

**For Information on 28 March 2011**

**Legislative Council Panel on  
Administration of Justice and Legal Services**

**Legal Aid Contribution**

**PURPOSE**

This paper informs members of the requirement for payment of contribution by legally aided person under both the Ordinary Legal Aid Scheme (OLAS) and Supplementary Legal Aid Scheme (SLAS) and how the contribution is utilized in practice.

**BACKGROUND**

2. At the meeting held on 24 January 2011, the Panel requested the Administration to provide for members' reference an analysis, with different scenarios, on the total amount of contributions payable for employee claims on appeal from Labour Tribunal.

**OBJECTIVE OF LEGAL AID**

3. The policy objective of legal aid is to ensure that no person with reasonable grounds for pursuing or defending a legal action is denied access to justice because of a lack of means.

4. To qualify for legal aid, a person has to satisfy the means and merits tests.

**OBJECTIVE OF CONTRIBUTION**

5. As legal aid is funded by the public coffer which is not unlimited, LAD has to conduct means tests on legal aid applicants to ensure that publicly-funded legal aid services are provided to those who are financially in need. It follows that an aided person is required to

make a contribution towards the cost of legal representation in an amount proportionate to his means if, on a determination of his financial resources, he should be able to do so. It would not be a proper nor prudent use of public fund if persons with some means are allowed to benefit from Government subsidized legal aid at no cost.

**BASIS FOR CALCULATING CONTRIBUTION**

6. Contribution payable by an aided person is determined on the basis of his financial resources which refer to the aggregate of his yearly disposable income and disposable assets <sup>Note 1</sup>.

**CONTRIBUTION UNDER OLAS**

7. At present, a person whose financial resources do not exceed \$175,800 is financially eligible for legal aid under OLAS. Of those who are eligible, only applicants with financial resources above \$20,001 are required to pay a contribution upon acceptance of an offer of legal aid on a sliding scale. A table showing the contribution scale is as follows-

<b>Financial Resources (\$)</b>	<b>Contribution Rates</b>	<b>Contributions (\$)</b>
0-20,000	-	-
20,001-40,000	-	1,000
40,001-60,000	-	2,000
60,001-80,000	5%	3,000-4,000
80,001-100,000	10%	8,000-10,000
100,001-120,000	15%	15,000-18,000
120,001-144,000	20%	24,000-28,800
144,001-175,800	25%	36,000-43,950

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<sup>1</sup> A person’s disposal income is his gross income minus deductible items as allowed under the Legal Aid Ordinance. A person’s disposable capital is the sum of his credit balance, money due to him, the market value of non-money resources and the value of business or share in a company, minus deductible items as allowed under the Legal Aid Ordinance

8. The nil contribution level is set at \$20,000 to ensure that payment of contribution would not cause hardship for individuals with little financial resources. Persons receiving Comprehensive Social Security Assistance are generally exempted from paying any contribution.

*Note 2*

9. Pursuant to the five-yearly review of the criteria for assessing the financial eligibility of legal aid applicants, the financial eligibility limit (FEL) for OLAS will be raised from the present \$175,800 to \$260,000. After the coming into effect of the new legislative amendments, an aided person will be required to pay the contribution if his/her financial resources are assessed to be between \$20,001 and \$260,000, and that the maximum contribution payable will be \$65,000 ( $\$260,000 \times 25\%$ ).

## **CONTRIBUTION UNDER SLAS**

10. SLAS is a self-financing scheme funded by contributions and damages recovered. Applicants with financial resources above \$175,800 but not exceeding \$488,400 are eligible for SLAS. Applicants pay an initial non-refundable application fee of \$1,000. Successful applicants are required to pay an interim contribution of \$43,950 (which is equivalent to the highest contribution payable by an aided person under OLAS) upon acceptance of offer of legal aid (interim contribution).

11. If the proceedings are successful, the aided person pays a percentage of damages recovered (percentage deduction) to replenish the SLAS Fund so that others in need of assistance in future can benefit under the SLAS. The current percentage deduction is 10% of the amount of damages recovered. If the case is settled before counsel is briefed to attend trial, the percentage deduction is lowered to 6%.

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<sup>2</sup> see regulation 8A of Legal Aid (Assessment of Resources and Contribution) Regulations. CSSA recipient is exempted from paying contribution unless there are reasonable grounds to believe or suspect that the financial resources of that person may be such as to render him ineligible for legal aid or liable to pay a contribution a contribution.

12. In successful cases, the aided persons are given credit for the application fee and interim contribution paid when calculating the amount they have to pay to the Fund. For those who are unsuccessful, the application fee and interim contribution are applied towards the costs incurred in the proceedings including any costs ordered to be paid to the opposite winning party. The shortfall, if any, will be borne entirely by the SLAS Fund.

13. Pursuant to the five-yearly review of the criteria for assessing the financial eligibility of legal aid applicants, the FEL for OLAS will be raised from the present \$175,800 to \$260,000, and that for SLAS from \$488,400 to \$1.3 million. After the coming effect of the new legislative amendments, the interim contribution payable by an aided person will be \$65,000 ( $\$260,000 \times 25\%$ ) instead of \$43,950.

#### **THE EXPANDED SLAS**

14. As set out in the paper on the review of SLAS submitted to this Panel for discussion on 28 March 2011, the Administration proposes that:

- (a) Claims of the following categories, with claim amounts exceeding \$60,000, be covered under the expanded SLAS using an enhanced rate of application fee and contribution –
  - (i) Professional negligence claims against Certified Public Accountants, Architects, Registered Professional Engineers, Registered Professional Surveyors, Authorized Land Surveyors, Registered Professional Planners, Landscape Architects and Estate Agents;
  - (ii) Claims arising from sale of insurance products; and
  - (iii) Claims against developers in the sale of first-hand residential properties;
- (b) The enhanced application fee and rates of contribution shall also apply to the existing three types of professional

negligence claims against the medical, dental or legal professions; and

- (c) Employees' claims on appeals from the Labour Tribunal, regardless of claim amounts, be covered under the expanded SLAS using the existing rates of application fee and contribution.

15. The enhanced rates of application fee and contribution are proposed as follows:

- (a) An applicant is required to pay a non-refundable application fee of \$5,000.
- (b) After accepting legal aid, the aided person is required to pay 10% of his/her assessed financial resources, but in any event not less than 25% of the FEL of OLAS, which is currently \$43,950 ( $\$175,800 \times 25\%$ ) and \$65,000 when the FEL for OLAS is increased.
- (c) If the proceedings are successful, 20% of the damages recovered will be deducted and paid into the Supplementary Legal Aid Fund. If the case is settled before counsel is briefed to attend trial, 15% of the damages recovered will instead be deducted.

16. The following table summarises and compares the existing rates of OLAS and SLAS as well as the enhanced rates of the expanded SLAS before and after the coming into effect of the new FELs.

Before the coming into effect of the new FELs

	<b>Existing rates of OLAS</b>	<b>Existing rates of SLAS</b>	<b>Enhanced rates of the expanded SLAS</b>
<b>Application fee</b>	-	\$1,000	\$5,000
<b>Contribution</b>	\$1,000 to \$43,950, depending on financial resources	-	-
<b>Interim contribution</b>	-	25% of FEL for OLAS, i.e. \$43,950	10% of assessed financial resources, but not less than \$43,950
<b>Final contribution (on successful conclusion of cases)</b>	-	6% of damages recovered for cases settled before delivery of brief to counsel, and 10% for other cases	15% of damages recovered for cases settled before delivery of brief to counsel, and 20% for other cases

After the coming into effect of the new FELs

	<b>Existing rates of OLAS</b>	<b>Normal rates of SLAS</b>	<b>Enhanced rates of the expanded SLAS</b>
<b>Application fee</b>	-	\$1,000	\$5,000
<b>Contribution</b>	\$1,000 to \$65,000, depending on financial resources	-	-
<b>Interim contribution</b>	-	25% of FEL for OLAS, i.e. \$65,000	10% of assessed financial resources, but not less than \$65,000
<b>Final contribution (on successful conclusion of cases)</b>	-	6% of damages recovered for cases settled before delivery of brief to counsel, and 10% for other cases	15% of damages recovered for cases settled before delivery of brief to counsel, and 20% for other cases

## **PAYMENT OF CONTRIBUTION**

17. The Director of Legal Aid may allow, in appropriate circumstances, payment of contribution by installments (normally not more than 6 monthly installments). Relevant factors for consideration include the likely duration of aided proceedings; the actual monthly income of the applicant after deduction of basic and essential expenditure; and the amount of available assets which includes savings and readily realizable assets.

## **USE OF CONTRIBUTIONS TOWARDS COSTS OF LITIGATION**

18. At the close of the case, if no costs are recovered, for example, the case is lost or if the costs recovered from the opposite party are less than the costs incurred by the Director, the contribution will be applied to meet the deficit. The balance, if any, will be refunded to the aided person. However, if the contribution is not enough to pay for the costs incurred by the Director, the aided person will not be asked to pay more to cover the shortfall. In other words, the costs to be borne by an aided person will not be more than the contribution he has to pay even though the costs incurred by the Director in the proceedings are higher than the contribution, unless the Director of Legal Aid's First Charge (DLA 1<sup>st</sup> Charge) applies. DLA 1<sup>st</sup> Charge arises where an aided person successfully recovers or preserves money / property in the aided proceedings.

19. The following examples illustrate how the contribution paid is applied in practice.

### **EXAMPLE 1**

20. Legal aid is granted to "A" under OLAS to oppose an appeal by the employer to the High Court against a Labour Tribunal award of \$30,000 in favour of the employee. "A" pays a contribution of \$2,000.

21. The employer is successful in quashing the award and the

case is remitted to the Labour Tribunal for rehearing. The Court also orders costs against “A”. However, as “A” is the respondent in the appeal, “A” is not liable to pay the costs of the employer even though there is an order for costs against “A”.

22. Costs of “A” amount to \$150,000 and the amount is borne by the Legal Aid Fund.

	Debit	Credit
(i) Damages awarded		Nil
(ii) Costs of “A” borne by the Legal Aid Fund	\$150,000	
(iii) Contribution paid		\$2,000
Balance borne by the Legal Aid Fund:		(\$148,000)

23. Since the costs of the proceedings are higher than the contribution paid and “A” has not recovered any money, the contribution will be used to settle “A”’s own costs of the appeal leaving a shortfall in the sum of \$148,000 (costs of “A” \$150,000 - contribution \$2,000) to be borne by the Legal Aid Fund, “A” does not have to pay anymore contribution.

## EXAMPLE 2

24. Legal aid is granted to “B” under OLAS to claim damages against his employer for breach of contract with a contribution of \$8,000.

25. The employer defends the claim and the case proceeds to full trial. The court makes an award in the sum of \$200,000 in favour of “B” and further order costs against the employer.

26. Assuming the employer pays up all the costs awarded against him, and assuming the amount of costs “B” has to pay to his assigned lawyer which are not recoverable from the employer (Common Fund costs) is assessed at \$15,000, the net amount which “B” will get back at the conclusion of the case :

	Debit	Credit
(i) Damages awarded		\$200,000
(ii) Contribution paid		\$8,000
<u>Less :</u>		
(iii) Common Fund Costs borne by “B”:	\$15,000	
Balance due to “B”:		\$193,000

27. Since the amount of damages recovered and the contribution paid is higher than the Common Fund costs, the balance after deducting the Common Fund costs will be refunded to “B” (i.e. damages \$200,000 + contribution \$8,000 – Common Fund Costs borne by “B” \$15,000 = \$193,000)

### EXAMPLE 3

28. Legal aid is granted to “C” under SLAS to claim employees’ compensation. He pays \$1,000 initial application fee and an interim contribution of \$43,950.

29. The claim is eventually settled before delivery of brief to counsel for \$300,000 with costs against the employer.

30. Assuming the employer has paid the costs, and assuming the Common Fund costs payable by “C” is assessed at \$8,000, the amount which “C” will get back at the conclusion of the case :

	Debit	Credit
(i) Damages awarded		\$300,000
(ii) Initial application fee		\$1,000
(iii) Interim contribution		\$43,950
<u>Less :</u>		
(iv) Common Fund Costs borne by “C”:	\$8,000	
(v) Percentage deduction: \$300,000 x 6%	\$18,000	
Balance due to “C”:		\$318,950

31. As “C” is successful, the amount of damages will be applied towards the payment of the Common Fund Costs to be borne by “C” as well as the percentage deduction. However, credit will be given when calculating the amount due to “C” for the initial application fee and interim contribution already paid.

**EXAMPLE 4**

32. Assuming that the new FELs have come into effect and SLAS is extended to cover Labour Tribunal appeal and “D” is granted legal aid to appeal against a decision of the Labour Tribunal under the new SLAS. “D” pays an initial application fee of \$1,000 and an interim contribution of \$65,000.

33. “D” is successful in the appeal and the court affirms the Tribunal’s award of \$40,000 being arrears of wages and related benefits.

34. Assuming the employer pays the award and costs, and assuming the Common Fund costs payable by “D” is assessed at \$5,000, the amount which “D” will get back at the conclusion of the case :

	Debit	Credit
(i) Damages awarded		\$40,000
(ii) Initial application fee		\$1,000
(iii) Interim contribution		\$65,000
<u>Less :</u>		
(iv) Common Fund Costs borne by “D”:	\$5,000	
(v) Percentage Deduction: \$40,000 x 10%	\$4,000	
Balance due to “D”:		\$97,000

35. Same as example 3 above, as “D” is successful in the appeal, the damages recovered together with the initial application fee and interim contribution will be paid back to “D” subject to the deduction of the Common Fund costs and percentage deduction which in this case is 10% as the case proceeds to the appeal hearing .

### **Example 5**

36. Assuming that the new FELs have come into effect and SLAS is expanded to cover claims against developers in the sale of first-hand residential properties. “E” is granted legal aid to sue a developer. Assuming the financial resources of “E” is \$1 million, “E” pays an initial application fee of \$5,000 and an interim contribution of \$100,000 (\$1 million x 10%).

37. The claim goes to trial and “E” is successful in the case and the court awards “E” damages of \$600,000.

38. Assuming the developer pays the award and costs, and assuming the Common Fund costs payable by “E” is assessed at \$20,000, the amount which “E” will get back at the conclusion of the case :

	Debit	Credit
(i) Damages awarded		\$600,000
(ii) Initial application fee		\$5,000
(iii) Interim contribution : \$1 million x 10%		100,000
<u>Less :</u>		
(iv) Common Fund Costs borne by “E”:	\$20,000	
(v) Percentage Deduction: \$600,000 x 20%	\$120,000	
Balance due to “E”:		\$565,000

**Home Affairs Bureau  
Legal Aid Department  
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