

# 法律援助申请人 财务资格限额的检讨

## Review of Financial Eligibility Limits of Legal Aid Applicants

凡本身财务资源不超过财务资格限额的人士，在经济上均符合资格申请法律援助。

「财务资源」意指申请人每年可动用收入和可动用资产的总和。可动用收入是指个人的总收入在减去《法律援助（评定资源及分担费用）规例》（《规例》）（第91B章）所规定可扣除项目后的余额。除非《规例》订明在计算可动用资产时应剔除某些项目，否则可动用资产须包括一切属资本性质的资产，例如现金、银行存款、珠宝首饰、古董、股票和物业。

现时共有两个财务资格限额。一个是根据普通法律援助计划（「普通计划」）提供的法律援助，该计划涵盖了《法律援助条例》（《条例》）（第91章）第5（1）条规定的区域法院或以上级别的民事诉讼，以及根据《刑事案件法律援助规则》（第221D章）规定的刑事法律援助。另一个是根据《条例》第5A（b）条规定的法律援助辅助计划（「辅助计划」）提供的法律援助。「辅助计划」是一项自负盈亏的计划，旨在为财务资源超出「普通计划」规定的限额，但又不超过某一金额的「夹心阶层」人士，就一些指定类别的民事案件提供额外的法律支援。



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

根据政府在1999年9月就《1999年法律援助（修订）条例草案》向立法会提交的报告，政府会参考丙类消费物价指数的一般物价变动的情况，每年检讨两个计划的财务资格限额。政府亦曾在2011年，分别一次性大幅调高「普通计划」及「辅助计划」的财务资格限额48%和166%以加强公众寻求司法公义的途径。

行政长官于2019年《施政报告附篇》公布，将会把「普通计划」及「辅助计划」的财务资格限额提高约三成，即由目前\$307,130元增加至\$400,000元（「普通计划」），以及由\$1,535,650元增至\$2,000,000元（「辅助计划」）。

在建议提高「普通计划」的财务资格限额（即由\$307,130元增加至\$400,000元）时，政府已考虑诉讼成本的升幅高于自2011年一次性调整以来一般物价变动的累积升幅，以及「普通计划」申请人对私人诉讼的负担能力。在缺乏具代表性的私人诉讼成本数据的情况下，政府参考了一系列有关法律专业人员开支指数的平均累积变动，包括民事法律援助案件的诉讼成本、名义工资指数及私人写字楼的租金指数，并与丙类消费物价指数的变动比较。

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.



政府另外建议将「辅助计划」的财务资格限额由目前1,535,650元提高至2,000,000元。除了因应诉讼成本相比于物价变动的升幅外，建议亦能帮助财务资源仅高于现时「辅助计划」财务资格限额的「夹心阶层」申请人，尤其是倚靠储蓄过活而没有固定收入的年长申请人，有可能因为案件复杂而需要动用所有资产以应付庞大的诉讼成本。

上述建议的目的是加强法律援助服务，从而实现法援政策的目标，即确保所有持合理理据在香港法院提出诉讼或抗辩的人士，不会因经济能力有限而没法寻求公义。

除了上述的30%增幅，政府会根据年度检讨机制定期调整财务资格限额，以计及

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月两年期内丙类消费物价指数的变动。就参照期由2017年7月至2018年7月，丙类消费物价指数录得2.3%的升幅，而就参照期由2018年7月至2019年7月，丙类消费物价指数则录得2.8%升幅。因此，根据丙类消费物价指数累积变动的调整（共5.1%）将会另加于2019年《施政报告附篇》公布的30%增幅之上。总而言之，经调整前后的财务资格限额表列如下：

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 -

	调整前的财务资格限额 FELs before Adjustment	调整后的财务资格限额 FELs after Adjustment
「普通计划」下的法律援助 Legal aid under OLAS	\$307,130	\$420,400
刑事法律援助 Criminal legal aid	\$307,130	\$420,400
「辅助计划」下的法律援助 Legal aid under SLAS	\$1,535,650	\$2,102,000

本局欢迎是次上调的建议。

The Council welcomes the proposed increase.