

立法會
Legislative Council

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(These minutes have been seen by
the Administration)

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

**Minutes of the first meeting
held on Thursday, 14 May 2015, at 8:30 am
in Conference Room 3 of the Legislative Council Complex**

- Members present** : Hon Dennis KWOK (Chairman)
Hon Albert HO Chun-yan
Hon LEE Cheuk-yan
Hon TAM Yiu-chung, GBS, JP
Hon Cyd HO Sau-lan, JP
Hon Paul TSE Wai-chun, JP
Hon TANG Ka-piu, JP
- Members absent** : Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Dr Hon Elizabeth QUAT, JP
- Public Officers attending** : Item II
Home Affairs Bureau

Mr Laurie LO Chi-hong, JP
Deputy Secretary for Home Affairs (1)

Ms Aubrey FUNG Ngar-wai
Principal Assistant Secretary for Home Affairs
(Civic Affairs) 2

Legal Aid Department

Ms Alice CHUNG Yee-ling
Deputy Director of Legal Aid (Policy and
Administration)

Mr Chris CHONG Yan-tung
Deputy Director of Legal Aid (Application and
Processing)

Department of Justice

Ms Queenie WU Chung-yi
Government Counsel

**Clerk in
attendance** : Miss Mary SO
Chief Council Secretary (4)2

**Staff in
attendance** : Mr Kelvin LEE
Assistant Legal Adviser 1

Ms Katrina WU
Senior Council Secretary (4)2

Miss Vivian YUEN
Legislative Assistant 4(2)

I. Election of Chairman

Mr Albert HO, the member who had the highest precedence amongst members present at the meeting, presided over the election of the Chairman.

2. Mr Albert HO invited nominations for the chairmanship of the Subcommittee. Mr Dennis KWOK was nominated by Mr TAM Yiu-chung and the nomination was seconded by Mr Albert HO. Mr Dennis KWOK accepted the nomination. As there was no other nomination, Mr Albert HO declared that Mr Dennis KWOK was elected Chairman of the Subcommittee.

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II. Meeting with the Administration

L.N. 78 of 2015 (gazetted on 24 April 2015)	--	Legal Aid (Assessment of Resources and Contributions) (Amendment) Regulation 2015
File Ref.: HAB/CR/19/1/65	--	Legislative Council ("LegCo") Brief
LC Paper No. LS62/14-15	--	Legal Service Division Report
LC Paper No. CB(4)966/14-15(01)	--	Background brief prepared by LegCo Secretariat

3. The Subcommittee deliberated (index of proceedings attached at **Annex**).

Declaration of interest

4. The Chairman declared that he was on the Legal Aid Panel under the Legal Aid Department ("LAD").

Discussion

5. Deputy Secretary for Home Affairs (1) ("DSHA(1)") briefed members on the Legal Aid (Assessment of Resources and Contributions) (Amendment) Regulation 2015 ("the Amendment Regulation"), details of which were set out in the LegCo Brief (File Ref.: HAB/CR/19/1/65).

Contributions

6. Members noted that as the proposed threshold of assessed financial resources exceeding which contributions began to be payable would be 12.5% of the financial eligibility limit ("FEL") of the Ordinary Legal Aid Scheme ("OLAS") (i.e. \$33,702.50 by applying the current OLAS FEL), instead of being set at \$20,000 at present, the number of aided persons who did not need to pay any contribution would increase under the proposal. If the aided persons needed to pay a contribution, most of their contribution amounts would be lower than, or at most be the same as, what they had to pay under the existing scales of contribution rates.

7. Members further noted that for the aided persons of cases in which a breach of the Hong Kong Bill of Rights Ordinance (Cap. 383) or an

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inconsistency with the International Covenant on Civil and Political Rights as applied to Hong Kong was an issue, whose financial resources might 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 was required to pay the contribution upon the granting of the legal aid certificate, he/she might apply to pay the contribution by installments and the DLA would consider the application on a case by case basis.

8. Whilst noting that aided persons of OLAS who were on Comprehensive Social Security Assistance ("CSSA") did not need to pay any contribution, Mr TANG Ka-piu asked about the number of aided persons of OLAS who were on CSSA in the past years. Deputy Director of Legal Aid (Policy and Administration) ("DDLA") responded that she did 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

9. Mr TAM Yiu-chung asked whether Government expenditure on the provision of legal aid would be increased should the Amendment Regulation be implemented. DSHA(1) responded that this might not necessarily be the case, as the actual amounts to be borne by the Legal Aid Department ("LAD") would depend on whether the aided persons had 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 would be refunded to the aided person.

Types of cases aided by OLAS

10. Mr TANG Ka-piu enquired about the proportion of civil proceedings involving personal injuries and matrimonial cases of which parties to such proceeding were aided persons of OLAS. DDLA replied that she did not have the requested information. However, personal injuries and matrimonial cases had all along accounted 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

11. Ms Cyd HO said 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 had yet to

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have universal retirement protection and LAD did not include the benefits accrued from the Mandatory Provident Fund ("MPF") schemes participated by legal aid applicants in assessing their financial resources. Mr TANG Ka-piu expressed similar views.

12. DSHA(1) responded that it was 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, were of a capital nature similar to, say, cash, banking savings and stocks. The reasons why LAD did not include the accrued benefits from the MPF schemes participated by legal aid applicants in assessing their financial resources were that the MPF system was introduced to help the workforce save for old age and withdrawal of accrued benefits was only allowed when scheme members reached the retirement age of 65, as stipulated in the MPF Schemes Ordinance (Cap. 485).

13. Ms Cyd HO urged LAD 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.

14. Mr TANG Ka-piu pointed out that an MPF scheme member might withdraw his/her accrued benefits under certain specified circumstance, such as he/she had made declaration that he/she had permanently ceased his/her employment or self-employment after he/she had reached the age of at least 60 or if he/she had terminal illness before the age of 60. Mr TANG asked whether LAD would include such MPF accrued benefits from early withdrawal when assessing applicants' financial resources.

15. DDLA responded that applicants' bank balance would be counted as capital. That said, for legal aid applicants who had reached the age of 60, an amount of capital equal to the OLAS FEL would be deducted from their assessed financial resources.

Review of the expansion of the scope of the Supplementary Legal Aid Scheme ("SLAS")

16. The Chairman said that the Legal Aid Services Council ("LASC") had 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. The Chairman asked when the LASC would present its recommendations on expansion of the scope of SLAS to the Government.

17. Principal Assistant Secretary for Home Affairs (Civic Affairs) 2 responded that notwithstanding the recent expansion of the scope of SLAS in November 2012, a further review was being conducted by LASC. As requested

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by members of the Panel of Administration of Justice and Legal Services at its meeting held on 23 March 2015, the Administration had 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.

Clause-by-clause scrutiny of the Amendment Regulation

18. The Subcommittee scrutinized the Amendment Regulation clause-by-clause and did not raise any queries.

III. Conclusion

19. The Chairman concluded that the Subcommittee completed scrutiny of the Amendment Regulation. The Subcommittee did not object to the Amendment Regulation which would come into operation on 17 June 2015. The Subcommittee and the Administration would not propose any amendment.

IV. Any of business

20. There being no other business, the meeting ended at 9:35 am.

Council Business Division 4
Legislative Council Secretariat
8 June 2015

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

**Proceedings of the first meeting
held on Thursday, 14 May 2015, at 8:30 am
in Conference Room 3 of the Legislative Council Complex**

Time Marker	Speaker(s)	Subject(s)	Action required
Election of Chairman			
000157-000300	Hon Albert HO Hon TAM Yiu-Chung Hon Dennis KWOK	Election of Chairman	
Meeting with the Administration			
000300-001020	Chairman Admin	Briefing by the Administration on the Legal Aid (Assessment of Resources and Contributions) (Amendment) Regulation 2015 ("Amendment Regulation").	
001020-001745	Chairman Admin Hon Albert HO	Justifications for revising the bandwidths of assessed financial resources of aided persons in relation to the contributions payable under the Ordinary Legal Aid Scheme ("OLAS")	
001745-002350	Chairman Hon TAM Yiu-chung Admin	Hon TAM Yiu-chung's enquiry about whether Government expenditure on the provision of legal aid would be increased should the Amendment Regulation be implemented. The Administration responded that this might not necessarily be the case, as the actual amounts to be borne by the Legal Aid Department ("LAD") would depend on whether the aided persons had 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 exceeded the actual costs, the balance would be refunded to the aided person.	
002350-002927	Chairman Hon Cyd HO Admin ALA1	Hon Cyd HO's enquiry about the upper limit of \$1,348,100 referred to in paragraph 2 of the Legal Service Division Report (LS62/14-15). ALA1 advised that \$1,348,100 was the FEL of the Supplementary Legal Aid Scheme ("SLAS"). The Admin supplemented that the Director of Legal Aid ("DLA") might 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").	
002927-003126	Chairman Admin	The Chairman's enquiry on the progress of the review on the expansion of the scope of SLAS.	

Time Marker	Speaker(s)	Subject(s)	Action required
		<p>The Administration responded that notwithstanding the recent expansion of the scope of SLAS in November 2012, a further review was being conducted by LASC. As requested by members of the Panel of Administration of Justice and Legal Services at its meeting held on 23 March 2015, the Administration had 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.</p>	
003126-003724	<p>Chairman Hon LEE Cheuk-yan Admin</p>	<p>Hon LEE Cheuk-yan's enquiry about setting the first two tiers of contribution payable in relation to the assessed financial resources of aided persons of OLAS at 2% and 2.5% respectively.</p> <p>The Administration explained that this was to maintain the real value of the first two tiers of contribution payable in relation to the assessed financial resources of aided persons of OLAS. The Administration further pointed out that the proposed 2% and 2.5% were lower than the existing scales of contributions at between 2.5% and 5% and between 3.3% and 5% for the first and second tiers of contribution payable respectively.</p>	
003724-004523	<p>Chairman Hon TANG Ka-piu Admin</p>	<p>Hon TANG Ka-piu's concern about the ability of aided persons of human rights cases to pay contributions.</p> <p>The Administration responded that although an aided person was required to pay the contribution upon the granting of the legal aid certificate, he/she might apply to pay the contribution by installments and the DLA would consider the application on a case by case basis.</p> <p>Hon TANG Ka-piu's enquiry about the number of aided persons of OLAS who were on Comprehensive Social Security Assistance ("CSSA") in the past years.</p> <p>The Administration responded that it did 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.</p> <p>Hon TANG Ka-piu's enquiry about the proportion of civil proceedings involving personal injuries and matrimonial cases of which parties to such proceeding were aided persons of OLAS. The Administration responded that it did not have the requested information. However, personal injuries and matrimonial cases had all along accounted 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.</p>	
004523-005114	<p>Chairman Hon Cyd HO Admin</p>	<p>Hon Cyd HO's views 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 had yet to have universal retirement protection and LAD did not include the benefits accrued from the Mandatory Provident Fund ("MPF") schemes participated by legal aid applicants in assessing their financial</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
		<p>resources.</p> <p>The Administration considered 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, were of a capital nature similar to, say, cash, banking savings and stocks. The reasons why LAD did not include the accrued benefits from the MPF schemes participated by legal aid applicants in assessing their financial resources were that the MPF system was introduced to help the workforce save for old age and withdrawal of accrued benefits was only allowed when scheme members reached the retirement age of 65, as stipulated in the MPF Schemes Ordinance (Cap. 485).</p> <p>Hon Cyd HO urged LAD 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.</p>	
005114-010203	Chairman Hon TANG Ka-piu Admin	<p>Noting that an MPF scheme member might withdraw his/her accrued benefits under certain specified circumstance, such as he/she had made declaration that he/she had permanently ceased his/her employment or self-employment after he/she had reached the age of at least 60 or if he/she had terminal illness before the age of 60, Hon TANG Ka-piu enquired whether LAD would include such MPF accrued benefits from early withdrawal when assessing applicants' financial resources.</p> <p>The Administration responded that applicants' bank balance would be counted as capital. That said, the Administration pointed out that for legal aid applicants who had reached the age of 60, an amount of capital equal to the OLAS FEL would be deducted from their assessed financial resources.</p> <p>Hon TANG Ka-piu's enquiry about whether money received by legal aid applicants from securing an additional mortgage on their self-occupied property would be assessed by LAD as a disposal capital of the applicants.</p> <p>The Administration replied in the positive. However, repayments made by the legal aid applications on their home mortgages would be treated as deductibles by LAD in assessing the financial resources of these applicants.</p>	
010203-010457	Chairman ALA1 Admin	The Subcommittee scrutinized the Amendment Regulation clause-by-clause.	
010457-010622	Chairman Admin	The Chairman concluded the Subcommittee had no objection to the Amendment Regulation which would come into operation on 17 June 2015.	