

运作的政策和程序

OPERATIONAL POLICY AND PROCEDURES

刑事法律援助费用制度

法律援助署（下称「法援署」）聘用私人执业的大律师和律师担任刑事诉讼法律援助案件的辩方律师，《刑事诉讼程序条例》第221章下的《刑事案件法律援助规则》第221D章第21条，已订明支付该等律师的费用表和费用的评估机制。

根据立法会财务委员会（下称「财委会」）在1992年10月的决议，当局每两年检讨有关费用一次。财委会在2003年6月，把日后批准调整费用的权力转授行政署长，惟费用的调整幅度不得超越参照期内按丙类消费物价指数计算的物价变动幅度。在进行每两年一次的检讨时，当局主要考虑参照期内通胀/通缩的情况，以及聘用大律师和律师是否存在困难。

从2010年的两年检讨中，我们得悉在参照期内（即2008年7月至2010年7月期间），丙类消费物价指数上升了1.6%。因此，当局建议参照期内通胀的升幅，把费用调升1.6%。而2010年7月后经济变动的情况，将于下次两年检讨中反映。

在2011年4月，民政事务局（下称「民

CRIMINAL LEGAL AID FEES SYSTEM

The Legal Aid Department ("LAD") engages counsel and solicitors in private practice as defence lawyers in criminal legal aid cases. The scale of fees payable to these lawyers as well as the fee assessment mechanism are prescribed in Rule 21 of the Legal Aid in Criminal Cases Rules (Cap. 221D) under the Criminal Procedure Ordinance (Cap. 221).

Pursuant to the decision of the Legislative Council Finance Committee in October 1992, the fees are subject to review by the Administration on a biennial basis. The Finance Committee also delegated in June 2003 the authority to approve future adjustments to any of the fees to the Administration, provided that the extent of adjustment is no greater than the movement of the Consumer Price Index (C) (CPI(C)) during the reference period. In conducting the biennial reviews, the Administration takes into account mainly inflation/deflation during the reference period and whether there has been difficulty in engaging the services of counsel and solicitors.

From the 2010 biennial review, it is noted that the CPI(C) for the reference period (i.e. July 2008 to July 2010) has increased by 1.6%. The Administration has therefore proposed to adjust the fees upward by 1.6% in accordance with the level of inflation during the reference period. The impact of economic changes after July 2010 will be reflected in the next biennial review.

政局」)通知本局,当局正草拟刑事案件法律援助(修订)规则,以修改《刑事案件法律援助规则》第4条和第21条,刑事案件法律援助费用增加1.6%的建议将于是次修订中落实。这些规则修订由刑事诉讼程序规则委员会制定,再提交立法会议决,并在2012年3月生效。第4条和第21条的修订内容如下:

第4条的修订

《刑事案件法律援助规则》第4条列明刑事案件可获得法律援助的情况,惟申请人须通过经济审查和案情审查。过去,第4(1)条并无明文涵盖在裁定无罪或获得释放、订定保留条件、获得转介或向上诉法庭或终审法院提出上诉后的法律程序。随着第4条之修订,任何人涉及由上诉法庭或终审法院审理的上诉案件,不论定罪与否,也可获给予法律援助。

第21条的修订

在检讨刑事法律援助费用的过程中,当局与两个法律专业团体就经修订的费用架构及处理刑事法律援助案件的外委律师的收费达成协议。修订第21条的目的,就是要改善刑事法律援助费用制度的费用架构。重点如下:

(a) 准备工作

在修订前,不论用了多少时间作审讯前或上诉前的准备工作,律师和大律师的收费是「划一」的。在经修订的费用架构下,准备工作的薪酬将会按所需时间计算。

In April 2011, the Home Affairs Bureau informed the Council that the Administration was in the course of drafting the Legal Aid in Criminal Cases (Amendment) Rules to amend Rule 4 and Rule 21 of the Legal Aid in Criminal Cases Rules (LACCR). The proposed +1.6% adjustment to the criminal legal aid fees would be incorporated in the Amendment Rules. Such Amendment Rules were subsequently made by the Criminal Procedure Rules Committee with the approval of the Legislative Council and came into operation in March 2012. Details of the amendment to Rules 4 and 21 are as follows:

Amendments to Rule 4

Rule 4 of the LACCR sets out the list of circumstances in which legal aid in criminal cases may be granted, subject to the applicant's eligibility on means and merits. In the past, Rule 4(1) did not expressly cover proceedings where after an acquittal or discharge, a reservation, reference or an appeal is made to the Court of Appeal (CA) and the Court of Final Appeal (CFA). With the amendments to Rule 4, legal aid can be granted to a person regardless of whether he/she has been convicted of an offence in an appeal case heard in the CA and the CFA.

Amendments to Rule 21

In the course of reviewing the criminal legal aid fees, the Administration has reached an agreement with the two legal professional bodies on the revised fee structure and the fees payable to assigned solicitors handling criminal legal aid cases. The purpose of the amendments to Rule 21 is to improve the payment structure of the criminal legal aid fee system. The main features are set out below –

(a) Preparatory work

Before the revision, solicitors and counsel were paid a fee for preparation of the case for trial or appeal, irrespective of the time spent up to the first day of trial

(b) 合理调整收费项目

过去，只有大律师获支付与受法律援助人士的「会议费用」。在经修订的架构下，律师也可收取按小时计算的会议费用。

(c) 提高厘定费用和重新厘定费用基础的透明度

在修订前，缴付外委律师的费用是待其工作完成及案件完结后评定的。在经修订的架构下，个别案件的分类和相关费用，以及所需准备时间，会经事先评估，并在委派案件时，在委聘书内注明。外委律师可在承办案件前参阅文件册，以决定是否同意有关费用，并可在有充份理由下，要求重新厘定所议定的费用。这些措施旨在提高收费架构的透明度。

(d) 取消现时有关费用的法定上限或限额

在经修订的费用架构下，付予发出指示律师的费用的法定上限或限额已被取消。

or appeal. Under the revised fee structure, preparation work will be remunerated according to the time required.

(b) Rationalization of fee items

In the past, only counsel was paid a “conference fee” with the legally aided person(s). Under the revised structure, a conference fee will also be payable to solicitors on an hourly basis.

(c) Enhanced transparency for the fee setting and re-determination basis

Before the revision, the fee payable to an assigned lawyer was assessed after the work was done and the case concluded. Under the revised structure, the classification of a particular case and hence the rates, as well as the required preparation time will be assessed beforehand and marked on the brief when making the assignment. Assigned lawyers will be allowed to view the bundle(s) before accepting assignments with a view to agreeing the fees to be paid. They can also seek a re-determination of the agreed fees if circumstances warrant this. These measures are designed to enhance the transparency of the fee structure.

(d) Abolition of existing statutory cap or limit on fees

Under the revised fee structure, the statutory cap or limit on fees payable to instructing solicitors have been abolished.

为期两年为无律师代表诉讼人提供法律咨询服务的试验计划

近年，日益增加的无律师代表诉讼人对香港民事司法制度带来挑战。由于只有少数无律师代表诉讼人知悉法庭规则和

TWO-YEAR PILOT SCHEME TO PROVIDE LEGAL ADVICE FOR LITIGANTS IN PERSON

In recent years, the increasing number of litigants in person (LIPs) has posed a challenge to the Hong Kong civil justice

程序，以致这类诉讼人、法庭以及其他诉讼各方，在推进个案及审理的过程中，遇到不少困难。无律师代表诉讼人一般面对的困难包括：

- (a) 对程序规则及实质法律缺乏认识；
- (b) 不懂得在非正审阶段及审讯期间陈述案情；
- (c) 如对讼一方聘有法律代表，感到不公平和处于下风；以及
- (d) 在部分个案中，无律师代表诉讼人可能会感到不安，以为有关的司法人员会因他们不熟悉法律及法庭程序而感到不耐烦。

立法会议员、香港大律师公会、香港律师会、司法机构和其他持份者，一致建议为无律师代表诉讼人提供法律咨询服务。

在2011年4月，当局通报本局，他们正筹划一个新的两年期试验计划，为无律师代表诉讼人提供免费的法律咨询服务。在2011年11月和2012年2月，当局向立法会司法及法律事务委员会（下称「事务委员会」）提交文件，简介试验计划的运作架构。当局计划伙同两个法律专业团体，并争取其他专业和有兴趣的律师行/大律师事务所支持，以推行试验计划。计划的目的是为那些未能负担私人法律服务，亦不认识本身权利和责任的无律师代表诉讼人，提供有关程序方面的法律意见。具体来说，计划将会：

- (a) 提供给已在区域法院、高等法院原讼法庭及上诉法庭，以及终审法院提出诉讼或是诉讼一方的人士；

system. Few LIPs know the court rules and procedures. This causes them, the court and other parties in the proceedings difficulties in progressing and trying the case. The difficulties generally faced by LIPs include -

- (a) Lack of knowledge of the rules of procedural and substantive law;
- (b) Lack of knowledge as to how to present their case at the interlocutory stages and at the trial;
- (c) A sense of inequality and being disadvantaged where the other party has legal representation; and
- (d) In some cases a sense of grievance induced by perceived judicial irritation at having to deal with an unrepresented litigant unfamiliar with the law and court procedures.

Members of the Legislative Council, the Hong Kong Bar Association ("Bar Association"), the Law Society of Hong Kong ("Law Society"), the Judiciary and other stakeholders have proposed that legal advice be given to LIPs.

In April 2011, the Administration informed the Council that they planned to provide free legal advice to LIPs by means of a new scheme running on a two-year pilot basis. In November 2011 and February 2012, the Administration submitted papers to the AJLS Panel briefing them on the operational framework of the pilot scheme. The Administration aims to launch the scheme in partnership with the two legal professional bodies and with support from members of other profession and the interested law firms/chambers. The objective of the scheme is to provide legal advice on procedural matters to assist LIPs who cannot afford private legal services and who lack knowledge of their rights and responsibilities. Specifically, the Scheme will be -

- (a) available to those who have commenced or are parties to legal proceedings in the District Court, Court of First Instance and Court of Appeal of the High Court, and Court of Final Appeal;

- (b) 提供给未能获得法律援助的人士； (b) available to those who have not been granted legal aid;
- (c) 以先到先得的形式提供；以及 (c) served on a first-come-first-served basis; and
- (d) 只为民事诉讼中不同阶段的法律程序事宜提供意见。 (d) providing advice on civil procedural matters only for different stages of the proceedings.

该计划的办事处将由一名中心主任掌管，并有一名全职或两名兼职常驻律师以及社区律师。社区律师须具备取得专业资格后两年或以上的经验，可以个人名义或律师行的身份（即用律师行名义）以义务性质参与工作。办事处尚有一名法律辅助人员及一名文书助理，支援秘书和行政工作。

当局通知本局这计划经过事务委员会在其2012年2月27日的会议商讨后，得到支持。

The LIPs office will be headed by a Centre-in-charge and supported by one full-time or two part-time resident lawyer(s) and community lawyers, who should have at least two years' post-qualification experience and join the Scheme in their personal capacity or in the capacity of a law firm (i.e. in the firm's name) providing service on a pro bono basis. The office is also supported by a para-legal and a clerical assistant providing secretarial and administrative support.

The Administration informed the Council that the proposed scheme was supported by the AJLS Panel after deliberation at its meeting on 27 February 2012.

大律师证明书

本局自2002年4月起实施一项援助计划，提供免费大律师证明书予已通过经济审查的法律援助上诉人。若无此证明书，上诉人无法根据《法律援助条例》第26A条寻求复核法律援助署署长拒绝批出法援的决定。有关计划的详情和运作情况已载述于过往的年度报告内。

截至2012年3月31日，援助计划的律师名册上有78名大律师（46名民事大律师及32名刑事大律师）及48名律师（37名民事律师及11名刑事律师）。就年内获批的申请，本局共将37宗个案外判予大律师和律师处理，详情如下：

CERTIFICATE BY COUNSEL

In April 2002, the Council implemented an assistance scheme to provide a legal aid appellant who has passed the means test with a free certificate by counsel without which he cannot seek a review of DLA's refusal to grant legal aid under Section 26A of the Legal Aid Ordinance. Details of the scheme and its operation have always been set out in annual reports of the Council.

As at 31 March 2012, the Scheme had 78 counsel (46 civil and 32 criminal) and 48 solicitors (37 civil and 11 criminal) on the panel. In respect of the applications approved during the year, the Council made a total of 37 assignments. Details are as follows -

刑事案件 Criminal Cases

	大律师 Counsel	律师 Solicitors
(a) 委派予申请人提名的名册律师 Assignment to panel lawyers according to applicants' nomination	31	31
(b) 委派予申请人提名的非名册律师（其曾于上诉庭代表申请人） Assignment to non-panel lawyers (who have represented the applicants in the appeal court) according to applicants' nomination	0	0
(c) 以轮流方式委派予名册律师 Assignment to panel lawyers by rotation	0	0
委派案件总数 Total assignment	31	31

民事案件 Civil Cases

	大律师 Counsel	律师 Solicitors
(a) 委派予申请人提名的名册律师 Assignment to panel lawyers according to applicants' nomination	6	6
(b) 委派予申请人提名的非名册律师（其曾于上诉庭代表申请人） Assignment to non-panel lawyers (who have represented the applicants in the appeal court) according to applicants' nomination	0	0
(c) 以轮流方式委派予名册律师 Assignment to panel lawyers by rotation	0	0
委派案件总数 Total assignment	6	6

在2011年4月1日至2012年3月31日期间，共接获53宗（41宗刑事案件及12宗民事案件）申请。当中，37宗（31宗刑事案件及6宗民事案件）申请获批，16宗（10宗刑事案件及6宗民事案件）申请被拒。

就该37宗获批的申请，已签发6份（刑事案件）大律师证明书陈述申请人有合理机会上诉得直，以及31份（25宗刑事案件及6宗民事案件）陈述申请人拟向终审法院提出的上诉并无合理机会成功。

至于该6宗获大律师证明书陈述有合理机

From 1 April 2011 to 31 March 2012, there were 53 (41 criminal and 12 civil) applications. Of these, 37 (31 criminal and 6 civil) applications were approved and 16 (10 criminal and 6 civil) applications were rejected.

In respect of the 37 approved applications, 6 (criminal) certificates by counsel stating that the applicants had reasonable prospect of success and 31 certificates by counsel (25 criminal and 6 civil) stating that the applicants did not have reasonable prospect of success in their intended appeals to the Court of Final Appeal were issued.

For the 6 criminal cases which were certified by counsel to have reasonable prospect of success, the Legal Aid

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会上诉得直的刑事案件，法援署已决定为该批案件提供法律援助。

Department (LAD) had decided to grant legal aid in all of the cases.

2010至11年度及2011至12年度的统计列表如下：

A table showing the statistics in 2010/11 and 2011/12 is appended below –

	2010年4月1日至 2011年3月31日接获的申请 Applications Received from 1.4.2010 to 31.3.2011			2011年4月1日至 2012年3月31日接获的申请 Applications Received from 1.4.2011 to 31.3.2012		
	刑事 Criminal	民事 Civil	总计 Total	刑事 Criminal	民事 Civil	总计 Total
1. 申请 Applications						
(a) 批准 approved	44	7	51	31	6	37
(b) 拒绝 rejected	13	11	24	10	6	16
(c) 中止 aborted	1	0	1	0	0	0
总计 Total	58	18	76	41	12	53
2. 大律师证明书 Certificate by Counsel						
(a) 有合理机会上诉得直 has reasonable prospect of success	5	0	5	6	0	6
(b) 无合理机会上诉得直 has no reasonable prospect of success	39	7	46	25	6	31
总计 Total	44	7	51	31	6	37
3. 有合理机会上诉得直的案件 Cases with reasonable prospect of success						
(a) 经法援署署长复核后获提供法律援助 legal aid granted upon review by Director of Legal Aid (DLA)	4	0	4	6*	0	6
(b) 经法援署署长复核后拒绝提供法律援助 legal aid not granted upon review by DLA	0	0	0	0	0	0
(c) 申请人撤回申请 withdrawn by applicant	1	0	1	0	0	0
总计 Total	5	0	5	6	0	6

* 包括一宗案件原获批法律援助，但其后被法援署署长取消。
including one case originally granted with legal aid but discharged by DLA afterwards

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两年的统计数据显示：

- (a) 总申请数目减少了30.3%（由2010/11年度的76宗下降至2011/12年度的53宗）；当中刑事案件下降了29.3%（由2010/11年度的58宗减少至2011/12年度的41宗）；民事案件则减少了33.3%（由2010/11年度的18宗下降至2011/12年度的12宗）；
- (b) 获大律师确认有合理机会上诉得直的案件的百分比，由2010/11年度的9.8%上升至2011/12年度的16.2%；上升主要来自刑事案件；在2010/11年度和2011/12年度并无民事案件获大律师证明有合理机会上诉得直；及
- (c) 法援署因应大律师证明书提供法律援助案件的百分比，2010/11年度和2011/12年度均为100%。

就2011/12年度接获的申请，共拨出\$1,104,000港元作为支付大律师及律师提供证明书的费用，详情如下：

The statistics for the two years reveal that -

- (a) the total number of applications has decreased by 30.3% (from 76 in 2010/11 to 53 in 2011/12), with a decrease of 29.3% in criminal cases (from 58 in 2010/11 to 41 in 2011/12) and 33.3% in civil cases (from 18 in 2010/11 to 12 in 2011/12);
- (b) the percentage of cases certified by counsel to have reasonable prospect of success has increased from 9.8% in 2010/11 to 16.2% in 2011/12, with increase mainly came from criminal cases as there were no civil cases certified by counsel to have reasonable prospect of success in 2010/11 and 2011/12; and
- (c) the percentage of cases where legal aid was granted by LAD in the light of the counsel certificates is 100% in both 2010/11 and 2011/12.

In respect of applications received in 2011/12, HK\$1.104 million was committed as fees for counsel and solicitors for providing the certificates. Details are as follows -

	获批案件数目 Number of Cases Approved	每宗案件的大律师费用 Counsel Fee/Case	大律师费用 总计 Total Counsel Fee	每宗案件的 律师费用 Solicitor Fee/Case	律师费用 总计 Total Solicitor Fee	费用 总数 Total Fee
刑事 Criminal	31	\$15,000	\$465,000	\$9,000	\$279,000	\$744,000
民事 Civil	6	\$40,000	\$240,000	\$20,000	\$120,000	\$360,000
总数 Total	37		\$705,000		\$399,000	\$1,104,000