibility of Legal Aid Applicants**

PURPOSE

This paper sets out the Administration's proposed scope of the 2007 five-yearly review of the criteria for assessing the financial eligibility of legal aid applicants, and invite views from Members.

BACKGROUND

2. Our legal aid policy objective is to ensure that no one with reasonable grounds for taking or defending legal action in the Hong Kong court is prevented from doing so because of a lack of means. Accordingly, means test is one of the two cardinal criteria for granting legal aid, the other being the merits test.

3. The financial eligibility limit for the Ordinary Legal Aid Scheme (OLAS), which covers civil proceedings at District Court and above, is \$158,300. The same eligibility limit also applies to criminal legal aid under the Legal Aid in Criminal Cases Rules of the Criminal Procedure Ordinance. The Supplementary Legal Aid Scheme (SLAS) is a self-financing legal aid scheme available to those whose financial resources are above \$158,300 but do not exceed \$439,800. It covers cases involving personal injury or death and medical, dental or legal professional negligence, where the claim for damages is likely to exceed \$60,000 and employees' compensation claims irrespective of amount. The eligibility limits are set out in the Legal Aid Ordinance.

4. Arising from the 1992 legal aid policy review, the Administration undertakes to review once every five years the overall approach towards assessing the financial eligibility of legal aid applicants. We have since then completed the 1997 and 2002 review.

THE 2007 FIVE-YEARLY REVIEW

5. The 2007 five-yearly review is now due. In line with the scope of the previous reviews, we intend to examine the following issues relating to the assessment of financial eligibility of legal aid applicants –

(a) the financial capacity approach in assessing the financial eligibility of legal aid applicants

6. Before 1992, a legal aid applicant was tested separately on his capital and income, and he had to satisfy the criteria of both tests before he became financially eligible. The system worked to the disadvantage of persons having only income or capital, and was tilted in favour of those having both.

7. To address the anomalies of having separate capital and income tests, Legal Aid Department (LAD) has since 1992 adopted a “financial capacity” approach in assessing the means of legal aid applicants. A person’s financial capacity refers to the aggregate of his yearly disposable income and his disposable capital (i.e. capital assets and annual income after deduction of certain statutory allowances). A person whose financial capacity does not exceed the financial eligibility limits referred to in paragraph 3 above is eligible for legal aid.

8. We will review whether there is any room for improvement to the current financial capacity approach in assessing the financial resources of legal aid applicants.

(b) The method of computing disposable income

9. According to Part I of Schedule 1 of the Legal Aid (Assessment of Resources and Contributions) Regulations, a person’s income is the income that person may reasonably expect to receive during the period of computation. Previously, LAD took the actual income of an applicant at the time of the application in calculating his yearly disposable income. Since May 2005, LAD has taken into account the anticipated loss or reduction of the applicant’s income in calculating his income. This is a fairer arrangement for those persons whose projected income is smaller than the amount earned at the time of the application.

10. A person’s disposable income is his income minus a number of deductible items allowed under Part II of Schedule 1 of the Legal Aid

(Assessment of Resources and Contributions) Regulations. The deductibles are comprehensive and compare very favourably with overseas jurisdictions. They include –

- (a) rent or mortgage payments of the person's main or only dwelling;
- (b) an allowance equivalent to the 35-percentile household expenditure excluding rent;
- (c) payment of salaries tax;
- (d) contribution to a pension or retirement scheme;
- (e) an amount to provide for the care of any dependant who is a child or is unable to take care of himself by reason of his mental or physical condition, while the applicant is at work; and
- (f) maintenance payment.

11. Item (b) above (i.e. deducting an amount equivalent to the 35-percentile household expenditure) was implemented in 2000 following the 1997 five-yearly review by replacing the previously used Comprehensive Social Security Assistance rates. Many overseas jurisdictions indeed still use their social security rates. Item (e) (i.e. expenses for taking care of dependants) was introduced in 2006 following the 2002 five-yearly review. Previously, the deductible only applied to dependent children while the person concerned was under employment. Item (f) (i.e. maintenance payment) was also introduced in 2006 following the 2002 five-yearly review. These expansions over the years have enhanced the scope of the deductibles and have further facilitated access to legal aid.

12. We will review the adequacy of these deductible items to ensure that they continue to be able to serve current needs.

(c) Method of computing disposable capital

13. In accordance with Schedule 2 of the Legal Aid (Assessment of Resources and Contributions) Regulations, a person's disposable capital is the value of his resource of a capital nature, disregarding a number of items. These items, which compare favourably with overseas jurisdictions, include –

- (a) value of the household furniture and effects of main or any dwelling occupied by the person concerned;

- (b) value of articles of personal clothing;
- (c) value of the personal tools and equipment of his trade;
- (d) value of any interest in the only or main dwelling;
- (e) value of a donation or gift received, as LAD considers to be reasonable, having regard to its amount, value and nature; and
- (f) insurance money received in respect of the injuries to which the person's personal injury claim relates, to cover his future medical needs. This item was added pursuant to the 2002 five-yearly review.

14. We will consider whether there is room for improvement in the items to be disregarded.

(d) the appropriateness of having a one-line financial eligibility limits

15. At present, one financial eligibility limit applies to all types of cases under OLAS as well as the criminal legal aid cases. Another limit exists for SLAS. Questions have been raised as to whether it would be more appropriate to set different limits for different types of cases or even for individual cases, having regard to the legal costs of the cases.

16. Setting an across-the-board financial eligibility limit is clear and simple to understand. Also, given the diverse nature of civil cases, it may not be practicable to categorise all of them for the purpose of setting the limits. The caseload of some categories may be relatively small and hence any data on costs derived from it may not be meaningful. We also doubt the practicability of setting different limits for individual cases having regard to their costs, because it is very difficult to estimate the costs for individual cases at the outset. Notwithstanding this, in the light of the suggestions for change, we will examine the issue in greater detail during the review.

(e) Review cycle of financial eligibility limits

17. Previously, the financial eligibility limits were reviewed once every two years to take account of inflation. Pursuant to the 1997 review, the Administration has undertaken to review the limits annually to take account of movements in CPI(C) and to maintain the real value of the limits; we also review the limits biennially to take account of changes in private litigation costs.

18. We will review whether there is any room for streamlining.

The Supplementary Legal Aid Scheme

19. Hong Kong is the only jurisdiction that has a legal aid scheme on a self-financing basis like SLAS. When SLAS was first established in 1984, it only covered claims arising from personal injuries or death. The scope was extended subsequently to include employees' compensation claims and medical, dental and legal professional negligence claims. The contribution rates were reduced twice, in 2000 and in 2006, to the present 6% (cases settled before delivery of brief to counsel) and 10% (other cases). Although not directly related to the criteria for assessing financial eligibility, the Administration would take the opportunity of the five-yearly review to examine whether there is scope of improving SLAS without undermining or jeopardising the financial viability of the scheme.

WAY FORWARD

20. The Administration Wing and LAD are geared up for the review. Members' views on the proposed scope of review and initial views on the issues concerned are most welcome.

21. As and when the Administration has formulated more specific proposals, we will consult the Legal Aid Services Council and this Panel. We aim to do so by the latter half of 2007.

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