

**For discussion
on 16 February 2015**

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

Proposed amendment of the Legal Aid (Assessment of Resources and Contributions) Regulations (Cap. 91B) and adjustment of the financial eligibility limits of the Ordinary and Supplementary Legal Aid Schemes

PURPOSE

This paper briefs Members on the proposed technical legislative amendments to implement a revised set of bandwidths of assessed financial resources¹ for determining contribution payable under the Legal Aid (Assessment of Resources and Contributions) Regulations (“LAR”) (Cap. 91B), so that the bandwidths are more evenly distributed. The proposed amendments will also avoid the need of regular legislative amendments in future to keep the bandwidths up-to-date with the financial eligibility limit (“FEL”) under the Ordinary Legal Aid Scheme (“OLAS”) as may be revised from time to time.

2. Subject to the proposed amendment of the LAR, we will also adjust the FELs of the OLAS and the Supplementary Legal Aid Scheme (“SLAS”) in accordance with changes of the Consumer Price Index (C) (“CPI(C)”) to maintain their respective real values.

PROPOSAL

3. We propose to amend Schedule 3 to the LAR to revise the bandwidths of assessed financial resources of aided persons in relation to the contribution payable under the OLAS (“resources bandwidths”) (as elaborated in paragraphs 10 to 14 below), so that –

- (a) the bandwidths would be represented as percentages of the FEL of the OLAS rather than the current absolute dollar figures; and

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 the Legal Aid Ordinance (“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.

(b) a more even distribution of bandwidths could be maintained.

4. Subject to the proposed amendments to the resources bandwidths mentioned in paragraph 3 above, we will also adjust the FELs of the OLAS and the SLAS upward by 7.7% in accordance with the CPI(C) changes between July 2012 and July 2014 (as elaborated in paragraph 15 below).

JUSTIFICATIONS

Financial eligibility limits

5. The Legal Aid Department (“LAD”) administers the OLAS² and the SLAS³ in accordance with the Legal Aid Ordinance (“LAO”) (Cap. 91). Under the LAO, only applicants who have passed the means and merits tests are eligible for legal aid. For the means test, the OLAS FEL is prescribed in Section 5(1) of the LAO, which is currently pitched at \$269,620. The corresponding limit for the SLAS is \$1,348,100 as prescribed in Section 5A(b) of the LAO.

6. Additionally, Section 5AA of the LAO provides that the Director of Legal Aid (“DLA”) may waive the OLAS FEL 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”).

7. The FELs of OLAS and SLAS are regularly adjusted to take into account changes in the CPI(C) and the financial eligibility of legal aid applicants, etc. Pursuant to a comprehensive review to enhance access to legal aid, the OLAS and SLAS FELs were significantly increased from \$175,800 to \$260,000 (an increase of 48%) and from \$488,400 to \$1,300,000 (an increase of 166%) respectively in May 2011. In June 2013, the FELs were further increased to \$269,620 and \$1,348,100

² With the exception of a few “excepted proceedings”, the OLAS covers most proceedings heard at District Court level and above.

³ The SLAS is a self-financing scheme which aimed at providing legal assistance to the “sandwich class”. Its scope covers (a) claims relating to personal injuries, (b) employees compensation, (c) medical, dental, legal and other professional negligence, (d) negligence claims against insurers or their intermediaries in respect of the taking out of personal insurance products, (e) monetary claims against the vendors in the sale of completed or uncompleted first-hand residential properties, and (f) representation for employees in appeals against awards made by the Labour Tribunal.

respectively in accordance with the CPI(C) changes between July 2011 and July 2012.

Contributions

8. As legal aid services are supported by public funds, aided persons (“APs”), depending on the level of their assessed financial resources, are required to pay a contribution proportionate to their means. The scales of contribution rates under the OLAS are prescribed in Part I of Schedule 3 to the LAR (“bandwidth tables”) (at **Annex A**).

9. Paragraphs (a) and (b) of Part I of Schedule 3 to the LAR set out the contribution rates for OLAS APs in general, while paragraph (c) sets out the contribution rates for APs of human rights cases whose financial resources may exceed the OLAS FEL. Except for the references to the OLAS FEL as prescribed under Section 5(1) of the LAO, the rest of the bandwidths are set out in absolute dollar figures in the bandwidth tables of the current LAR.

Proposed amendments for the resources bandwidths

Resources bandwidths as percentages of the OLAS FEL

10. With the current resources bandwidths set out in absolute dollar figures and the significant increase in the OLAS FEL in recent years, the OLAS FEL has now almost caught up to the ceiling of the next higher resources band (\$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]⁴	\$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%

We are unable to further adjust the OLAS FEL upward until the bandwidths are amended, since otherwise, there will be an anomaly where the “lower end” of the band (i.e. left column) in row (i) will be higher than the “upper end” of that band (i.e. middle column).

11. To resolve the problem once and for all, we propose 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 bandwidths would then automatically be adjusted upon any future OLAS FEL adjustments.

Maintaining an even bandwidth distribution

12. Since only the OLAS FEL has been adjusted upward in the amendment exercises in recent years⁵, the resources bandwidths are now unevenly distributed, with some bands covering a very wide range of assessed financial resources while some other covering a very narrow range, as demonstrated in rows (h) and (i) in the table below –

⁴ Whilst the OLAS FEL is currently set at \$269,620, as mentioned in paragraphs 6 and 9 above, the bandwidth table accommodates the circumstances in which legal aid applicants have assessed financial resources exceeding the OLAS FEL for human rights cases.

⁵ 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.

	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%

13. As such, we also propose to take the opportunity to adjust the distribution of resources bandwidths so as to maintain a more even distribution. To maintain the real value of the first two tiers of contribution payable in relation to the OLAS FEL, we also propose to amend the current fixed contribution amounts of \$1,000 and \$2,000 (in rows (b) and (c)) to 2% and 2.5% of the APs' assessed financial resources respectively. A table setting out the current arrangements and the proposed amendments is at **Annex B**.

14. The threshold of assessed financial resources exceeding which contributions begin to be payable is currently set at \$20,000, and we propose to change it to 12.5% of the OLAS FEL (i.e. \$33,702.5 by applying the current OLAS FEL). In 2013, 7 195 out of 10 024 APs (or 72%) need not pay any contribution at all as their financial resources were assessed to be below \$20,000. Under our proposal, the percentage of APs who do not need to pay any contribution will increase by 9% to 7 847 based on the statistics in 2013. APs with assessed financial resources

exceeding 12.5% of the OLAS FEL will need to pay a contribution ranging from \$674 (i.e. $\$269,620 \times 12.5\% \times 2\%$) to \$67,405 (i.e. $\$269,620 \times 25\%$), depending on the level of their assessed financial resources. Further, for the APs of human rights cases whose financial resources may exceed the OLAS FEL, their contribution amount would range from \$80,886 (i.e. $\$269,620 \times 30\%$) to 67% of his/her assessed financial resources. An illustration table of the number of APs and their corresponding contribution bands based on the statistics in 2013 is at C **Annex C** for reference.

Proposed adjustment to the OLAS and SLAS FELs

15. Upon making the amendments to the LAR as set out in paragraphs 10 to 14 above, we can adjust the OLAS FEL, together with the SLAS FEL, upward to reflect the CPI(C) changes by way of a Legislative Council (“LegCo”) resolution. The last adjustment implemented in June 2013 had taken into account the CPI(C) change of +3.7% between July 2011 and July 2012. For the coming adjustment, we propose to increase the OLAS and SLAS FELs by 7.7% to \$290,380 and \$1,451,900 respectively to reflect the accumulated change in CPI(C) recorded between July 2012 and July 2014.

CONSULTATION AND LEGISLATIVE TIMETABLE

16. At its meeting on 27 January 2015, we briefed and obtained the Legal Aid Services Council’s support on the proposals as set out in paragraphs 10 to 15 above. We plan to introduce the amendment regulations for the resources bandwidths and move the LegCo resolution to adjust the FELs of OLAS and SLAS in the second quarter of 2015.

BACKGROUND

17. The scales of contribution payable for civil legal aid cases under the OLAS are set out in Part I of Schedule 3 to the LAR. The scales set out in the LAR are also applicable to criminal legal aid cases as provided under the Legal Aid in Criminal Cases Rules (Cap. 221D). The rates of contributions payable under the SLAS are set out in Regulation 14 of the LAR.

**Home Affairs Bureau
Legal Aid Department
February 2015**

Extract of the Legal Aid (Assessment of Resources and Contributions) Regulations (Cap. 91B)

Schedule:	3	CONTRIBUTIONS	L.N. 146 of 2012	30/11/2012
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[regulations 8A, 13 & 14]
(L.N. 148 of 2000)

PART I

For the purposes of regulation 13- (L.N. 146 of 2012)

- (a) if the financial resources of an aided person do not exceed \$20000, the maximum contribution of the person is \$0;
- (b) except as provided in subparagraph (c), if the financial resources of an aided person exceed the amount indicated in column A but do not exceed the amount indicated opposite that amount in column B, the maximum contribution of the person is the amount or, as the case may be, the percentage of the financial resources of the person, indicated opposite those amounts in column C as follows- (L.N. 146 of 2012)

A	B	C
If the financial resources of the aided person exceed	But do not exceed	Then, the person's maximum contribution is
\$20000	\$40000	\$1000
\$40000	\$60000	\$2000
\$60000	\$80000	5%
\$80000	\$100000	10%
\$100000	\$120000	15%
\$120000	\$144000	20%
\$144000	the amount of financial resources specified in section 5(1) of the Ordinance	25%;

and (L.N. 148 of 2000; L.N. 141 of 2006; L.N. 114 of 2007)

- (c) if the certificate of an aided person 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- (L.N. 146 of 2012)
- (i) if the financial resources of the person exceed the amount indicated in column A but do not exceed the amount indicated opposite that amount in column B, the maximum contribution of the person is the amount or, as the case may be, the percentage of the financial resources of the person, indicated opposite those amounts in column C as follows- (L.N. 146 of 2012)

A	B	C
If the financial resources of the aided person exceed	But do not exceed	Then, the person' s maximum contribution is
\$20000	\$40000	\$1000
\$40000	\$60000	\$2000
\$60000	\$80000	5%
\$80000	\$100000	10%
\$100000	\$120000	15%
\$120000	\$144000	20%
\$144000	the amount of financial resources specified in section 5(1) of the Ordinance	25%
the amount of financial resources specified in section 5(1) of the Ordinance	\$269700	30%
\$269700	\$369700	35%
\$369700	\$469700	40%
\$469700	\$569700	45%
\$569700	\$669700	50%
\$669700	\$769700	55%
\$769700	\$869700	60%
\$869700	\$1200000	65%;

or (L.N. 141 of 2006; L.N. 114 of 2007)

- (ii) if the financial resources of the person exceed \$1200000, the maximum contribution of the person is 67% of the person' s financial resources. (L.N. 148 of 2000)

(L.N. 85 of 1997; L.N. 83 of 2004; L.N. 146 of 2012)

Bandwidths for Contribution Payable by Aided Persons under OLAS

Assessed financial resources				Amount / percentage of contribution payable	
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%

Illustration of the number of Aided Persons and their corresponding contribution bands based on the statistics in 2013

Current			Proposed		
Assessed financial resources (\$)	Amount payable range (\$)	No. of APs	Assessed financial resources (\$)	Amount payable range (\$)	No. of APs
≤ \$20,000	0	7 195	≤ \$33,702.50	0	7 847
20,000 - 40,000	1,000	887	33,702.50 - 67,405.00	674.05 - 1,348.10	918
40,000 - 60,000	2,000	543	67,405.00 - 101,107.50	1,685.13 - 2,527.69	521
60,000 - 80,000	3,000 - 4,000	386	101,107.50 - 134,810.00	5,055.38 - 6,740.50	255
80,000 - 100,000	8,000 - 10,000	259	134,810.00 - 168,512.50	13,481.00 - 16,851.25	202
100,000 - 120,000	15,000 - 18,000	168	168,512.50 - 202,215.00	25,276.88 - 30,332.25	111
120,000 - 144,000	24,000 - 28,800	157	202,215.00 - 235,917.50	40,443.00 - 47,183.50	107
144,000 - 269,620	36,000 - 65,000	420	235,917.50 - 269,620.00	58,979.38 - 67,405.00	54
	36,000 - 67,405				
269,620 - 269,700	80,886 - 80,910	-	269,620.00 - 404,430.00	80,886.00 - 121,329.00	6
269,700 - 369,700	94,395 - 129,395	6	404,430.00 - 539,240.00	141,550.50 - 188,734.00	-
369,700 - 469,700	147,880 - 187,880	-	539,240.00 - 674,050.00	215,696.00 - 269,620.00	1
469,700 - 569,700	211,365 - 256,365	-	674,050.00 - 808,860.00	303,322.50 - 363,987.00	1
569,700 - 669,700	284,850 - 334,850	1	808,860.00 - 943,670.00	404,430.00 - 471,835.00	-
669,700 - 769,700	368,335 - 423,335	-	943,670.00 - 1,078,480.00	519,018.50 - 593,164.00	1
769,700 - 869,700	461,820 - 521,820	1	1,078,480.00 - 1,213,290.00	647,088.00 - 727,974.00	-
869,700 - 1,200,000	565,305 - 780,000	1	1,213,290.00 - 1,348,100.00	788,638.50 - 876,265.00	-
≥ 1,200,000	≥ 804,000	-	> 1,348,100.00	≥ 903,227.00	-
Total APs:		10 024	Total APs:		10 024