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Room 1210
Central Government Offices (West Wing)
Tel:(852)2810 2576
Fax:(852)2501 5779

26 January 2000

Clerk to Bills Committee
Legislative Council Secretariat
3/F, Citibank Tower
Hong Kong

Urgent By Fax

[Attn:Ms Mary So]

Dear Ms So,

**Bills Committee on
Legal Aid (Amendment) Bill 1999**

At the first meeting of the Bills Committee on the Legal Aid (Amendment) Bill 1999, we undertook to provide the draft Legal Aid (Amendment) Regulation and Legal Aid (Assessment of Resources and Contributions) (Amendment) Regulation for Members' perusal. The latest draft of the said regulations is at Annex A, with the exception of Clause 5 of the Legal Aid (Assessment of Resources and Contributions) (Amendment) Regulation, which sets out the method for calculating household expenditure for the purpose of computing the financial resources of a legal aid applicant. We shall provide Members with the draft Clause as soon as possible.

We also undertook to inform Members of the provisions in the Legal Aid Ordinance relating to contributions from legally aided persons. Extracts of the relevant provisions are now at Annex B.

The Legal Aid Department is working to retrieve the data on cases involving a first charge by the Director of Legal Aid on a property held by a legally aided person who had won in a matrimonial case, for the purpose of recouping the outstanding

costs owed by the former spouse of the aided person. We shall supply such data as soon as possible, hopefully by the next meeting of the Bills Committee.

Yours sincerely,

(Ms Miranda Chiu)
for Director of Administration

LEGAL AID (AMENDMENT) REGULATION 2000

(Made by the Chief Executive in Council under section 28
of the Legal Aid Ordinance (Cap. 91))

1. Commencement

This Regulation shall come into operation on the day appointed for the commencement of the Legal Aid (Amendment) Ordinance 2000 (of 2000).

2. Application for certificate

Regulation 3 of the Legal Aid Regulations (Cap. 91 sub. leg.) is amended by repealing paragraph (2) (c) and substituting -

"(c) the financial resources, disposable income and disposable capital of the applicant."

3. Issue of certificate

Regulation 5 is amended -

- (a) in paragraph (4), by repealing "income or financial resources, disposable income and disposable capital" and substituting "financial resources";
- (b) in paragraph (7), by repealing "and, in the case of legal aid to be granted under the Supplementary Legal Aid Scheme, also pay a fee of \$1,000";
- (c) by repealing paragraph (8);
- (d) in paragraph (9), by repealing "paragraphs (7) and (8)" and substituting "paragraph (7)";

- (e) in paragraph (10), by repealing "(3), (4), (5) or (6)" and substituting "(3), (4) or (5)".

4. Power to amend on change of circumstances or contribution

Regulation 63 is amended by repealing "or 8(3), the Director may amend a certificate, other than a certificate granted under the Supplementary Legal Aid Scheme," and substituting", the Director may amend a certificate".

5. Increase of contribution under certificates

Regulation 6C is amended by adding ", or 5AA" after "section 5".

6. Discharge and revocation of certificates

Regulation 8 is amended -

- (a) in paragraph (2) -
 - (i) in subparagraph (e) (ii), by repealing "receiving" and substituting "bankruptcy";
 - (ii) by adding -
 - "(fa) if he is satisfied that the financial resources of an aided person exceed the limits prescribed in section 5 or 5A of the Ordinance:

Provided that a certificate shall not be discharged under this subparagraph until the aided

Person has been given an opportunity to show cause why the certificate should not be discharged;"

(b) by adding -

"(2A) Notwithstanding paragraph (2) (fa) and without prejudice to regulation 6B, the Director need not discharge a certificate by reason of the circumstances referred to in that paragraph if he is satisfied that it is appropriate not to do so.";

(c) by repealing paragraph (3) and substituting -

"(3) The Director shall discharge a certificate if he considers that the aided person no longer has reasonable grounds for taking, defending or being a party to the proceedings or, as the case may be, that it is unreasonable in the particular circumstances for him to continue to receive legal aid:

Provided that a certificate shall not be discharged under this paragraph until the aided person has been given an opportunity to show cause why the certificate should not be discharged."

7. Effect of discharge and revocation

Regulation 9 is amended -

(a) by repealing paragraph (5A) (b) and substituting -

"(b) where aid was granted under the Supplementary Legal Aid Scheme, by the

amount of any interim contribution paid under section 32 of the Ordinance and the application fee paid under regulation 3(3).";

- (b) in paragraph (a) of the proviso to paragraph (10), by repealing "8(3)(b)" and substituting "8(3)".

8. Conduct of proceedings by solicitors

Regulation 12(2) is amended -

- (a) by repealing "or" at the end of paragraph (e);
- (b) by repealing the comma at the end of paragraph (f) and substituting "; or"; and
- (c) by adding -
 - "(g) to represent the aided person at an inquest into the death of a person under the Coroners Ordinance (Cap. 504) which gives rise to the proceedings to which the certificate relates,".

9. Regulation added

The following is added -

"15B. Category of persons who may be granted legal aid in coroners inquests

(1) For the purposes of section 28(2) and paragraph 3 in Part I in Schedule 2 of the Ordinance and the grant of legal aid to the family of a deceased person in respect of an inquest into deaths under the Coroners Ordinance (Cap. 504), the Director may approve the grant of legal aid to one and, only one, person being -

- (a) the surviving spouse or the surviving partner or partners to a union of concubinage entered into before 7 October 1971;
- (b) the children of the deceased including any children born of a union of concubinage entered into before 7 October 1971;
- (c) the father or mother of the deceased; or
- (d) the brother or sister of the deceased.

(2) Notwithstanding paragraph (1), where the Director is satisfied that there is no person of any description in that paragraph either in being or, to whom a grant of legal aid can practicably be made, he may for that reason approve the grant of legal aid for the purposes mentioned in Paragraph (1) to any other person who is a surviving close relative of the deceased if he is satisfied that it is appropriate to do so."

Clerk to the Executive Council

COUNCIL CHAMBER

2000

Explanatory Note

This Regulation amends the Legal Aid Regulations (Cap. 91 sub. leg.) as follows -

- (a) to establish uniform reference to the expression "financial resources" (sections 2 and 3(a));

- (b) to make it clear that if the financial resources of an applicant exceed the financial eligibility limits the Director of Legal Aid need not discharge a legal aid certificate under regulation B if he is satisfied that it is appropriate not to do so (section 6);
- (c) to make it clear that interim contributions paid under section 32 of the Ordinance and an application fee paid under regulation 3(3) by a person who is granted aid under the Supplementary Legal Aid Scheme are to be deducted from any amount recoverable by the Director from such person whose certificate has been revoked or discharged (section 7);
- (d) to make provision relating to the grant of legal aid for persons who seek representation at coroners inquests.

2. The other amendments are miscellaneous or consequential.

**LEGAL AID (ASSESSMENT OF RESOURCES AND CONTRIBUTIONS)
(AMENDMENT) REGULATION 2000**

(Made by the Chief Executive in Council under section 28
of the Legal Aid Ordinance (Cap. 91))

1. Commencement

This Regulation shall come into operation on the day appointed for the commencement of the Legal Aid (Amendment) Ordinance 2000 (of 2000).

2. Resources of a spouse

Regulation 7(3) of the Legal Aid (Assessment of Resources and Contributions) Regulations (Cap. 91 sub. leg.) is amended by repealing "and rule 11 of Schedule 2".

3. Regulation added

The following is added -

"8A. Resources of persons receiving Comprehensive Social Security Assistance

For the purposes of determining the financial resources of a person receiving assistance under the Comprehensive Social Security Assistance Scheme administered by the Director of Social Welfare, it shall be presumed that the financial resources of that person do not exceed the amount prescribed in subparagraph (a) of Part I of Schedule 3 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 by virtue of section 18(1) of the Ordinance."

4. Regulation substituted

Regulation 14 is repealed and the following substituted -

"14. Contributions under the Supplementary Legal Aid Scheme

For the purposes of section 32 of the Ordinance and a grant of legal aid to any person under the Supplementary Legal Aid Scheme -

- (a) an interim contribution shall be payable by an aided person to the Director for the benefit of the Fund in an amount equivalent to the maximum contribution payable by an aided person under section 18(1) of the Ordinance whose financial resources are equal to the limit prescribed in section 5 of the Ordinance; and
- (b) a final contribution shall be payable by an aided person to the Director for the benefit of the Fund in an amount equivalent to -
 - (i) the sums paid or payable on his account out of the Fund;
 - (ii) the costs incurred on his behalf;
 - (iii) the percentage calculated in accordance with Part III of Schedule 3 of the value of any property (wherever situate) recovered or preserved for the aided person in such proceedings whether on his own behalf or on behalf of another, less any application fee paid under

regulation 3(3) of the Legal Aid Regulations (Cap. 91 sub. leg.).".

6. Contributions

Schedule 3 is amended -

- (a) by adding "8A," after "[regs.";
- (b) in Part I -
 - (i) in subparagraph (a), by repealing "\$86,000" and substituting "\$20,000";
 - (ii) by repealing subparagraph (b) and substituting -
 - "(b) except as provided in subparagraph (c), if his financial resources exceed the amount indicated in column A but do not exceed the amount indicated opposite in column B, be the amount or, as the case may be, the percentage of his financial resources indicated opposite in column C as follows -

A	B	C
		Then, in relation to his financial resources, his maximum contribution is
If his financial resources exceed	But do not exceed	
\$20,000	\$40,000	\$1,000
\$40,000	\$60,000	\$2,000
\$60,000	\$80,000	5%
\$80,000	\$100,000	10%
\$100,000	\$120,000	15%
\$120,000	\$144,000	20%
\$144,000	\$169,700	25%;

and";

(iii) by repealing subparagraph (c) and substituting -

"(c) if his certificate 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 -

(i) if his financial resources exceed the amount indicated in column A but do not exceed the amount indicated opposite in column B, be the

amount or, as the case may be, the percentage of his financial resources indicated opposite in column C as follows -

A	B	C
		Then, in relation to his financial resources, his maximum contribution is
If his financial resources exceed	But do not exceed	
\$20,000	\$40,000	\$1,000
\$40,000	\$60,000	\$2,000
\$60,000	\$80,000	5%
\$80,000	\$100,000	10%
\$100,000	\$120,000	15%
\$120,000	\$144,000	20%
\$144,000	\$169,700	25%
\$169,700	\$269,700	30%
\$269,700	\$369,700	35%
\$369,700	\$469,700	40%
\$469,700	\$569,700	45%
\$569,700	\$669,700	50%
\$669,700	\$769,700	55%
\$769,700	\$869,700	60%
\$869,700	\$1,200,000	65%; or

(ii) if his financial resources exceed \$1,200,000, be 67% of his financial resources.";

(c) in Part III, in paragraph 3, by repealing "15%" and substituting "12%".

Clerk to the Executive Council

COUNCIL CHAMBER

2000

Explanatory Note

This Regulation amends the Legal Aid (Assessment of Resources and Contributions) Regulations (Cap. 91 sub. leg.) as follows -

- (a) to enable the Director of Legal Aid to provide for exceptions in the determination of the financial resources of persons receiving assistance under the Comprehensive Social Security Assistance Scheme (section 3);
- (b) to provide for the manner and the circumstances in which, having regard to the 5-yearly Household Expenditure Survey conducted by the Census and Statistics Department, allowable deductions are to be calculated or made for the purposes of grants of legal aid (section 5);
- (c) to adjust the scale of contributions payable by persons granted legal aid and to reduce the percentage contribution prescribed for legal aid granted under the Supplementary Legal Aid Scheme (section 6).

**The different contributions, rates and charge
under the Legal Aid Ordinance (Cap. 91)**

Contributions or charge	Provisions
<p>Contribution under Standard Legal Aid Scheme: -</p> <p>-contribution rate for Standard Legal Aid Scheme</p> <p>-contribution rate for Bill of Rights cases</p>	<p>Section 18(1)(b) of Legal Aid Ordinance</p> <p>Reg. 13 and Paras (a) and (b) of Part I of Schedule 3 of the Legal Aid (Assessment of Resources and Contributions) Regulations</p> <p>Reg. 13 and paras (a) and (c) of Part I of Schedule 3 of the Legal Aid (Assessment of Resources and Contributions) Regulations</p>
<p>Contribution under Supplementary Legal Aid Scheme (SLAS):-</p> <p>-contribution rate for SLAS</p>	<p>Section 18(1)(a) and section 32 of Legal Aid Ordinance</p> <p>Reg. 14 and Part III of Schedule 3 of the Legal Aid (Assessment of Resources and Contributions) Regulations</p>
<p>First Charge on property recovered/ Preserved</p>	<p>Section 18A of Legal Aid Ordinance</p>

- (b) 凡受助人以幼年人的監護人身分獲得法律援助，該項限制須延伸至該幼年人。
- (4) (由 1995 年第 79 號第 50 條廢除) (由 1984 年第 54 號第 14 條增補)

17. 法院可在某些情況下命令受助人繳付訟費

- (1) 凡法院或法官覺得有人以欺詐手段或失實陳述獲取法律援助證書，可命令該受助人繳付署長及代該受助人行事的大律師和律師的訟費，或繳付另一方的訟費，或繳付署長、大律師和律師以及另一方的訟費。
- (2) 如法律援助證書在上述命令作出前已被撤回或取消，則第 (1) 款提述“受助人”(aided person)之處，包括提述在緊接撤回或取消證書之前為受助人的受助人。(由 1967 年第 27 號第 3 條修訂)
- (3) 凡法院或法官覺得受助人在提出或進行法律程序或就法律程序抗辯時曾作出不合當作為，可命令該受助人繳付署長及代該受助人行事的大律師和律師的訟費，或繳付另一方的訟費，或繳付署長、大律師和律師以及另一方的訟費。
- (4) 凡法院或法官根據第 (1) 或 (3) 款作出命令，有關訟費須予以評定，猶如該命令繳付訟費的一方並非受助人一樣。
- (5) 除有關命令另有指示外，法院或法官根據第 (1) 或 (3) 款命令繳付的訟費須包括第 16B(c) 及 (d) 條所指性質的費用。(由 1984 年第 54 號第 15 條修訂)
- (6) 在本條中，“法院”(court) 包括終審法院。(由 1995 年第 79 號第 50 條增補)

18. 受助人繳付的分擔費用

- (1) 凡——
- (a) 受助人根據法律援助輔助計劃獲得法律援助，受助人須按照第 32 條向署長繳付分擔費用；及
- (b) 屬其他情況，如署長提出要求，受助人須就可能要由署長為該人繳付的款項或可能變為要由署長為該人繳付的款項，向署長繳付分擔費用。(由 1984 年第 54 號第 16 條代替)
- (2) 受助人根據本條例須向署長繳付的分擔費用為欠署長的債項，須以訂明的方式繳付。

- (b) where the aided person has been granted legal aid as the guardian of an infant, to the infant.
- (4) (Repealed 79 of 1995 s. 50) (Added 54 of 1984 s. 14)

17. Court may order payment of costs by aided person in certain event

- (1) Where it appears to a court or judge that a legal aid certificate has been obtained by fraud or misrepresentation, the court or judge may order the aided person to pay the costs of the Director and of the counsel and solicitor who acted for him or the costs of the other party, or the costs of the Director and such counsel and solicitor and such party.
- (2) In subsection (1) a reference to an “aided person” (受助人) shall include, in any case where the legal aid certificate has been revoked or discharged before the making of the order, the person who immediately before such revocation or discharge was the aided person. (Amended 27 of 1967 s. 3)
- (3) Where it appears to a court or judge that an aided person has acted improperly in bringing or defending any legal proceedings or in the conduct of them, the court or judge may order the aided person to pay the costs of the Director and of the counsel or solicitor who acted for him or the costs of the other party, or the costs of the Director and such counsel and solicitor and such party.
- (4) Where an order is made under subsection (1) or (3), the costs shall be taxed as if the party ordered to pay them were not an aided person.
- (5) The costs so ordered to be paid shall, unless otherwise directed by the order, include fees and charges of the nature referred to in section 16B(c) and (d). (Amended 54 of 1984 s. 15)
- (6) In this section, “court” (法院) includes the Court of Final Appeal. (Added 79 of 1995 s. 50)

18. Contributions by aided person

- (1) An aided person shall pay to the Director a contribution—
- (a) where legal aid has been granted to him under the Supplementary Legal Aid Scheme, in accordance with section 32; and
- (b) in any other case, if so required by the Director, towards the sums that may be or become payable on his account by the Director. (Replaced 54 of 1984 s. 16)
- (2) Any contribution payable by an aided person to the Director under this Ordinance shall be a debt due to the Director and shall be paid in such manner as may be prescribed.

(3) 如受助人繳付的分擔費用總額超過第 18A(2) 條所指出署長為該人而承擔的費用淨額，則多繳之數須發還給該受助人：(由 1984 年第 54 號第 16 條修訂)
但本款不適用於根據第 32 條繳付的分擔費用。(由 1984 年第 54 號第 16 條增補)

(由 1981 年第 60 號第 2 條代替)

18A. 被收回的財產的押記

(1) 凡受助人就某法律程序或署長認為是與該法律程序有重大關連的另一法律程序而接受法律援助，而在該法律程序或該另一法律程序中有任何財產(不論是否位於香港)為受助人收回或保留，則除本條另有規定外——

(a) 分擔費用中未繳的款額；及

(b) 除根據法律援助補助計劃給予法律援助的情況外，如分擔費用總額少於署長為受助人承擔的費用淨額，則相等於不敷之數的款項，

須作為使署長受益的第一押記而押記於該等財產之上。(由 1991 年第 27 號第 11 條代替)

(2) 第 18 條及第 (1) 款提述署長就任何法律程序為任何人承擔的費用淨額之處，包括提述以下款額的總和——

(a) 署長就該法律程序已經或必須為該人付予任何律師或大律師的款項(如署長代人行事，則指假若並非由署長如此代人行事時所須繳付的款項)，該等款項須屬未被署長從該人根據繳付訟費命令或協議就該法律程序收回的款項中扣除者；

(b) 署長已經或必須根據第 16C 條代該人支付的任何款額；及 (由 1984 年第 54 號第 17 條修訂)

(c) 署長根據第 9(f) 條就給予該人法律援助而支付的任何開支款額。

(3) 第 (1) 款提述在任何法律程序中為受助人收回或保留的財產之處，須包括——

(a) 受助人根據任何為避免進行法律程序或為終止法律程序而達成的妥協所享有的權利，及該人根據繳付訟費命令或協議就該法律程序收回的任何款項；及

(b) (凡就有關法律程序發給受助人的法律援助證書被撤回或取消) 在其後由受助人本人或別人為他在有關法律程序中收回或保留的任何財產，或憑

(3) If the total contribution paid by an aided person is more than the net liability of the Director on his account within the meaning of section 18A(2), the excess shall be repaid to him: (Amended 54 of 1984 s. 16)

Provided that nothing in this subsection shall apply to a contribution payable under section 32. (Added 54 of 1984 s. 16)

(Replaced 60 of 1981 s. 2)

18A. Charge on property recovered

(1) Subject to this section—

(a) the amount of a contribution to the extent that it is unpaid; and

(b) except where legal aid has been granted under the Supplementary Legal Aid Scheme, if the total contribution is less than the net liability of the Director on the aided person's account, a sum equal to the deficiency,

shall be a first charge for the benefit of the Director on any property, whether situated in Hong Kong or otherwise, which is recovered or preserved for the aided person in the proceedings or in any other proceedings in respect of which the person was aided and which, in the opinion of the Director, were substantially related to or connected with the proceedings in which property was recovered or preserved. (Replaced 27 of 1991 s. 11)

(2) The references in section 18 and in subsection (1) to the net liability of the Director on any person's account in relation to any proceedings refer to the aggregate amount of the following—

(a) sums paid or payable by the Director on his account in respect of the proceedings to any solicitor or counsel (or, where the Director acts for a person, sums which would have been so payable if the Director had not so acted) and not recouped by the Director from sums recovered under an order or agreement for costs made in favour of that person with respect to the proceedings;

(b) any amount paid or payable by the Director under section 16C on behalf of that person; and (Amended 54 of 1984 s. 17)

(c) the amount of any expenses defrayed by the Director under section 9(f) in respect of the grant of legal aid to that person.

(3) The reference in subsection (1) to property recovered or preserved for an aided person in any proceedings shall include—

(a) his rights under any compromise arrived at to avoid or bring to an end the proceedings and any sums recovered under an order or agreement for costs made in his favour with respect to the proceedings; and

(b) where the legal aid certificate granted to him in respect of the proceedings is revoked or discharged, any property subsequently

- 藉任何為避免進行法律程序或為終止法律程序而達成的妥協所收回或保留的任何財產；及 (由 1984 年第 54 號第 17 條修訂)
- (c) 為受助人所代表的人的利益或為受助人有權從中獲得彌償的任何產業或基金的利益而收回的任何財產。 (由 1984 年第 54 號第 17 條增補)
- (3A) 凡所收回或保留的財產是土地或土地權益，第 (1) 款所訂的押記須歸屬署長，而署長可使用任何可就各方之間作出的押記而由承押記人使用的方式 (包括根據《土地註冊條例》(第 128 章) 註冊)，強制執行第 (1) 款所訂的押記。 (由 1991 年第 27 號第 11 條增補)
- (3B) 凡在任何法律程序中有任何財產為受助人收回或保留，而根據法院或終審法院命令或所達成的協議的條款，該財產須用作受助人或其受養人的居所，則以下條文適用—— (由 1995 年第 79 號第 50 條修訂)
- (a) 凡受助人欲將該財產用作他本人或其受養人的居所，並以書面同意遵守 (b) 段所列條件，則如署長信納該財產會為 (b) 段所指的款項提供足夠保證，署長可押後執行在該財產之上的押記。
- (b) (a) 段所指的條件為：自有關押記首度註冊之日起，須按署長如無本款規定即可就此收回或保留的財產而留存的款項，以每年 10% 的息率或訂明息率，孳生由受助人繳付予署長以單利計算的利息。
- (c) 受助人根據 (b) 段須繳付的利息須繼續孳生，直至有關款項獲清繳為止，而在該款項獲清繳之前，署長不得謀求追討利息。受助人可就有關款項的本金或利息，定期或不定期地作出中期付款；如受助人就本金付款，則除非尚有利息未繳付，否則付款須從有關款項中減除。 (由 1991 年第 27 號第 11 條增補)
- (4) 如律師享有的訟費留置權不能阻止法院或終審法院准許將有關的損害賠償或訟費用作抵銷其他損害賠償或訟費，則根據第 (1) 款就有關損害賠償或訟費而訂立的押記，亦不能阻止法院或終審法院作出該項批准。 (由 1995 年第 79 號第 50 條修訂)

- recovered or preserved by or for him in the proceedings or by virtue of any compromise arrived at to avoid or bring to an end the proceedings; and (Amended 54 of 1984 s. 17)
- (c) any property recovered for the benefit of any person on whose behalf the aided person is acting or for the benefit of any estate or fund out of which that aided person is entitled to be indemnified. (Added 54 of 1984 s. 17)
- (3A) Where the property recovered or preserved is land or an interest in land, a charge under subsection (1) shall vest in the Director who may enforce the charge in any manner which would be available to a chargee in respect of a charge given inter partes including registration under the Land Registration Ordinance (Cap. 128). (Added 27 of 1991 s. 11)
- (3B) Where in any proceedings, there is recovered or preserved for the aided person property which by order of the court or the Court of Final Appeal or, under the terms of any agreement reached, is to be used as a home for the aided person or his dependants the following shall apply— (Amended 79 of 1995 s. 50)
- (a) Where the aided person wishes to use the property as a home for himself or his dependants and he agrees in writing to comply with the condition set out in paragraph (b) the Director may, if he is satisfied that the property will provide adequate security for any sum referred to in paragraph (b), agree to defer enforcing the charge over that property.
- (b) The condition referred to in paragraph (a) is that from the date on which the charge is first registered, simple interest payable by the aided person shall accrue for the benefit of the Director at the rate of 10% per annum or at the prescribed rate on such sum as, but for the provisions of this subsection, the Director would have retained in respect of property so recovered or preserved.
- (c) Interest payable by the aided person under paragraph (b) shall continue to accrue until the sum referred to is paid and the Director shall not seek to recover interest until such payment is made. Nothing shall prevent an aided person from making interim payments of interest or capital in respect of any sum referred to whether such payments are made at regular intervals or not and any such payment of capital shall reduce the sum accordingly except that no interim payment shall be used to reduce any sum while interest remains outstanding. (Added 27 of 1991 s. 11)
- (4) The charge created by subsection (1) on any damages or costs shall not prevent a court or the Court of Final Appeal allowing them to be set off against other damages or costs in any case where a solicitor's lien for costs would not prevent it. (Amended 79 of 1995 s. 50)

- (5) 第 (1) 款所訂的對財產的押記不適用於以下款項——
- (a) 根據命令或與命令具有相同效力的協議而作的中期付款；
 - (b) 在審訊期間提供的贍養費或在家事法律程序中作出的命令，或根據與命令具有相同效力的協議，而就子女、配偶或前度配偶的贍養而作的定期付款；但如付款是就配偶或前度配偶的贍養而作出，而其款額超過每月 \$4,800 (或其等值)，則屬例外；(由 1997 年第 8 號第 4 條修訂)
 - (c) 凡須就配偶或前度配偶的贍養而支付的款額，超過每月 \$4,800 (或其等值)，則第 (1) 款所訂的對財產的押記不適用於首 \$4,800 (或其等值)；(由 1997 年第 8 號第 4 條修訂)
 - (d) 因拖欠贍養費而繳付的款額 (但在 (b) 段會適用的範圍內則除外)；及
 - (e) 以備員補償方式收回的款額；但第 (1) 款所訂的對財產的押記就可歸因於在相同情況下產生的受助人的申索而適用。(由 1995 年第 43 號第 8 條代替)

(由 1981 年第 60 號第 2 條增補)

18B. 訟費保證金

如受助人須繳付訟費保證金，署長可從受其支配並可為該目的而動用的基金，撥款支付該筆保證金；(由 1984 年第 54 號第 18 條修訂)

但如根據法律援助輔助計劃給予受助人法律援助，則保證金須由計劃基金撥款支付。(由 1984 年第 54 號第 18 條增補)

(由 1982 年第 14 號第 12 條增補)

19. 訟費的判給

(1) 法院或終審法院可作出繳付訟費命令，判令受助人獲得訟費或繳付訟費，命令的方式及範圍與命令任何其他人獲得訟費或繳付訟費一樣，但命令只可在第 16C 條容許的範圍內針對受助人及署長而強制執行。(由 1984 年第 54 號第 19 條修訂；由 1995 年第 79 號第 50 條修訂)

(1A)(a) 凡法院或終審法院作出繳付訟費命令，判令受助人獲得訟費，被繳付訟費命令判令繳費的人，須同時繳付若無第 16B(c) 及 (d) 條的規定即須由

- (5) The charge on property under subsection (1) does not apply to—
- (a) an interim payment under an order or an agreement having the same effect as an order;
 - (b) maintenance pending suit or a periodical payment under an order made in domestic proceedings, or under an agreement having the same effect as an order, for the maintenance of a child, spouse or former spouse unless the payments are for the maintenance of a spouse or former spouse and are at a rate exceeding \$4,800 (or its equivalent) each month; (Amended 8 of 1997 s. 4)
 - (c) where the payment of maintenance for a spouse or former spouse is payable at a rate exceeding \$4,800 (or its equivalent) each month, the first \$4,800 (or its equivalent) of each payment; (Amended 8 of 1997 s. 4)
 - (d) the payment of arrears of maintenance except to the extent that paragraph (b) would otherwise apply; and
 - (e) an amount recovered by way of employee's compensation to the extent that the charge would apply the deficiency attributable to a common law claim by the aided person arising out of the same circumstances. (Replaced 43 of 1995 s. 8)

(Added 60 of 1981 s. 2)

18B. Security for costs

In any case in which an aided person is obliged to furnish security for costs, the Director may provide such security out of funds in his control which are available for that purpose. (Amended 54 of 1984 s. 18)

Provided that where legal aid has been granted to an aided person under the Supplementary Legal Aid Scheme any such security shall be provided out of the Fund. (Added 54 of 1984 s. 18)

(Added 14 of 1982 s. 12)

19. Award of costs

(1) A court or the Court of Final Appeal may make an order for costs in favour of or against an aided person in the same manner and to the same extent as it may make an order for costs in favour of or against any other person but such an order may only be enforced against the aided person and the Director to the extent permitted by section 16C. (Amended 54 of 1984 s. 19; 79 of 1995 s. 50)

(1A)(a) Where a court or the Court of Final Appeal makes an order for costs in favour of an aided person, there also shall be payable by

(5) 財政司司長可發出指示，就公務員根據該計劃提供服務而向計劃基金收取每年管理費用，撥入政府一般收入項下，該筆費用數額由財政司司長釐定。(由 1997 年第 362 號法律公告修訂)

30. 署長的借貸權力

- (1) 署長可用透支或其他方式暫時借入所需款項，以應付在恰當情況下須由計劃基金支付的開支，或充作這方面的開支。
- (2) 署長在獲得財政司司長事先批准下，可為計劃基金的妥善運作，藉暫時貸款以外的方式借入所需款項。(由 1997 年第 362 號法律公告修訂)
- (3) 貸款給署長的人無須查究借款是否合法，或合乎規定，或所籌集的款項是否妥善運用，亦無須因為有任何不合法或不合乎規定的事，或有關款項運用不當或不予運用而蒙受不利。

31. 帳目

- (1) 署長須備存妥善的帳目及與之有關的計劃基金事務紀錄。
- (2) 審計署署長有權審計計劃基金的帳目。(由 1997 年第 362 號法律公告修訂)

32. 撥付計劃基金的分擔費用

- (1) 凡根據法律援助輔助計劃給予任何人法律援助，除非該受助人在法律援助的協助下提出的法律程序中全部或部分勝訴，否則該受助人無須繳付分擔費用；如該受助人獲得勝訴，則須向署長繳付分擔費用，撥入計劃基金，所付款額相等於——
 - (a) 計劃基金已經或必須為該人繳付的款項；
 - (b) 代該人招致的訟費；及
 - (c) 在法律程序中為受助人本人或其所代表的其他人收回或保留的財產(不論位於何處)價值中的一個訂明百分率，
 而根據繳付訟費命令或協議所收回的款項及其他訂明款項，須從分擔費用中扣除。

(5) The Financial Secretary may direct that an annual administration fee to be determined by him and payable in respect of the services afforded by public servants under the Scheme shall be charged to the Fund and paid into general revenue.

30. Borrowing powers of the Director

- (1) The Director may borrow temporarily, by way of overdraft or otherwise, such sums as may be required for meeting or being expenses properly chargeable to the Fund.
- (2) The Director may with the prior approval of the Financial Secretary borrow (otherwise than by way of temporary loan) such moneys as may be required for the proper operation of the Fund.
- (3) A person lending money to the Director shall not be concerned to inquire whether the borrowing of the money is legal or regular or whether the money raised has been properly applied and shall not be prejudiced by any illegality or irregularity or by misapplication or non-application of the money.

31. Accounts

- (1) The Director shall keep proper accounts and proper records in relation thereto of the affairs of the Fund.
- (2) The Director of Audit shall have power to audit the accounts of the Fund.

32. Contributions for benefit of the Fund

- (1) Where legal aid is granted to any person under the Supplementary Legal Aid Scheme no contribution shall be payable by the aided person unless such person is successful, either in whole or in part, in the proceedings brought by him with the assistance of such legal aid and, if he is successful a contribution shall be payable by him to the Director for the benefit of the Fund in an amount equivalent to—
 - (a) the sums paid or payable on his account out of the Fund;
 - (b) the costs incurred on his behalf; and
 - (c) such percentage as may be prescribed of the value of any property (wherever situate) recovered or preserved for the aided person in such proceedings whether on his own behalf or on behalf of another,
 and there shall be deducted from the amount of the contribution any sums recovered under an order or agreement for costs and such other sums as may be prescribed.

(2) 根據本條繳付的分擔費用，不得超過在法律程序中為受助人收回或保留的財產的價值。

(3) 署長如信納他假若行使根據本條收取分擔費用的權利，會使任何人遭遇嚴重困苦，並在所有情況下均屬公正及公平，可藉給予受助人書面通知，完全或局部放棄其權利。

(4) 第(1)或(2)款並不阻止署長在撤回或取消根據法律援助輔助計劃發給前受助人的法律援助證書時，按訂明方式及款額，向該人追討在撤回或取消其證書前招致的公費及開支，而不論該人是否繼續進行有關法律程序，亦不論該等法律程序是否勝訴。

(5) 就本條而言，凡根據法院命令或根據為避免進行法律程序或為終止法律程序而達成的妥協，為受助人收回或保留財產，則有關法律程序須當作勝訴。

(6) 本條提述在法律程序中為受助人收回或保留財產之處，須按照第 18A(3) 條解釋。

2A. 轉移至不同計劃的效果

(1) 凡某人的財務資源有所改變，令他有權尋求在法律援助輔助計劃以外的另一法律援助計劃下的援助，署長可更改須由該人根據法律援助輔助計劃的分擔費用。

(2) 署長可在屬及該人根據法律援助輔助計劃獲得援助的時間及解決有關中案所需時間後，將須繳付的分擔費用攤分。

(由 1995 年第 43 號第 12 條增補)

3. 署長提出的上訴及其權力

(1) 凡根據法律援助輔助計劃獲給予法律援助的人——

(a) 在該項法律援助的協助下，於法院提出的法律程序中全部或部分敗訴，署長可對該法院所作的判決或命令提出上訴；

(b) 在該等法律程序中全部或部分勝訴，但沒有在任何其他人提出的上訴中抗辯，則署長本人可反對該上訴。

(2) No contribution payable under this section shall exceed the value of the property recovered or preserved for the aided person in the proceedings.

(3) The Director may by notice in writing to the aided person waive, either in whole or in part, his rights to a contribution under this section where he is satisfied that it would cause serious hardship to any person to rely on such rights and it is in all the circumstances just and equitable to do so.

(4) Nothing in subsection (1) or (2) shall prevent the recovery from a formerly aided person, in such manner and amount as may be prescribed, of the costs and expenses of legal aid under the Supplementary Legal Aid Scheme incurred prior to the revocation or discharge of his legal aid certificate upon such revocation or discharge whether or not such person continues the proceedings and whether or not the proceedings are successful.

(5) For the purposes of this section proceedings shall be deemed to be successful where property is recovered or preserved for the aided person either under a court order or under a compromise arrived at to avoid or bring to an end the proceedings.

(6) References in this section to the property recovered or preserved for the aided person in the proceedings shall be construed in accordance with section 18A(3).

32A. Effect of transfer between schemes

(1) The Director may vary the contribution payable by a person under the Supplementary Legal Aid Scheme where the financial resources of the person have changed so as to entitle him to seek assistance under another legal aid scheme.

(2) The Director shall apportion the contribution payable having regard to the time for which the person was aided under the Supplementary Legal Aid Scheme and the period taken to resolve the claim.

(Added 43 of 1995 s. 12)

33. Appeals and powers of the Director

(1) Where a person who has been granted legal aid under the Supplementary Legal Aid Scheme—

(a) fails, whether in whole or in part, in proceedings brought by him with the assistance of such legal aid, the Director may appeal against any judgment or order of the court in which the proceedings were brought;

(b) succeeds, whether in whole or in part, in such proceedings and fails to defend any appeal brought by any other person, the Director may himself oppose such appeal.

[附屬法例]

[Subsidiary]

12. 因出現錯誤或過失而對釐定作出修訂

凡署長覺得在釐定任何人的財務資源、收入、可動用收入、可動用資產或分擔費用最高款額時曾出現錯誤或過失，或在該項釐定所根據的計算或估計中曾出現錯誤或過失，而改正該項錯誤或糾正該項過失是公正及公平的，署長可作出經修訂的釐定；就各方面而言，經修訂的釐定須取代原先的釐定，並全面有效，猶如它是原先的釐定一樣。

(1992 年第 195 號法律公告)

12. Amendment of determination because of error or mistake

Where it appears to the Director that there has been an error or mistake in the determination of a person's financial resources, income, disposable income, disposable capital or maximum contribution or in any computation or estimate upon which such determination is based and that it would be just and equitable to correct the error or mistake, the Director may make an amended determination, which shall for all purposes be substituted for the original determination and shall have effect in all respects as if it were the original determination.

(L.N. 195 of 1992)

第 III 部

PART III

分擔費用

CONTRIBUTIONS

13. 接受法律援助人士繳付的分擔費用

受助人根據本條例第 18(1)(b) 條繳付的分擔費用最高款額，為按照附表 3 第 I 部就其財務資源評定的分擔費用。

(1992 年第 195 號法律公告)

13. Contributions from legally aided persons

The maximum contribution of an aided person under section 18(1)(b) of the Ordinance shall be a contribution in respect of his financial resources assessed in accordance with Part I of Schedule 3.

(L.N. 195 of 1992)

14. 根據法律援助輔助計劃受助所須繳付的分擔費用

為施行本條例第 32 條而訂明的分擔費用百分率，須符合附表 3 第 III 部的規定；根據《法律援助規例》(第 91 章，附屬法例) 第 3(3) 及 5(7) 條繳付的費用，須從分擔費用中扣除。

14. Contributions under the Supplementary Legal Aid Scheme

The percentage contribution prescribed for the purposes of section 32 of the Ordinance shall be in accordance with Part III of Schedule 3 and there shall be deducted from that contribution fees paid under regulations 3(3) and 5(7) of the Legal Aid Regulations (Cap. 91 sub. leg.).

15. 為僱員補償及普通法損害賠償而繳付的分擔費用

凡任何人就僱員補償獲發給一張法律援助證書，並就普通法損害賠償獲發給另一張法律援助證書，而該等僱員補償及普通法損害賠償是因同一情況而產生的，則該人只須為該兩張證書繳付一筆分擔費用。

(1995 年第 489 號法律公告)

15. Contributions for employee's compensation and common law damages

A person who is issued with 2 legal aid certificates, one for employee's compensation and the other for common law damages arising out of the same circumstances, is liable to pay only one amount of contributions for the 2 certificates.

(L.N. 489 of 1995)

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[附屬法例]

附表 3
分擔費用

[第 13 及 14 條]

第 1 部

受助人根據本條例第 18(1)(b) 條所須承擔的分擔費用最高款額如下——

- (a) 如受助人的財務資源不超過 \$86,000，他無須承擔任何分擔費用；
- (b) 除 (c) 節另有規定外，如受助人的財務資源超過以下 A 欄所示款額，但不超過 B 欄在相對位置所示款額，則他須承擔的分擔費用最高款額為其財務資源的一個百分率，即在 C 欄相對位置所示的百分率——

A	B	C
如其財務資源超過	但不超過	則就其財務資源而言，其分擔費用最高款額為
\$86,000	\$94,300	10%
\$94,300	\$104,900	15%
\$104,900	\$121,400	20%
\$121,400	\$129,600	25%
\$129,600	\$139,100	30%
\$139,100	\$147,300	34%
\$147,300	\$155,600	38%
\$155,600	\$163,800	41%
\$163,800	\$169,700	43%；及

- (c) 如受助人的證書是就違反《香港人權法案條例》(第 383 章) 或抵觸《公民權利和政治權利國際公約》中適用於香港的條文為其中端點的法律程序發出——
 - (i) 如受助人的財務資源超過以下 A 欄所示款額，但不超過 B 欄在相對位置所示款額，則他須承擔的分擔費用最高款額為其財務資源的一個百分率，即在 C 欄相對位置所示的百分率——

A	B	C
如其財務資源超過	但不超過	則就其財務資源而言，其分擔費用最高款額為
\$86,000	\$94,300	10%
\$94,300	\$104,900	15%
\$104,900	\$121,400	20%
\$121,400	\$129,600	25%
\$129,600	\$139,100	30%
\$139,100	\$147,300	34%
\$147,300	\$155,600	38%
\$155,600	\$163,800	41%
\$163,800	\$284,100	43%

[Subsidiary]

SCHEDULE 3

[regs. 13 & 14]

CONTRIBUTIONS

PART I

The maximum contribution of an aided person under section 18(1)(b) of the Ordinance shall—

- (a) if his financial resources do not exceed \$86,000, be nil;
- (b) except as provided in subparagraph (c), if his financial resources exceed the amount indicated in column A but do not exceed the amount indicated opposite in column B, be the percentage of his financial resources indicated opposite in column C as follows—

A	B	C
If his financial resources exceed	But do not exceed	Then, in relation to his financial resources, his maximum contribution is
\$86,000	\$94,300	10%
\$94,300	\$104,900	15%
\$104,900	\$121,400	20%
\$121,400	\$129,600	25%
\$129,600	\$139,100	30%
\$139,100	\$147,300	34%
\$147,300	\$155,600	38%
\$155,600	\$163,800	41%
\$163,800	\$169,700	43%; and

- (c) if his certificate 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—
 - (i) if his financial resources exceed the amount indicated in column A but do not exceed the amount indicated opposite in column B, be the percentage of his financial resources indicated opposite in column C as follows—

A	B	C
If his financial resources exceed	But do not exceed	Then, in relation to his financial resources, his maximum contribution is
\$86,000	\$94,300	10%
\$94,300	\$104,900	15%
\$104,900	\$121,400	20%
\$121,400	\$129,600	25%
\$129,600	\$139,100	30%
\$139,100	\$147,300	34%
\$147,300	\$155,600	38%
\$155,600	\$163,800	41%
\$163,800	\$284,100	43%

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B 10 第 91 章 法律援助 (評定資源及分擔費用) 規例

[附屬法例]

如其財務 資源超過	但不超過	則就其財務資 源而言，其分 擔費用最高款 額為
\$284,100	\$425,600	46%
\$425,600	\$568,200	49%
\$568,200	\$709,700	52%
\$709,700	\$852,400	55%
\$852,400	\$993,800	58%
\$993,800	\$1,136,500	61%
\$1,136,500	\$1,278,000	64% ; 或

(ii) 如受助人的財務資源超過 \$1,278,000，則他須承擔的分擔費用最高款額為其財務資源的 67%。

(1997 年第 85 號法律公告)

第 II 部

(由 1992 年第 195 號法律公告廢除)

第 III 部

根據法律援助輔助計劃受助所須繳付的分擔費用

3. 凡中索進展至判決階段，分擔費用率為 15%。(1995 年第 353 號法律公告)
4. 凡中索在判決前達成和解，分擔費用率須調低如下——
 - (a) 凡在向大律師送交在正審中出庭的委聘書之前達成和解，調低 50%；
 - (b)-(c) (由 1995 年第 353 號法律公告廢除)

第 IV 部

(由 1995 年第 489 號法律公告廢除)

CAP. 91 Legal Aid (Assessment of Resources and Contributions) Regulations

[Subsidiary]

If his financial resources exceed	But do not exceed	Then, in relation to his financial resources, his maximum contribution is
\$284,100	\$425,600	46%
\$425,600	\$568,200	49%
\$568,200	\$709,700	52%
\$709,700	\$852,400	55%
\$852,400	\$993,800	58%
\$993,800	\$1,136,500	61%
\$1,136,500	\$1,278,000	64%; or

(ii) if his financial resources exceed \$1,278,000, be 67% of his financial resources.

(L.N. 85 of 1997)

PART II

(Repealed L.N. 195 of 1992)

PART III

CONTRIBUTIONS UNDER THE SUPPLEMENTARY LEGAL AID SCHEME

3. Where a claim proceeds to judgment the rate of contribution is 15%. (L.N. 353 of 1995)
4. Where a claim is settled prior to judgment the rate of contribution shall be reduced as follows—
 - (a) where settlement occurs prior to delivery of a brief to Counsel, by 50%;
 - (b)-(c) (Repealed L.N. 353 of 1995)

PART IV

(Repealed L.N. 489 of 1995)