

For Information

Legislative Council Subcommittee on Proposed Resolution under Section 7(b) of the Legal Aid Ordinance (Cap. 91)

INTRODUCTION

At its meeting on 30 March 2012, the Legislative Council (“LegCo”) Subcommittee on the Proposed Resolution under Section 7(b) of the Legal Aid Ordinance (Cap. 91) (“the Subcommittee”) requested the Administration to –

- (a) provide an analysis, under different scenarios, on the amount of contributions and legal costs payable by an aided person (“AP”) in Labour Tribunal appeals under the existing Ordinary Legal Aid Scheme (“OLAS”) and the proposed expanded Supplementary Legal Aid Scheme (“SLAS”); and
- (b) explain the rationale for replacing “提出” by “提起” in the Chinese text of the phrase “civil proceedings brought by” (提起的民事法律程序) in Part I of Schedule 3 to the Legal Aid Ordinance (Cap. 91) (“LAO”).

CONTRIBUTIONS UNDER OLAS AND SLAS

Basis for calculating contribution

2. Contribution payable by an AP is determined on the basis of the AP’s financial resources which refer to the aggregate of the AP’s yearly disposable income and disposable assets¹.

Contribution under OLAS

3. At present, if an AP whose financial resources do not exceed \$260,000, the AP is financially eligible for legal aid under OLAS. If the financial resources of an AP are above \$20,000 but below \$260,000, the

¹ A person’s disposal income is the person’s gross income minus deductible items as allowed under the LAO. 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 LAO.

AP is required to pay a contribution upon acceptance of offer of legal aid in accordance with a sliding scale as follows –

Financial Resources	Contribution Rates	Contribution payable
0 - \$20,000	-	0
\$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 - \$260,000	25%	\$36,000 - \$65,000

Contribution under SLAS

4. An AP with financial resources above \$260,000 but not exceeding \$1.3 million is eligible for SLAS. An AP has to pay an initial non-refundable application fee of \$1,000. If an AP's application is successful, the AP is required to pay an interim contribution of \$65,000 (which is equivalent to the highest contribution payable by an AP under OLAS) upon acceptance of offer of legal aid.

5. The proposed expanded SLAS cover representation for employees in appeals brought by either the employer or the employee against awards made by the Labour Tribunal, regardless of the amount in dispute. If an AP is successful in the appeal proceedings, the AP has to pay a percentage of the award recovered to the Supplementary Legal Aid Fund ("SLAS Fund"). The percentage deduction will be 10% of the amount of the award recovered. If the case is settled before counsel is briefed to attend the appeal, or prior to the date of commencement of the appeal if no counsel is involved, the percentage deduction is reduced to 6%.

6. In successful cases, the AP is given credit for the initial application fee and interim contribution paid when calculating the amount the AP has to pay to the SLAS Fund. For an AP who is unsuccessful, the initial application fee and interim contribution are applied towards the costs ordered to be paid to the opposite winning party. In the event that the initial application fee and interim contribution paid exceed the costs of the proceedings, the surplus will be refunded to the AP. On the other hand, any shortfall will be borne entirely by the SLAS Fund.

Examples on how the contributions and costs liability work in practice

(I) Under OLAS

Example 1

7. Legal aid is granted to “A” to oppose an appeal by his employer to the High Court against a Labour Tribunal award of \$30,000 in “A’s” favour. “A” pays a contribution of \$2,000.

8. 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”.

9. The costs of “A” in opposing the appeal amount to \$150,000. The \$2,000 paid by “A” by way of contribution will be used towards satisfaction of his own costs. Balance of the costs is borne by the Legal Aid Fund.

	Debit	Credit
(i) Compensation 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)

Example 2

10. Legal aid is granted to “B” to appeal against a decision of the Labour Tribunal. “B” pays a contribution of \$8,000.

11. “B” is successful in reversing the order and the court makes an award in the sum of \$40,000. The Court also orders costs against the employer.

12. Assuming the employer pays up all the costs ordered 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 \$10,000, the net amount which “B” will get back at the conclusion of the case is as follows –

	Debit	Credit
(i) Compensation awarded		40,000
(ii) Contribution paid		\$8,000
<u>Less :</u>		
(iii) Common Fund Costs borne by "B":	\$10,000	
Balance due to "B" :		\$38,000 ²

(II) Under SLAS

Example 3

13. Legal aid is granted to "C" to appeal against a decision of the Labour Tribunal. "C" pays an initial application fee of \$1,000 and an interim contribution of \$65,000.

14. "C" is successful in the appeal and the court makes an award in the sum of \$30,000. The Court also orders costs against the employer.

15. Assuming the employer has paid the costs, and assuming the Common Fund costs payable by "C" is assessed at \$10,000, the amount which "C" will get back at the conclusion of the case is as follows –

	Debit	Credit
(i) Compensation awarded		\$30,000
(ii) Initial application fee		\$1,000
(iii) Interim contribution		\$65,000
<u>Less :</u>		
(iv) Common Fund Costs borne by "C"	\$10,000	
(v) Percentage deduction : \$30,000 x 10%	\$3,000	
Balance due to "C":		\$83,000 ²

16. Same as example 2 above, as "C" is successful in the appeal, the compensation recovered together with the initial application fee and interim contribution will be paid back to "C" subject to the deduction of the Common fund costs and percentage deduction which in this case is 10% as the case proceeded to the appeal hearing.

² The balance AP will recover at the conclusion of the case depends, to a large extent, on the amount of Common Fund costs payable to the assigned lawyer. The amount of Common fund costs is, in the absence of agreement with the assigned lawyer, taxed (i.e. assessed) by the court.

Example 4

17. Same as example 3 above but the appeal is not successful and the court affirms the Tribunal's decision.

18. Assuming the costs lost to the employer is \$200,000 and assuming the amount of costs to be paid to the assigned lawyer (the Common Fund costs) is assessed at \$150,000, the total amount to be borne by the SLAS Fund is as follows –

	Debit	Credit
(i) Compensation awarded		Nil
(ii) Initial application fee		\$1,000
(iii) Interim contribution		\$65,000
<u>Less :</u>		
(iv) Costs lost to the employer	\$200,000	
(v) Common Fund Costs of "D"	\$150,000	
Balance borne by the SLAS Fund:		(\$284,000)

19. Despite total costs in the unsuccessful appeal are in excess of the initial application fee and interim contribution paid, "D" is not required to pay any additional sum since the initial application fee and interim contribution paid represent the maximum liability for costs of an AP under SLAS if the case is lost.

"BROUGHT BY" IN CHINESE TEXT

20. As regards Members' query mentioned in paragraph 1(b) above, we have reviewed the relevant provisions and considered it more appropriate to use "提起" in this particular context.

21. In the present case, "提起" has the same meaning as "提出". However, it is more generally accepted to use "提起" when referring to the institution or bringing of legal proceedings by a person. Examples of using "提起" instead of "提出" to match with "訴訟", or to express in Chinese the meaning of the word "bring" when it is used in connection with "legal proceedings" could also be found in the following dictionaries –

- (a) in the Xian Dai Han Yu Ci Dian (revised edition) (《現代漢語詞典(修訂本)》) published by the Commercial Press (Beijing) (商務印書館(北京)) –

“[提起](1) 談到；說起：~此人，沒有一個不知道的。(2) 奮起：~精神。(3) 提出：~訴訟。”; and

- (b) in An English-Chinese Dictionary of Law (《英漢法律詞典》) published by Fa Lu Chu Ban She (Shanghai) (法律出版社) –

“bring v. 1. 產生，引起，導致；2. 提出(論據等)，*提起(訴訟)*。”.

ADVICE SOUGHT

22. Members are invited to note the above information.

**Home Affairs Bureau
Legal Aid Department
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