

LEGISLATIVE COUNCIL BRIEF

Legal Aid Ordinance (Chapter 91)

LEGAL AID (ASSESSMENT OF RESOURCES AND CONTRIBUTIONS) (AMENDMENT) REGULATION 2007

INTRODUCTION

A At the meeting of the Executive Council on 5 June 2007, the Council ADVISED and the Chief Executive ORDERED that, under section 28 of the Legal Aid Ordinance, the Legal Aid (Assessment of Resources and Contributions) (Amendment) Regulation 2007 at **Annex A**, should be made.

JUSTIFICATIONS

Financial Eligibility Limit

2. At present, a person whose financial resources¹ do not exceed \$158,300 is financially eligible for legal aid under the Ordinary Legal Aid Scheme (OLAS). The limit is specified under section 5(1) of the Legal Aid Ordinance (Chapter 91) (the Ordinance).

Review of the Financial Eligibility Limit

3. It is our policy to review the limit annually to take account of movements in the Consumer Price Index (C) (CPI(C)), so as to maintain the real value of the limit.

4. Pursuant to the 2006 annual review, the increase in the CPI(C) from July 2005 to July 2006 is 2.5%. We moved, and LegCo passed on

¹ Financial Resources means the aggregate of an applicant's yearly disposable income and disposable capital. A person's **disposable income** is his gross income minus deductible items as allowed under the Legal Aid Ordinance (the Ordinance). A person's **disposable capital** is the value of his resource of a capital nature, disregarding a number of items as allowed under the Ordinance.

2 May 2007, a resolution under section 7(a) of the Ordinance to adjust the limit in section 5(1) of the Ordinance upward by 2.5% from \$158,300 to **\$162,300**. The resolution will come into effect on a day to be appointed by the Director of Administration.

Scale of Contributions Payable by Aided Persons

5. All legally aided persons are required to contribute towards the costs of litigation, according to their financial capacity. The scale of contribution is set out in Part I of Schedule 3 to the Legal Aid (Assessment of Resources and Contributions) Regulations (Chapter 91, Sub. leg. B) (the Regulations), at **Annex B**. The Regulations contain a numerical reference to the limit. Following the approved adjustment to the limit, therefore, we need to amend the scale of contributions.

B

Consequential Amendments to the Scale of Contributions Payable by Aided Persons

6. The process of giving effect to the annual adjustments of the limit is unnecessarily cumbersome and time consuming – given the need to first amend the limit in the Ordinance, and thereafter update the Regulations. The Legal Aid (Assessment of Resources and Contributions) (Amendment) Regulation 2007 (the Amendment Regulation) seeks to streamline the process by linking the limit specified in the Regulations to that approved under section 5(1) of the Ordinance.

THE AMENDMENT REGULATION

7. The Amendment Regulation amends Part I of Schedule 3 to the Regulations by repealing references to \$158,300 and substituting them by a reference to the limit specified in section 5(1) of the Ordinance.

LEGISLATIVE TIMETABLE

8. The legislative timetable is as follows –

Publication in the Gazette	15 June 2007
Tabling at the Legislative Council	20 June 2007

In order that the revised scale of contributions can be implemented as soon as possible for the benefit of the legally aided persons, the Amendment Regulation will take effect upon gazettal, i.e. 15 June. The Director of Administration will appoint the gazettal day as the commencement day of the resolution as mentioned in paragraph 4 above. The Commencement Notice will also be published in the gazette on 15 June.

IMPLICATIONS OF THE PROPOSAL

9. The proposal is in conformity with the Basic Law, including provisions concerning human rights. It does not affect the existing binding effect of the Ordinance. The proposal should also have no financial, civil service, economic, productivity, environmental or sustainability implications.

PUBLIC CONSULTATION

10. We have briefed the Panel on Administration of Justice and Legal Services that, following LegCo's approval of the resolution, we would make consequential amendments to the scale of contributions payable by legally aided persons set out in the Regulations.

PUBLICITY

11. A press release will be issued. A spokesman will be available to answer media and public enquiries. The Legal Aid Department will update its website.

ENQUIRIES

12. Any enquiries on this brief can be addressed to Mrs Alice Cheung, Assistant Director (Administration) at 2810 2576.

Administration Wing
Chief Secretary for Administration's Office
13 June 2007

**LEGAL AID (ASSESSMENT OF RESOURCES AND
CONTRIBUTIONS)(AMENDMENT)
REGULATION 2007**

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

1. Contributions

Part I of Schedule 3 to the Legal Aid (Assessment of Resources and Contributions) Regulations (Cap. 91 sub. leg. B) is amended by repealing “\$158,300” wherever it appears and substituting –

“the amount of financial resources specified in section 5(1) of the Ordinance”.

Clerk to the Executive Council

COUNCIL CHAMBER

2007

Explanatory Note

This Regulation amends Part I of Schedule 3 to the Legal Aid (Assessment of Resources and Contributions) Regulations (Cap. 91 sub. leg. B). The Schedule specifies the maximum contribution payable by a legally aided person to the Director of Legal Aid. Subparagraphs (b) and (c) of that Part are amended so that certain maximum contributions will be determined by reference to the limit of the financial resources of an aided person under section 5(1) of the Legal Aid Ordinance (Cap. 91).

Annex B

Chapter:	91B	LEGAL AID (ASSESSMENT OF RESOURCES AND CONTRIBUTIONS) REGULATIONS	Gazette Number	Version Date
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Schedule:	3	CONTRIBUTIONS	L.N. 141 of 2006	16/06/2006
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[regulations 8A, 13 & 14]
(L.N. 148 of 2000)

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 \$20000, be nil; (L.N. 148 of 2000)
- (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
If his financial resources exceed	But do not exceed	Then, in relation to his financial resources, his maximum contribution is
\$20000	\$40000	\$1000
\$40000	\$60000	\$2000
\$60000	\$80000	5%
\$80000	\$100000	10%
\$100000	\$120000	15%
\$120000	\$144000	20%
\$144000	\$158300	25%;

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

- (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
If his financial resources exceed	But do not exceed	Then, in relation to his financial resources, his maximum contribution is
\$20000	\$40000	\$1000
\$40000	\$60000	\$2000
\$60000	\$80000	5%
\$80000	\$100000	10%
\$100000	\$120000	15%
\$120000	\$144000	20%
\$144000	\$158300	25%
\$158300	\$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)

- (ii) if his financial resources exceed \$1200000, be 67% of his financial resources. (L.N. 148 of 2000)

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

PART II

(Repealed L.N. 195 of 1992)

PART III

CONTRIBUTIONS UNDER THE SUPPLEMENTARY LEGAL AID SCHEME

3. Subject to paragraph 4, the rate of contribution is 10%. (L.N. 224 of 2005)
4. Where a claim is settled prior to delivery of a brief for attendance at trial to counsel, the rate of contribution is 6%. (L.N. 224 of 2005)

PART IV

(Repealed L.N. 489 of 1995)