

法律援助申請人 財務資格限額的檢討

Review of Financial Eligibility Limits of Legal Aid Applicants

凡本身財務資源不超過財務資格限額的人士，在經濟上均符合資格申請法律援助。「財務資源」意指申請人每年可動用收入和可動用資產的總和。可動用收入是指個人的總收入在減去《法律援助（評定資源及分擔費用）規例》（《規例》）（第91B章）所規定可扣除項目後的餘額。除非《規例》訂明在計算可動用資產時應剔除某些項目，否則可動用資產須包括一切屬資本性質的資產，例如現金、銀行存款、珠寶首飾、古董、股票和物業。

現時共有兩個財務資格限額。一個是根據普通法律援助計劃（「普通計劃」）提供的法律援助，該計劃涵蓋了《法律援助條例》（《條例》）（第91章）第5（1）條規定的區域法院或以上級別的民事訴訟，以及根據《刑事案件法律援助規則》（第221D章）規定的刑事法律援助。另一個是根據《條例》第5A（b）條規定的法律援助輔助計劃（「輔助計劃」）提供的法律援助。「輔助計劃」是一項自負盈虧的計劃，旨在為財務資源超出「普通計劃」規定的限額，但又不超過某一金額的「夾心階層」人士，就一些指定類別的民事案件提供額外的法律支援。



A person is financially eligible for legal aid if his financial resources do not exceed the statutory financial eligibility limit (FEL). “Financial resources” means the aggregate of a legal aid applicant’s yearly disposable income and disposable capital. A person’s disposable income is his gross income minus deductible items as allowed under the Legal Aid (Assessment of Resources and Contributions) Regulations (“the Regulations”) (Cap. 91B). A person’s disposable capital consists of all assets of a capital nature, such as cash, bank savings, jewellery, antiques, stocks and shares, and property, unless such items should be excluded from calculation under the Regulations.

At present, there are two FELs. One is for legal aid under the Ordinary Legal Aid Scheme (OLAS) which covers civil proceedings in the District Court or courts at levels above as set out in section 5(1) of the Legal Aid Ordinance (LAO) (Cap. 91) and criminal legal aid under the Legal Aid in Criminal Cases Rules (Cap. 221D). The other one is for legal aid under the Supplementary Legal Aid Scheme (SLAS) as specified in section 5A(b) of the LAO. SLAS is a self-financing

根據政府在1999年9月就《1999年法律援助（修訂）條例草案》向立法會提交的報告，政府會參考丙類消費物價指數的一般物價變動的情況，每年檢討兩個計劃的財務資格限額。政府亦曾在2011年，分別一次性大幅調高「普通計劃」及「輔助計劃」的財務資格限額48%和166%以加強公眾尋求司法公義的途徑。

行政長官於2019年《施政報告附篇》公佈，將會把「普通計劃」及「輔助計劃」的財務資格限額提高約三成，即由目前307,130元增加至400,000元（「普通計劃」），以及由1,535,650元增至2,000,000元（「輔助計劃」）。

在建議提高「普通計劃」的財務資格限額（即由307,130元增加至400,000元）時，政府已考慮訴訟成本的升幅高於自2011年一次性調整以來一般物價變動的累積升幅，以及「普通計劃」申請人對私人訴訟的負擔能力。在缺乏具代表性的私人訴訟成本數據的情況下，政府參考了一系列有關法律專業人員開支指數的平均累積變動，包括民事法律援助案件的訴訟成本、名義工資指數及私人寫字樓的租金指數，並與丙類消費物價指數的變動比較。

scheme aiming at providing additional legal aid support in certain types of civil cases to the “sandwich class” whose financial resources exceed the limit allowed under OLAS, but below a certain amount.

Pursuant to the Government’s report to the Legislative Council (LegCo) on the Legal Aid (Amendment) Bill 1999 in September 1999, the Government has been making annual adjustments to the two FELs with reference to the general price movement based on the Consumer Price Index (C) (CPI(C)). The Government has also made a one-off adjustment in 2011 to increase the FELs for OLAS and SLAS by 48% and 166% respectively with a view to enhancing the public’s access to justice.

In the 2019 Policy Address Supplement, the Government proposes to increase the FELs for OLAS and SLAS by about 30%, i.e. from \$307,130 to \$400,000 for OLAS and from \$1,535,650 to \$2,000,000 for SLAS.

The Government proposes increasing the FEL for OLAS from \$307,130 to \$400,000 having regard to the higher increase in legal costs than that of general price movement since the last one-off adjustment in 2011, as well as the affordability of private litigation services to OLAS applicants. In the absence of any representative data on private litigation costs, the Government have made reference to the average cumulative change of a series of indices relevant to legal professionals’ expenses, including civil litigation costs of legally aided cases, nominal wage indices and rental indices for private offices for comparison with that of CPI(C) for the purpose of review.



政府另外建議將「輔助計劃」的財務資格限額由目前1,535,650元提高至2,000,000元。除了因應訴訟成本相比於物價變動的升幅外，建議亦能幫助財務資源僅高於現時「輔助計劃」財務資格限額的「夾心階層」申請人，尤其是倚靠儲蓄過活而沒有固定收入的年長申請人，有可能因為案件複雜而需要動用所有資產以應付龐大的訴訟成本。

上述建議的目的是加強法律援助服務，從而實現法援政策的目標，即確保所有持合理理據在香港法院提出訴訟或抗辯的人士，不會因經濟能力有限而沒法尋求公義。

除了上述的30%增幅，政府會根據年度檢討機制定期調整財務資格限額，以計及

The Government also proposes increasing the FEL for SLAS from \$1,535,650 to \$2,000,000. Apart from the increase in legal costs as compared with price changes, the Government finds merit in providing a modest buffer for “sandwich class” applicants with financial resources marginally higher than the current FEL for SLAS, particularly elderly applicants who are living on savings (not regular income) and may otherwise need to exhaust all their assets to cope with tremendous legal costs for the more complicated cases.

The aim of the above proposals is to enhance access to legal aid so that it will continue to meet the policy objective of legal aid, i.e. to ensure that all those who have reasonable grounds for pursuing or defending a legal action in the courts of Hong Kong will not be denied access to justice owing to a lack of means.

2017年7月至2019年7月兩年期內丙類消費物價指數的變動。就參照期由2017年7月至2018年7月，丙類消費物價指數錄得2.3%的升幅，而就參照期由2018年7月至2019年7月，丙類消費物價指數則錄得2.8%升幅。因此，根據丙類消費物價指數累積變動的調整（共5.1%）將會另加於2019年《施政報告附篇》公布的30%增幅之上。總而言之，經調整前後的財務資格限額表列如下：

In addition to the above 30% increase, the Government will make regular adjustments to the FELs to take into account the change in CPI(C) for the two-year period between July 2017 and July 2019 in accordance with the annual review mechanism. For the reference period from July 2017 to July 2018, an increase of 2.3% in CPI(C) was recorded. As for the following reference period from July 2018 to July 2019, there was an increase of 2.8% in CPI(C). The Government will make adjustments based on CPI(C) movements (+5.1% on aggregate) on top of the 30% increase in FELs announced in the 2019 Policy Address Supplement. In sum, the FELs before and after the adjustment are shown below -

	調整前的財務資格限額 FELs before Adjustment	FELs after Adjustment
Legal aid under OLAS	\$307,130	\$420,400
Criminal legal aid	\$307,130	\$420,400
Legal aid under SLAS	\$1,535,650	\$2,102,000

本局歡迎是次上調的建議。

The Council welcomes the proposed increase.