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法律援助的政策及策略

Legal Aid Policy & Strategy



《法律援助(評定資源及分擔費用)規例》下用作釐定受助人應繳分擔費用比率的新經評定財務資源組別及新的財務資格限額

New Bandwidths of Assessed Financial Resources for Determining Contribution Payable under the Legal Aid (Assessment of Resources and Contributions) Regulations and New Financial Eligibility Limits for Legal Aid

法律援助服務是由公帑支持運作。受助人視乎其經評定的財務資源水平，必須繳付與其經濟狀況相稱的分擔費用。《法律援助(評定資源及分擔費用)規例》（《規例》）附表3第1部訂明普通法律援助計劃（「普通計劃」）下相關分擔費用的比率。

本局去年已報告，民政局會建議修訂規例，以修改《規例》下用作釐定受助人應繳分擔費用比率的經評定財務資源組別，以確保各財務資源組別較平均地分布，有關的修訂亦可免除因「普通計劃」的財務資格限額不時調整而要經常進行法例修訂以更新有關資源組別。有別於以往用實際金額數字列出的做法，新資源組別將改以相對「普通計劃」財務資格限額的百分率顯示，如「普通計劃」財務資格限額將來有所變動，有關組別亦會自動作出相應調整。在修訂資源組別後，民政局會把「普通計劃」及「輔助計劃」的財務資格限額上調7.7%，以反映丙類消費物價指數在2012年7月至2014年7月期間錄得的累積變動。

本局知悉「普通計劃」的新經評定財務資源組別及分擔費用比率已於2015年6月17日生效，而「普通計劃」及「輔助計劃」

Legal aid services are supported by public funds. Aided persons, depending on the level of their assessed financial resources, are required to pay a contribution proportionate to their means. The scales of contribution rates under the Ordinary Legal Aid Scheme (OLAS) are prescribed in Part I of Schedule 3 to the Legal Aid (Assessment of Resources and Contributions) Regulations (LAR).

Last year we reported that HAB would introduce the amendment regulations so as to implement a revised set of bandwidths of assessed financial resources for determining contribution payable under the LAR so that the bandwidths are more evenly distributed. The proposed amendments will also avoid the need for regular legislative amendments in future to keep the bandwidths up-to-date with the financial eligibility limit under the OLAS as may be revised from time to time. The resources bandwidths will be represented as percentages of the OLAS FEL rather than absolute dollar figures used before. The bandwidths will then automatically be adjusted upon any future OLAS FEL adjustments. Upon making amendments to the financial resources bandwidths, HAB would adjust the OLAS FEL, together with the SLAS FEL, upward by 7.7% to reflect the accumulated change in Consumer Price Index (C) (CPI(C)) recorded between July 2012 and July 2014.

The Council noted that with effect from 17 June 2015, the financial resources bandwidths and contribution rates have been revised for the OLAS, and the financial eligibility limits for OLAS and SLAS have been adjusted upwards to \$290,380 and \$1,451,900

的財務資格限額已分別上調至290,380元及1,451,900元，並於2015年7月17日開始生效。現時「普通計劃」下受助人的應繳分擔費用如下：

respectively effective 17 July 2015. The contribution payable by aided persons under OLAS is now as follows:

財務資源 Financial Resources	分擔費比率 Contribution Rates	應繳分擔費用 Contribution Payable
\$0 - \$36,297.50	-	\$0
\$36,297.51 - \$72,595.00	2%	\$726 - \$1,452
\$72,595.01 - \$108,892.50	2.5%	\$1,815 - \$2,722
\$108,892.51 - \$145,190.00	5%	\$5,445 - \$7,260
\$145,190.01 - \$181,487.50	10%	\$14,519 - \$18,149
\$181,487.51 - \$217,785.00	15%	\$27,223 - \$32,668
\$217,785.01 - \$254,082.50	20%	\$43,557 - \$50,817
\$254,082.51 - \$290,380.00	25%	\$63,521 - \$72,595

本局樂見新的分擔費用比率及財務資格限額已經推行。

The Council is glad to see the implementation of the new contribution rates and the financial eligibility limits.

刑事法律援助費用的檢討 Review of Criminal Legal Aid Fees

目前，法援署聘用私人執業律師處理刑事法律援助案件的訴訟工作，是按《刑事案件法律援助規則》（《規則》）（第221章附屬法例D）訂明的大律師及律師處理各級別法院刑事案件收費來支付費用；律政司在行政上參照同一收費表聘用私人執業律師代表政府為刑事案件進行檢控。在得到立法會的支持及在政府和兩個法律專業團體的共同努力下，行政當局在2012年3月推行了「標明報聘費制度」以改善刑事法律援助費用制度的付費架構，並承諾會在新費用制度實施後的兩年內，檢討刑事法律援助費用的修訂水平。

At present, lawyers in private practice engaged to undertake litigation work in respect of criminal cases on behalf of LAD are remunerated in accordance with the Schedule to the Legal Aid in Criminal Cases Rules (LACCR) (Cap. 221 sub. leg. D), which specifies the fees payable to counsel and solicitors for criminal cases in different levels of Court. The Department of Justice (DoJ) draws reference to the same scale of fees administratively to engage counsel in private practice to appear for the Government in criminal cases. With LegCo's support and the collaborative efforts of the Government and the two legal professional bodies, the payment structure of the criminal legal aid fees system was enhanced in March 2012 with the introduction of a "marked brief system". The Government has also undertaken to review the revised rates of criminal legal aid fees in two years' time upon the implementation of the enhanced system.

承以前報告，民政局在2014年3月成立工作小組，檢討刑事法律援助費用的收費水平，工作小組成員包括香港大律師公會和香港律師會的代表，以及法援署和律政司的政府代表。在2016年2月，民政局通知本局有關上調刑事法律援助費用的建議方案。接下來的段落將闡述方案詳情。

(a) 大律師費用上調 50%

工作小組考慮到大律師的工作性質及所履行的專業職責，以及在2012年的檢討中給予大律師的法援費用並沒有實質調升，因此，建議將大律師的刑事法援費用上調50%（已包涵丙類消費物價指數於2012年7月至2014年7月參照期內的7.7%升幅）。根據工作小組的方案，大律師在原訟法庭出庭以處理刑事法律援助案件的費用會由現時的每小時1,530元增至\$2,300元。

(b) 發出指示的律師費用上調 25%

在2012年的檢討中付予發出指示的律師的費用，已獲上調約60%（由460元增至740元）。工作小組經討論後，建議將付予發出指示的律師的刑事法律援助費用上調25%（已包涵2012年7月至2014年7月參照期內丙類消費物價指數的7.7%升幅）。根據工作小組的建議，發出指示的律師在原訟法庭處理刑事法律援助案件的費用，會由現時的每小時800元增至1,000元。

As reported before, in March 2014, HAB set up a working group to review the rates of criminal legal aid fees. Members of the working group include representatives from the Hong Kong Bar Association and the Law Society of Hong Kong, as well as government representatives from LAD and DoJ. In February 2016, HAB informed the Council of the proposed package of increases in criminal legal aid fees. Details are elaborated in the ensuing paragraphs.

(a) A 50% increase for counsel

Having regard to the nature of work and professional duties to be discharged by counsel, and the fact that the legal aid fees payable to counsel were not substantively increased in the 2012 review, the working group has proposed a 50% increase in criminal legal aid fees for counsel (which will include the 7.7% CPI(C) increase for the reference period from July 2012 to July 2014). Under the working group's proposal, the hourly rate for counsel appearing before the Court of First Instance for criminal legal aid cases will be increased from the current \$1,530 to \$2,300.

(b) A 25% increase for instructing solicitors

The fees payable to instructing solicitors were increased by about 60% (from \$460 to \$740) in the 2012 review. After deliberation, the working group has proposed a 25% increase in the criminal legal aid fees for instructing solicitors (which is also inclusive of the 7.7% CPI(C) increase for the reference period from July 2012 to July 2014). Under the working group's proposal, the hourly rate for instructing solicitors handling criminal legal aid cases at the Court of First Instance will be increased from the current \$800 to \$1,000.

(c) 在區域法院以訟辯人兼發出指示的律師身分行事的律師費用上調 40%

現時《規則》亦訂明付予在區域法院以訟辯人兼發出指示的律師（訟辯律師）身分行事的律師的費用。訟辯律師與大律師的情況相若，在區域法院處理案件的費用在2012年的檢討中並無實質調整。鑑於大律師費用和發出指示的律師費用已分別獲建議上調50%和25%，工作小組建議把付予訟辯律師以處理區域法院案件的刑事法律援助費用上調40%，由現時的每小時1,260元增至1,770元。由於訟辯律師於處理法律援助案件時身負較重要的職責，工作小組相信這個費用水平既能提供與職責相稱的合理待遇，亦可與大律師和發出指示的律師已獲上調的費用維持恰當的對比。

(d) 為享有較高級法院出庭發言權的訟辯律師設立新的費用項目

至於為享有較高級法院出庭發言權的訟辯律師新增的費用類別，相關費用將按大律師處理較高級法院案件的最新建議費用計算，並按付予大律師和訟辯律師以處理區域法院案件的費用之間的百分比差額進一步上調（即準備費用或首天法庭聆訊費用高出15.48%；額外準備費用高出11.48%；以及繼續委聘費用高出28.02%）。舉例來說，先把現時付予大律師處理原訟法庭案件的準備費用上調50%，然後再上調15.48%，便會得出付予享有較高級法院出庭發言權的訟辯律師處理原訟法庭案件的建議準備費用。因此，大律師和訟辯律師處理原訟法庭案件的建議準備

(c) A 40% increase for solicitors acting as both advocate and instructing solicitor in the District Court

The existing LACCR also specifies fees payable to solicitors acting as both advocate and instructing solicitor ("solicitor advocates") in the District Court. Similar to the rates for counsel, the rates for solicitor advocates in the District Court were not substantively revised in the 2012 review. Noting the proposed 50% increase in counsel fees and 25% increase for instructing solicitors' fees, the working group has proposed a 40% increase in the criminal legal aid fees for solicitor advocates in the District Court, from the current hourly rate of \$1,260 to \$1,770. It is believed this is a reasonable level of remuneration commensurate with the heavier job responsibilities of solicitor advocates handling legal aid cases, while maintaining the relativity with the increased fees for counsel and instructing solicitors.

(d) New fee items for Solicitor Advocates with higher rights of audience

As regards the new category of fees for solicitor advocates with higher rights of audience, they would be calculated based on the proposed new fees payable to counsel at the higher courts, and adjusted further upwards according to the percentage difference between the fees payable to counsel and solicitor advocates in the District Court (i.e. 15.48% higher for preparation or first day Court hearing, 11.48% higher for additional preparation and 28.02% higher for refresher). For illustration, the proposed preparation fee payable to a solicitor advocate with higher rights of audience in the Court of First Instance will be the existing preparation fee payable to counsel in the Court of First Instance first adjusted upwards by 50%, then further increased by 15.48%. Accordingly, the proposed preparation fee payable to counsel and solicitor advocates for Court of First Instance cases would be \$18,390 and \$21,240 respectively. The

費用將分別為18,390元和21,240元。由於訟辯律師具有身兼訟辯人和發出指示的律師的雙重身分，工作小組相信這對他們來說是一個合理的報酬水平。

本局得知工作小組在審議過程中，曾審視一些相關的海外司法管轄區的法律援助費用。由於有些海外司法管轄區採用結構不同的法律援助費用制度、設有費用上限，及採用偏低的民事法律援助費用水平，工作小組認為這難與香港的法律援助費用制度比較。舉例來說，在英國，除了有限的幾類案件（例如涉及兒童的案件）外，大多數的民事案件已不再屬於法律援助的範圍。在澳洲新南威爾斯州，如民事案件敗訴及訟費需由政府支付，則付予有關外委律師的費用會較低。在加拿大安大略省，有些刑事法律援助案件所支付的每小時費用可能看似高於香港，但該些費用設有支付時數上限。除此之外，一些海外司法管轄區的民事和刑事案件法律援助費用水平雖然似乎看齊，但事實上這些地區付予接辦民事案件的律師的費用卻往往偏低。

本局亦知悉正如工作小組向兩個法律專業團體解釋，由於為民事和刑事案件而設的制度並不相同，小組認為應繼續容許在不同範疇執業的律師獲得不同報酬。因此，工作小組集中為接辦刑事法律援助案件的律師訂定合理收費水平，並致力與兩個法律專業團體就建議增幅尋求共識。



working group believes this is a reasonable level of remuneration for solicitor advocates as they perform the dual roles of advocate and instructing solicitor.

The Council was informed that in the course of deliberation by the working group, they have examined the legal aid fees in some relevant overseas jurisdictions. Due to structural differences, the use of caps and much lower civil legal aid rates payable in some overseas jurisdictions, the working group found it difficult to compare the Hong Kong legal aid fees system with those of overseas jurisdictions. For example, in the United Kingdom, most civil cases are no longer covered under the legal aid scope, save for limited types of cases, such as those involving children. In New South Wales of Australia, the rate payable to civil assigned-out lawyers is lower if the case is lost and the costs are paid by the Government. In Ontario of Canada, whilst in some cases the hourly rates for criminal legal aid cases may seem to be higher than those paid in Hong Kong, the payments are however capped by the number of hours payable. Besides, in some overseas jurisdictions where the civil and criminal legal aid fee rates may seem to be on par, very often it is because they are paying rather low rates for civil cases.

The Council also noted that as explained to the two legal professional bodies, since the systems for civil and criminal cases are different, the working group was of the view that differences between the rates for remunerating lawyers in different practices should continue to be allowed. Hence, the working group has focused on working out reasonable fee rates for lawyers undertaking criminal legal aid cases and fostering a consensus on the proposed increases with the two legal professional bodies.

本局獲悉民政局在2016年2月22日就上述刑事法律援助費用上調建議方案諮詢立法會司法及法律事務委員會。刑事訴訟程序規則委員會於2016年5月4日對《規則》作出修訂，而民政局已在2016年6月向立法會提出動議以修改法例。

本局期待支付代表法援署處理刑事訴訟工作的大律師及律師的新費用早日生效。

It was noted that HAB had consulted the LegCo Panel on Administration of Justice and Legal Services on the proposed package of increases in criminal legal aid fees as set out above on 22 February 2016. The Criminal Procedure Rules Committee made the Amendment Rules to the LACCR on 4 May 2016. HAB had served a notice to the LegCo for moving a resolution in LegCo in June 2016 to effect the legislative changes.

The Council is looking forward to the commencement of the new criminal legal aid fees payable to counsel and solicitors.

為法援受助人委派律師的安排 Assignment of Lawyers to Legally Aided Persons

在2013年9月，法援署就分派法律援助個案引入「申報制度」，以回應公眾對不當兜攬生意活動或包攬訴訟的關注。此制度的目的是為確保受助人所作的律師提名，純屬其自由意願，以及並無與任何人士達成協議，包括被提名的律師、律師的僱員、代理或索償代理，攤分在訴訟中可能討回的任何損害賠償、財產或訟費。相關條款亦列明於律師委任信中作為委派案件的條件，獲提名的律師如未能接受上述條款，便不得接受有關委派。

兩個法律專業團體在2015年3月的立法會司法及法律事務委員會會議上，要求法援署檢討「申報制度」的條款，以進一步收緊名

In September 2013, LAD introduced a “declaration system” for assignment of legal aid cases to address the public concern on improper touting or champerty. The system is designed to ensure that nominations of lawyers are made out of the aided persons’ own free will without agreeing to share any damages, property or costs which they may get in the proceedings with any person(s) including the lawyers nominated, the lawyers’ employees, agents or claims agents. Corresponding clauses are also set out in the assignment letters issued to lawyers as assignment conditions. A nominated lawyer who is unable to accept such conditions will not be allowed to take up the assignment.

At the meeting of the LegCo Panel on Administration of Justice and Legal Services in March 2015, the two legal professional bodies requested LAD to review the terms under the “declaration system” with a view to tightening the conditions of assignment to panel lawyers further. LAD has since completed the review and the assignment letters to lawyers have been revised incorporating the suggestions of the two professional bodies.

The Council welcomes the changes and is also glad to know that LAD will continue to work with the Law Society, which has set up a sub-committee, with a



冊律師接辦案件的條件。法援處已經完成相關檢討，並根據兩個法律專業團體的意見修改律師委任信。

本局對有關修改表示歡迎，同時樂見法援署續與香港律師會合作，成立包括法援署首長級人員的小組委員會，研究如何協助法援申請人應付不當的兜攬生意活動。

本局明白《法律援助條例》第13條列明，如法援受助人欲自行挑選，他有權從法律援助律師名冊中揀選任何私人執業律師以處理他的法援案件。法援署會本着以受助人利益為依歸的基本原則分派法援工作予名冊內的律師，只要被受助人提名的律師／大律師具備有關個案所需的相關經驗及專長，以及過往在處理法援案件時沒有不良紀錄，除非有令人信服的理由，法援署一般不會拒絕有關律師／大律師的提名並同意受助人的選擇。法援署曾多次重申，包括在立法會司法及法律事務委員會在2015年3月舉行的會議，該署不宜查究受助人是否因某律師曾作出某些不適當的行為才提名該律師，此舉不但不恰當，亦有辱被提名律師的品格及專業操守。在司法覆核案件方面，該等查詢會被視為採取不必要及不當的手段，企圖影響法援訴訟的結果。

directorate officer from LAD as member, to study how to assist legal aid applicants to deal with improper touting activities.

The Council understands that under section 13 of the Legal Aid Ordinance, aided persons have the right to select any lawyers in private practice who are on the Legal Aid Panel, if they so desire, to handle their own legal aid cases. LAD will adhere to the fundamental principle that the aided person's interest is of paramount importance when distributing legal aid work to lawyers on the Panel. As long as the solicitor/counsel nominated by the aided person has obtained the relevant experience and expertise required to take up the assignment, and no previous records of unsatisfactory performance in handling legal aid cases, LAD will normally accede to and will not reject an aided person's choice of solicitor/counsel unless there are compelling reasons to do so. On various occasions including the meeting of LegCo Panel on Administration of Justice and Legal Services in March 2015, LAD has explained that it was improper for the Department and would be a slur on the character and professional integrity of the nominated lawyer for LAD to enquire if the nomination was promoted by some kind of questionable conduct on the part of the lawyer concerned. In judicial review cases, any such enquiry might also be interpreted as an unnecessary and improper attempt to influence the outcome of legally aided proceedings.

