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Paper for the House Committee

Report of the Subcommittee on Legal Aid (Assessment of Resources and Contributions) (Amendment) Regulation 2015

Purpose

This paper reports on the deliberations of the Subcommittee on Legal Aid (Assessment of Resources and Contributions) (Amendment) Regulation 2015 ("Amendment Regulation").

Background

2. The Legal Aid Department ("LAD") administers the Ordinary Legal Aid Scheme ("OLAS") and the Supplementary Legal Aid Scheme ("SLAS") in accordance with the Legal Aid Ordinance (Cap. 91). Under Cap. 91, only applicants who have passed the means and merits tests are eligible for legal aid. For the means test, the OLAS financial eligibility limit ("FEL") is specified in Section 5(1) of Cap. 91, which is currently pitched at \$269,620. Additionally, section 5AA of Cap. 91 provides that the Director of Legal Aid ("DLA") may waive the FEL of OLAS for applicants in meritorious cases 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 ("human rights cases").

3. As legal aid services are supported by public funds, aided persons, depending on the level of their assessed financial resources¹, are required to pay

¹ "Financial resources" means the aggregate of an applicant's disposable income within a 12-month period and disposable capital. A person's disposable income is his gross income minus deductible items as allowed under Cap. 91. A person's disposable capital is the sum of his credit balance, money due to him, the market

a contribution proportionate to their means. The scales of contribution rates under the OLAS ("bandwidth tables") are specified in Part 1 of Schedule 3 to the Legal Aid (Assessment of Resources and Contributions) Regulations (Cap. 91B). Paragraphs (a) and (b) of Part 1 of Schedule 3 to Cap. 91B set out the contribution rates for aided persons of OLAS in general, whilst paragraph (c) sets out the contribution rates for aided persons of human rights cases whose financial resources may exceed the OLAS FEL. Except for the references to the OLAS FEL as specified under Section 5(1) of Cap. 91, the rest of the resources bandwidths are set out in absolute dollar figures in the bandwidth tables of the current Cap. 91B.

The Amendment Regulation

4. The Amendment Regulation seeks to revise the bandwidths of assessed financial resources of aided persons in relation to the contributions payable under the OLAS, so that:

- (a) the bandwidths would be represented as percentages of the OLAS FEL rather than the current absolute figures; and
- (b) a more even distribution of bandwidths could be maintained.

5. According to the Administration, the proposed amendments to Schedule 3 to Cap. 91B will avoid the need of regular legislative amendments in future to keep the bandwidths up-to-date with the FEL under the OLAS as may be revised from time to time.

The Subcommittee

6. At the meeting of the House Committee held on 8 May 2015, Members agreed that a subcommittee should be formed to study the Amendment Regulation. The membership list of the Subcommittee is in **Appendix I**.

7. Under the chairmanship of Hon Dennis KWOK, the Subcommittee has held one meeting with the Administration.

Deliberations of the Subcommittee

Justifications for the Amendment Regulation

8. On resources bandwidths as percentages of the OLAS FEL, the Administration has advised that with the current resources bandwidths set out in absolute dollar figures and the significant increase in the OLAS FEL in recent years, currently at \$269,620, it has now almost caught up to the ceiling of the next higher resources band at \$269,700 as shown in row (i) in the table below:

	Assessed financial resources		Payable contribution – amount / percentage of assessed financial resources
	Exceeding	Not exceeding	
(a)	≤ \$20,000		\$0
(b)	\$20,000	\$40,000	\$1,000
(c)	\$40,000	\$60,000	\$2,000
(d)	\$60,000	\$80,000	5%
(e)	\$80,000	\$100,000	10%
(f)	\$100,000	\$120,000	15%
(g)	\$120,000	\$144,000	20%
(h)	\$144,000	OLAS FEL [\$269,620]	25%
(i)	OLAS FEL [\$269,620]²	\$269,700	30%
(j)	\$269,700	\$369,700	35%
(k)	\$369,700	\$469,700	40%
(l)	\$469,700	\$569,700	45%
(m)	\$569,700	\$669,700	50%
(n)	\$669,700	\$769,700	55%
(o)	\$769,700	\$869,700	60%
(p)	\$869,700	\$1,200,000	65%
(q)	\$1,200,000	-	67%

9. The Administration is unable to further adjust the OLAS FEL upward before the resources bandwidths are amended, since otherwise, there will be an anomaly where the "lower end" of the band (i.e. second column) in row (i) will be higher than the "upper end" of the same band (i.e. third column). To resolve the problem, there is a need to amend the bandwidth tables so that the resources bandwidths will be represented as percentages of the OLAS FEL rather than absolute dollar figures. The resources bandwidths would then automatically be adjusted upon any future OLAS FEL adjustments.

² Whilst the OLAS FEL is currently set at \$269,620, the bandwidth table accommodates the circumstances in which legal aid applicants have assessed financial resources exceeding the OLAS FEL for meritorious human rights cases.

10. Regarding the need to maintain an even bandwidth distribution, the Administration has advised that since only the OLAS FEL has been adjusted upward in the amendment exercises in recent years³, the resources bandwidths are now unevenly distributed, with some bands covering a very wide range of assessed financial resources whilst some other covering a very narrow range, as demonstrated in rows (h) and (i) in the table below.

	Banding of assessed financial resources	Range of banding as percentile of OLAS FEL	Contribution payable - amount / percentage of assessed financial resources
(a)	≤ \$20,000	7 th	\$0
(b)	\$20,000 – \$40,000	7 th – 15 th	\$1,000
(c)	\$40,000 – \$60,000	15 th – 22 nd	\$2,000
(d)	\$60,000 – \$80,000	22 nd – 30 th	5%
(e)	\$80,000 – \$100,000	30 th – 37 th	10%
(f)	\$100,000 – \$120,000	37 th – 45 th	15%
(g)	\$120,000 – \$144,000	45 th – 53 rd	20%
(h)	\$144,000 – OLAS FEL [\$269,620]	53rd – 100th	25%
(i)	OLAS FEL – \$269,700 [269,620]	100th – 101st	30%
(j)	\$269,700 – \$369,700	101 st – 137 th	35%
(k)	\$369,700 – \$469,700	137 th – 175 nd	40%
(l)	\$469,700 – \$569,700	175 nd – 210 th	45%
(m)	\$569,700 – \$669,700	210 th – 250 th	50%
(n)	\$669,700 – \$769,700	250 th – 285 th	55%
(o)	\$769,700 – \$869,700	285 th – 322 nd	60%
(p)	\$869,700 – \$1,200,000	322 nd – 445 th	65%
(q)	≥ \$1,200,000	455 th	67%

11. The Administration has further advised that to maintain the real value of the first two tiers of contribution payable in relation to the aided persons' assessed financial resources, the current fixed contribution amounts of \$1,000 and \$2,000 (in rows (b) and (c) of the table referred to in paragraph 9 above) are proposed to be amended to set at 2% and 2.5% of the aided persons' assessed financial resources respectively.

³ The OLAS FEL was adjusted upwards by 1.6% in June 2006, by 2.5% in June 2007, by 2.1% in December 2007, by 6.1% in May 2009, by 48% in May 2011 and by 3.7% in June 2013.

12. A table setting out the current arrangements and the proposed arrangements is in **Appendix II**.

Contributions

13. As the proposed threshold of assessed financial resources exceeding which contributions begin to be payable will be 12.5% of the OLAS FEL (i.e. \$33,702.50 by applying the current OLAS FEL) instead of being set at \$20,000 at present, members note that under the proposal, the number of aided persons who do not need to pay any contribution will increase. If the aided persons need to pay a contribution, most of their contribution amounts would be lower than, or at most be the same at, what they have to pay under the existing scales of contribution rates.

14. Members further note that for the aided persons of human rights cases whose financial resources may exceed the OLAS FEL, their contribution amount would range from \$80,886 (i.e. \$269,620×30%) to 67% of his/her assessed financial resources. Although an aided person is required to pay the contribution upon the granting of the legal aid certificate, he/she may apply to pay the contribution by installments and the DLA will consider the application on a case by case basis.

15. Whilst noting that aided persons of OLAS who are on Comprehensive Social Security Assistance ("CSSA") do not need to pay any contribution, question was raised about the number of aided persons of OLAS who were on CSSA in the past years.

16. The Administration has advised that it does not have the requested information in hand. However, based on past statistics, over 80% of aided persons of OLAS each year only paid \$2,000 or less and most of them did not have to pay any contribution.

Financial implication

17. Question was raised as to whether Government expenditure on the provision of legal aid would be increased should the Amendment Regulation be implemented.

18. The Administration has responded that this may not necessarily be the case, as the actual amounts to be borne by LAD would depend on whether the aided persons have won the cases; and if so, the amounts of damages and/or costs that could be recovered from the successful cases would be used to offset the expenses incurred by LAD during the conduct of the cases. Moreover, if the contribution paid exceeds the actual costs, the balance will be refunded to the aided person.

Types of cases aided by OLAS

19. A member has enquired about the proportion of civil proceedings involving personal injuries and matrimonial cases of which parties to such proceeding are aided persons of OLAS.

20. The Administration has advised that it does not have the requested information. However, personal injuries and matrimonial cases have all along account for the majority of civil legal aid applications and legal aid certificates granted. For instance, in 2013, personal injury and matrimonial cases accounted for 82.3% of all civil legal aid applications and 92.1% of all civil legal aid certificates granted.

Assessment of financial resources of legal aid applicants

21. Some members are of the view that LAD should not include the cash value accrued from retirement insurance schemes bought by legal aid applicants in assessing their financial resources, having regard to the facts that Hong Kong has yet to have universal retirement protection and LAD does not include the benefits accrued from the Mandatory Provident Fund ("MPF") schemes participated by legal aid applicants in assessing their financial resources.

22. The Administration considers it not appropriate to exclude the cash value accrued from the retirement insurance schemes bought by legal aid applicants in assessing their financial resources, as these schemes, albeit for retirement purpose, are of a capital nature similar to, say, cash, banking savings and stocks. The reasons why LAD does not include the accrued benefits from the MPF schemes participated by legal aid applicants in assessing their financial resources are that the MPF system was introduced to help the workforce save for old age and withdrawal of accrued benefits is only allowed when scheme members reach the retirement age of 65, as stipulated in the Mandatory Provident Fund ("MPF") Schemes Ordinance (Cap. 485).

23. The Administration was urged to give further thoughts on excluding or reducing the cash value accrued from the retirement insurance schemes bought by legal aid applicants in assessing their financial resources.

24. Members note that an MPF scheme member may withdrawal his/her accrued benefits under certain specified circumstance, such as he/she has made declaration that he/she has permanently ceased his/her employment or self-employment after he/she has reached the age of at least 60 or if he/she has

terminal illness⁴ before the age of 60. Question was raised as to whether LAD would include such MPF accrued benefits from early withdrawal when assessing applicants' financial resources. The Administration advised that applicants' bank balance would be counted as capital. That said, the Administration pointed out that for legal aid applicants who have reached the age of 60, an amount of capital equal to the OLAS FEL will be deducted from their assessed financial resources.

Review of the expansion of the scope of SLAS

25. Members note that the Legal Aid Services Council ("LASC") has formed a Working Group to conduct a further review on the expansion of the scope of SLAS with a view to presenting a new round of recommendations to the Government. Question was raised as to when the LASC will present its recommendations on expansion of the scope of SLAS to the Government.

26. The Administration has advised that the review of SLAS being conducted by LASC is drawing to a close. As requested by members of the Panel of Administration of Justice and Legal Services at its meeting held on 23 March 2015, the Administration has conveyed to LASC that it should duly consider the views of or further consult the two legal professional bodies on the review of SLAS before presenting its recommendations to the Government.

Recommendation

27. The Subcommittee does not object to the Amendment Regulation which will come into operation on 17 June 2015. The Subcommittee and the Administration will not propose any amendment.

Advice sought

28. Members are invited to note the deliberations of the Subcommittee.

Council Business Division 4
Legislative Council Secretariat
19 May 2015

⁴ "Terminal illness" refers to an illness that is likely to reduce the life expectancy of the MPF scheme member to 12 months or less as certified by a registered medical practitioner or a registered Chinese medicine practitioner.

**Subcommittee on Legal Aid (Assessment of Resources and Contributions)
(Amendment) Regulation 2015**

Membership list

Chairman

Hon Dennis KWOK

Members

Hon Albert HO Chun-yan
Hon LEE Cheuk-yan
Hon TAM Yiu-chung, GBS, JP
Hon Cyd HO Sau-lan, JP
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon Paul TSE Wai-chun, JP
Dr Hon Elizabeth QUAT, JP
Hon TANG Ka-piu, JP

(Total : 9 Members)

Clerk

Mary SO

Legal adviser

Kelvin LEE

Bandwidths for Contribution Payable by Aided Persons under OLAS

Assessed financial resources				Contribution Payable – amount / percentage of assessed financial resources	
Current		Proposed		Current	Proposed
Exceed	Not exceed	Exceed	Not exceed		
≤ \$20,000		≤ 12.5% OLAS FEL		\$0	\$0
\$20,000	- \$40,000	12.5% OLAS FEL	- 25% OLAS FEL	\$1,000	2%
\$40,000	- \$60,000	25% OLAS FEL	- 37.5% OLAS FEL	\$2,000	2.5%
\$60,000	- \$80,000	37.5% OLAS FEL	- 50% OLAS FEL	5%	5%
\$80,000	- \$100,000	50% OLAS FEL	- 62.5% OLAS FEL	10%	10%
\$100,000	- \$120,000	62.5% OLAS FEL	- 75% OLAS FEL	15%	15%
\$120,000	- \$144,000	75% OLAS FEL	- 87.5% OLAS FEL	20%	20%
\$144,000	- \$269,620	87.5% OLAS FEL	- 100% OLAS FEL	25%	25%
\$269,620	- \$269,700	100% OLAS FEL	- 150% OLAS FEL	30%	30%
\$269,700	- \$369,700	150% OLAS FEL	- 200% OLAS FEL	35%	35%
\$369,700	- \$469,700	200% OLAS FEL	- 250% OLAS FEL	40%	40%
\$469,700	- \$569,700	250% OLAS FEL	- 300% OLAS FEL	45%	45%
\$569,700	- \$669,700	300% OLAS FEL	- 350% OLAS FEL	50%	50%
\$669,700	- \$769,700	350% OLAS FEL	- 400% OLAS FEL	55%	55%
\$769,700	- \$869,700	400% OLAS FEL	- 450% OLAS FEL	60%	60%
\$869,700	- \$1,200,000	450% OLAS FEL	- 500% OLAS FEL	65%	65%
\$1,200,000	-	500% OLAS FEL	-	67%	67%