

運作的政策和程序

OPERATIONAL POLICY AND PROCEDURES

刑事法律援助費用制度

CRIMINAL LEGAL AID FEES SYSTEM

法律援助署（下稱「法援署」）聘用私人執業的大律師和律師擔任刑事訴訟法律援助案件的辯方律師，《刑事訴訟程序條例》第221章下的《刑事案件法律援助規則》第221D章第21條，已訂明支付該等律師的費用表和費用的評估機制。

根據立法會財務委員會（下稱「財委會」）在1992年10月的決議，當局每兩年檢討有關費用一次。財委會在2003年6月，把日後批准調整費用的權力轉授行政署長，惟費用的調整幅度不得超逾參照期內按丙類消費物價指數計算的物價變動幅度。在進行每兩年一次的檢討時，當局主要考慮參照期內通脹/通縮的情況，以及聘用大律師和律師是否存在困難。

從2010年的兩年檢討中，我們得悉在參照期內（即2008年7月至2010年7月期間），丙類消費物價指數上升了1.6%。因此，當局建議參照期內通脹的升幅，把費用調升1.6%。而2010年7月後經濟變動的影響，將於下次兩年檢討中反映。

在2011年4月，民政事務局（下稱「民

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，當局正草擬刑事案件法律援助(修訂)規則，以修改《刑事案件法律援助規則》第4條和第21條，刑事案件法律援助費用增加1.6%的建議將於次修訂中落實。這些規則修訂由刑事訴訟程序規則委員會制定，再提交立法會議決，並在2012年3月生效。第4條和第21條的修訂內容如下：

第4條的修訂

《刑事案件法律援助規則》第4條列明刑事案件可獲得法律援助的情況，惟申請人須通過經濟審查和案情審查。過去，第4(1)條並無明文涵蓋在裁定無罪或獲得釋放、訂定保留條件、獲得轉介或向上訴法庭或終審法院提出上訴後的法律程序。隨著第4條之修訂，任何人涉及由上訴法庭或終審法院審理的上訴案件，不論定罪與否，也可獲給予法律援助。

第21條的修訂

在檢討刑事法律援助費用的過程中，當局與兩個法律專業團體就經修訂的費用架構及處理刑事法律援助案件的外委律師的收費達成協議。修訂第21條的目的，就是要改善刑事法律援助費用制度的費用架構。重點如下：

(a) 準備工作

在修訂前，不論用了多少時間作審訊前或上訴前的準備工作，律師和大律師的收費是「劃一」的。在經修訂的費用架構下，準備工作的薪酬將會按所需時間計算。

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) 合理調整收費項目

過去，只有大律師獲支付與受法律援助人士的「會議費用」。在經修訂的架構下，律師也可收取按小時計算的會議費用。

(c) 提高釐定費用和重新釐定費用基礎的透明度

在修訂前，繳付外委律師的費用是待其工作完成及案件完結後評定的。在經修訂的架構下，個別案件的分類和相關費用，以及所需準備時間，會經事先評估，並在委派案件時，在委聘書內註明。外委律師可在承辦案件前參閱文件冊，以決定是否同意有關費用，並可在有充分理由下，要求重新釐定所議定的費用。這些措施旨在提高收費架構的透明度。

(d) 取消現時有關費用的法定上限或限額

在經修訂的費用架構下，付予發出指示律師的費用的法定上限或限額已被取消。

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.

為期兩年為無律師代表訴訟人提供法律諮詢服務的試驗計劃

近年，日益增加的無律師代表訴訟人對香港民事司法制度帶來挑戰。由於只有少數無律師代表訴訟人知悉法庭規則和

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，以致這類訴訟人、法庭以及其他訴訟各方，在推進個案及審理的過程中，遇到不少困難。無律師代表訴訟人一般面對的困難包括：

- (a) 對程序規則及實質法律缺乏認識；
- (b) 不懂得在非正審階段及審訊期間陳述案情；
- (c) 如對訟一方聘有法律代表，感到不公平和處於下風；以及
- (d) 在部分個案中，無律師代表訴訟人可能會感到不安，以為有關的司法人員會因他們不熟識法律及法庭程序而感到不耐煩。

立法會議員、香港大律師公會、香港律師會、司法機構和其他持份者，一致建議為無律師代表訴訟人提供法律諮詢服務。

在2011年4月，當局通報本局，他們正籌劃一個新的兩年期試驗計劃，為無律師代表訴訟人提供免費的法律諮詢服務。在2011年11月和2012年2月，當局向立法會司法及法律事務委員會（下稱「事務委員會」）提交文件，簡介試驗計劃的運作架構。當局計劃夥同兩個法律專業團體，並爭取其他專業和有興趣的律師行/大律師事務所支持，以推行試驗計劃。計劃的目的是為那些未能負擔私人法律服務，亦不認識本身權利和責任的無律師代表訴訟人，提供有關程序方面的法律意見。具體來說，計劃將會：

- (a) 提供給已在區域法院、高等法院原訟法庭及上訴法庭，以及終審法院提出訴訟或是訴訟一方的人士；

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) 提供給未能獲得法律援助的人士； (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) 只為民事訴訟中不同階段的法律程序事宜提供意見。 (d) providing advice on civil procedural matters only for different stages of the proceedings.

該計劃的辦事處將由一名中心主任掌管，並有一名全職或兩名兼職常駐律師以及社區律師。社區律師須具備取得專業資格後兩年或以上的經驗，可以個人名義或律師行的身份（即用律師行名義）以義務性質參與工作。辦事處尚有一名法律輔助人員及一名文書助理，支援秘書和行政工作。

當局通知本局這計劃經過事務委員會在其2012年2月27日的會議商討後，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.

大律師證明書

本局自2002年4月起實施一項援助計劃，提供免費大律師證明書予已通過經濟審查的法律援助上訴人。若無此證明書，上訴人無法根據《法律援助條例》第26A條尋求覆核法律援助署署長拒絕批出法援的決定。有關計劃的詳情和運作情況已載述於過往的年度報告內。

截至2012年3月31日，援助計劃的律師名冊上有78名大律師（46名民事大律師及32名刑事大律師）及48名律師（37名民事律師及11名刑事律師）。就年內獲批的申請，本局共將37宗個案外判予大律師和律師處理，詳情如下：

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 -

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刑事案件 Criminal Cases

	大律師 Counsel	律師 Solicitors
(a) 委派予申請人提名的名冊律師 Assignment to panel lawyers according to applicants' nomination	31	31
(b) 委派予申請人提名的非名冊律師（其曾於上訴庭代表申請人） Assignment to non-panel lawyers (who have represented the applicants in the appeal court) according to applicants' nomination	0	0
(c) 以輪流方式委派予名冊律師 Assignment to panel lawyers by rotation	0	0
委派案件總數 Total assignment	31	31

民事案件 Civil Cases

	大律師 Counsel	律師 Solicitors
(a) 委派予申請人提名的名冊律師 Assignment to panel lawyers according to applicants' nomination	6	6
(b) 委派予申請人提名的非名冊律師（其曾於上訴庭代表申請人） Assignment to non-panel lawyers (who have represented the applicants in the appeal court) according to applicants' nomination	0	0
(c) 以輪流方式委派予名冊律師 Assignment to panel lawyers by rotation	0	0
委派案件總數 Total assignment	6	6

在2011年4月1日至2012年3月31日期間，共接獲53宗（41宗刑事案件及12宗民事案件）申請。當中，37宗（31宗刑事案件及6宗民事案件）申請獲批，16宗（10宗刑事案件及6宗民事案件）申請被拒。

就該37宗獲批的申請，已簽發6份（刑事案件）大律師證明書陳述申請人有合理機會上訴得直，以及31份（25宗刑事案件及6宗民事案件）陳述申請人擬向終審法院提出的上訴並無合理機會成功。

至於該6宗獲大律師證明書陳述有合理機

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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會上訴得直的刑事案件，法援署已決定為該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年度的統計列表如下：

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日接獲的申請 Applications Received from 1.4.2010 to 31.3.2011			2011年4月1日至 2012年3月31日接獲的申請 Applications Received from 1.4.2011 to 31.3.2012		
	刑事 Criminal	民事 Civil	總計 Total	刑事 Criminal	民事 Civil	總計 Total
1. 申請 Applications						
(a) 批准 approved	44	7	51	31	6	37
(b) 拒絕 rejected	13	11	24	10	6	16
(c) 中止 aborted	1	0	1	0	0	0
總計 Total	58	18	76	41	12	53
2. 大律師證明書 Certificate by Counsel						
(a) 有合理機會上訴得直 has reasonable prospect of success	5	0	5	6	0	6
(b) 無合理機會上訴得直 has no reasonable prospect of success	39	7	46	25	6	31
總計 Total	44	7	51	31	6	37
3. 有合理機會上訴得直的案件 Cases with reasonable prospect of success						
(a) 經法援署署長覆核後獲提供法律援助 legal aid granted upon review by Director of Legal Aid (DLA)	4	0	4	6*	0	6
(b) 經法援署署長覆核後拒絕提供法律援助 legal aid not granted upon review by DLA	0	0	0	0	0	0
(c) 申請人撤回申請 withdrawn by applicant	1	0	1	0	0	0
總計 Total	5	0	5	6	0	6

* 包括一宗案件原獲批法律援助，但其後被法援署署長取消。
including one case originally granted with legal aid but discharged by DLA afterwards

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兩年的統計數據顯示：

- (a) 總申請數目減少了30.3%（由2010/11年度的76宗下降至2011/12年度的53宗）；當中刑事案件下降了29.3%（由2010/11年度的58宗減少至2011/12年度的41宗）；民事案件則減少了33.3%（由2010/11年度的18宗下降至2011/12年度的12宗）；
- (b) 獲大律師確認有合理機會上訴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%；上升主要來自刑事案件；在2010/11年度和2011/12年度並無民事案件獲大律師證明有合理機會上訴得直；及
- (c) 法援署因應大律師證明書提供法律援助案件的百分比，2010/11年度和2011/12年度均為100%。

就2011/12年度接獲的申請，共撥出\$1,104,000港元作為支付大律師及律師提供證明書的費用，詳情如下：

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 -

	獲批案件數目 Number of Cases Approved	每宗案件的大律師費用 Counsel Fee/Case	大律師費用 總計 Total Counsel Fee	每宗案件的 律師費用 Solicitor Fee/Case	律師費用 總計 Total Solicitor Fee	費用 總數 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
總數 Total	37		\$705,000		\$399,000	\$1,104,000