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## 法律援助的政策及策略 Legal Aid Policy & Strategy



## 《法律援助(评定资源及分担费用)规例》下用作厘定受助人应缴分担费用比率的新经评定财务资源组别及新的财务资格限额

### 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

法律援助服务是由公帑支持运作。受助人视乎其经评定的财务资源水平，必须缴付与其经济状况相称的分担费用。《法律援助(评定资源及分担费用)规例》（《规例》）附表3第1部订明普通法律援助计划（「普通计划」）下相关分担费用的比率。

本局去年已报告，民政局会建议修订规例，以修改《规例》下用作厘定受助人应缴分担费用比率的经评定财务资源组别，以确保各财务资源组别较平均地分布，有关的修订亦可免除因「普通计划」的财务资格限额不时调整而要经常进行法例修订以更新有关资源组别。有别于以往用实际金额数字列出的做法，新资源组别将改以相对「普通计划」财务资格限额的百分率显示，如「普通计划」财务资格限额将来有所变动，有关组别亦会自动作出相应调整。在修订资源组别后，民政局会把「普通计划」及「辅助计划」的财务资格限额上调7.7%，以反映丙类消费物价指数在2012年7月至2014年7月期间录得的累积变动。

本局知悉「普通计划」的新经评定财务资源组别及分担费用比率已于2015年6月17日生效，而「普通计划」及「辅助计划」

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

的财务资格限额已分别上调至290,380元及1,451,900元，并于2015年7月17日开始生效。现时「普通计划」下受助人的应缴分担费用如下：

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

财务资源 Financial Resources	分担费比率 Contribution Rates	应缴分担费用 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

本局乐见新的分担费用比率及财务资格限额已经推行。

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

## 刑事法律援助费用的检讨 Review of Criminal Legal Aid Fees

目前，法援署聘用私人执业律师处理刑事法律援助案件的诉讼工作，是按《刑事案件法律援助规则》（《规则》）（第 221 章附属法例 D）订明的大律师及律师处理各级别法院刑事案件收费来支付费用；律政司在行政上参照同一收费表聘用私人执业律师代表政府为刑事案件进行检控。在得到立法会的支持及在政府和两个法律专业团体的共同努力下，行政当局在2012年3月推行了「标明报聘费制度」以改善刑事法律援助费用制度的付费架构，并承诺会在新费用制度实施后的两年内，检讨刑事法律援助费用的修订水平。

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.

承以前报告，民政局在2014年3月成立工作小组，检讨刑事法律援助费用的收费水平，工作小组成员包括香港大律师公会和香港律师会的代表，以及法援署和律政司的政府代表。在2016年2月，民政局通知本局有关上调刑事法律援助费用的建议方案。接下来的段落将阐述方案详情。

#### **(a) 大律师费用上调 50%**

工作小组考虑到大律师的工作性质及所履行的专业职责，以及在2012年的检讨中给予大律师的法援费用并没有实质调升，因此，建议将大律师的刑事法援费用上调50%（已包涵丙类消费物价指数于2012年7月至2014年7月参照期内的7.7%升幅）。根据工作小组的方案，大律师在原讼法庭出庭以处理刑事法律援助案件的费用会由现时的每小时1,530元增至\$2,300元。

#### **(b) 发出指示的律师费用上调 25%**

在2012年的检讨中付予发出指示的律师的费用，已获上调约60%（由460元增至740元）。工作小组经讨论后，建议将付予发出指示的律师的刑事法律援助费用上调 25%（已包涵2012年7月至2014年7月参照期内丙类消费物价指数的7.7%升幅）。根据工作小组的建议，发出指示的律师在原讼法庭处理刑事法律援助案件的费用，会由现时的每小时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) 在区域法院以讼辩人兼发出指示的律师身分行事的律师费用上调 40%**

现时《规则》亦订明付予在区域法院以讼辩人兼发出指示的律师（讼辩律师）身分行事的律师的费用。讼辩律师与大律师的情况相若，在区域法院处理案件的费用在2012年的检讨中并无实质调整。鉴于大律师费用和发出指示的律师费用已分别获建议上调50%和25%，工作小组建议把付予讼辩律师以处理区域法院案件的刑事法律援助费用上调40%，由现时的每小时1,260元增至1,770元。由于讼辩律师于处理法援案件时身负较重要的职责，工作小组相信这个费用水平既能提供与职责相称的合理待遇，亦可与大律师和发出指示的律师已获上调的费用维持恰当的对比。

**(d) 为享有较高级法院出庭发言权的讼辩律师设立新的费用项目**

至于为享有较高级法院出庭发言权的讼辩律师新增的费用类别，相关费用将按大律师处理较高级法院案件的最新建议费用计算，并按付予大律师和讼辩律师以处理区域法院案件的费用之间的百分比差额进一步上调（即准备费用或首天法庭聆讯费用高出15.48%；额外准备费用高出11.48%；以及继续委聘费用高出28.02%）。举例来说，先把现时付予大律师处理原讼法庭案件的准备费用上调50%，然后再上调15.48%，便会得出付予享有较高级法院出庭发言权的讼辩律师处理原讼法庭案件的建议准备费用。因此，大律师和讼辩律师处理原讼法庭案件的建议准备

**(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



费用将分别为18,390元和21,240元。由于讼辩律师具有身兼讼辩人和发出指示的律师的双重身分，工作小组相信这对他们来说是一个合理的报酬水平。

本局得知工作小组在审议过程中，曾审视一些相关的海外司法管辖区的法律援助费用。由于有些海外司法管辖区采用结构不同的法律援助费用制度、设有费用上限，及采用偏低的民事法律援助费用水平，工作小组认为这难与香港的法律援助费用制度比较。举例来说，在英国，除了有限的几类案件（例如涉及儿童的案件）外，大多数的民事案件已不再属于法律援助的范围。在澳洲新南威尔斯州，如民事案件败诉及讼费需由政府支付，则付予有关外委律师的费用会较低。在加拿大安大略省，有些刑事法律援助案件所支付的每小时费用可能看似高于香港，但该些费用设有支付时数上限。除此之外，一些海外司法管辖区的民事和刑事案件法律援助费用水平虽然似乎看齐，但事实上这些地区付予接办民事案件的律师的费用却往往偏低。

本局亦知悉正如工作小组向两个法律专业团体解释，由于为民事和刑事案件而设的制度并不相同，小组认为应继续容许在不同范畴执业的律师获得不同报酬。因此，工作小组集中为接办刑事法律援助案件的律师订定合理收费水平，并致力与两个法律专业团体就建议增幅寻求共识。



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.

本局获悉民政局在2016年2月22日就上述刑事法律援助费用上调建议方案咨询立法会司法及法律事务委员会。刑事诉讼程序规则委员会于2016年5月4日对《规则》作出修订，而民政局已在2016年6月向立法会提出动议以修改法例。

本局期待支付代表法援署处理刑事诉讼工作的大律师及律师的新费用早日生效。

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.

## 为法援受助人委派律师的安排 Assignment of Lawyers to Legally Aided Persons

在2013年9月，法援署就分派法律援助个案引入「申报制度」，以回应公众对不当兜揽生意活动或包揽诉讼的关注。此制度的目的是为确保受助人所作的律师提名，纯属其自由意愿，以及并无与任何人士达成协议，包括被提名的律师、律师的雇员、代理或索偿代理，摊分在诉讼中可能讨回的任何损害赔偿、财产或讼费。相关条款亦列明于律师委任信中作为委派案件的条件，获提名的律师如未能接受上述条款，便不得接受有关委派。

两个法律专业团体在2015年3月的立法会司法及法律事务委员会会议上，要求法援署检讨「申报制度」的条款，以进一步收紧名



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

册律师接办案件的条件。法援处已经完成相关检讨，并根据两个法律专业团体的意见修改律师委任信。

本局对有关修改表示欢迎，同时乐见法援署续与香港律师会合作，成立包括法援署首长级人员的小组委员会，研究如何协助法援申请人应付不当的兜揽生意活动。

本局明白《法律援助条例》第13条列明，如法援受助人欲自行挑选，他有权从法律援助律师名册中拣选任何私人执业律师以处理他的法援案件。法援署会本着以受助人利益为依归的基本原则分派法援工作予名册内的律师，只要被受助人提名的律师 / 大律师具备有关个案所需的相关经验及专长，以及过往在处理法援案件时没有不良纪录，除非有令人信服的理由，法援署一般不会拒绝有关律师 / 大律师的提名并同意受助人的选择。法援署曾多次重申，包括在立法会司法及法律事务委员会在2015年3月举行的会议，该署不宜查究受助人是否因某律师曾作出某些不适当的行为才提名该律师，此举不但不恰当，亦有辱被提名律师的品格及专业操守。在司法复核案件方面，该等查询会被视为采取不必要及不当的手段，企图影响法援诉讼的结果。

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.

