

法律援助申請人財務資格限額的檢討及 法律援助署署長第一押記

Annual Reviews of Financial Eligibility Limits of Legal Aid Applicants and Director of Legal Aid's First Charge

法律援助申請人財務資格限額

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，例如該人的貸方結餘總和、其他人須付予該人的款項、該人名下非金錢資源權益價值、其業務或在公司的業務中所佔份額的價值等。

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，該計劃涵蓋了裁判法院的交付法律程序、《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和刑事訴訟，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。

Financial Eligibility Limits of Legal Aid Applicants

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 the sum of his / her credit balance, money due to him / her, the value of the person's interest in non-money resources, the value of business or share in a company etc, 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 committal proceedings in the Magistrates' Courts, civil and criminal proceedings in the District Court or courts 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 scheme aiming at providing additional legal aid support in certain types of civil cases to the "sandwich class" who may not meet the means test criterion of OLAS.

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。財務資格限額已由 2020 年 6 月 26 日起上調 5.1%，以反映由 2017 年 7 月至 2019 年 7 月丙類消費物價指數的累計變動。

政府根據參照期內（即 2019 年 7 月至 2020 年 7 月）的丙類消費物價指數（即下跌了 0.1%），完成了最新一輪有關財務資格限額的周年檢討工作。

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)). An upward adjustment of FELs by 5.1% was made effective from 26 June 2020 to reflect the accumulated changes in CPI(C) from July 2017 to July 2019.

The Government had completed the latest round of annual review on FELs with reference to the CPI(C) for the reference period (i.e. July 2019 to July 2020), which had decreased by 0.1%.



法律援助署署長第一押記

如法援受助人從獲批法援的訴訟討回或保留任何金錢或物業，便須按《法援條例》的規定，從有關訴訟所討回或保留的金錢或物業，向法援署署長清還一切與訴訟相關的費用及開支。這些費用及開支的款項稱為法援署署長第一押記。在實際上來說，如為受助人討回金錢，有關費用及開支會先從該筆金錢中扣除，然後餘款才會發放給法援受助人。如涉及的物業為一項房地產，法援署署長會在土地註冊處把其押記登記在有關物業上，以保證法援受助人向法援署署長清還費用及開支。不過，根據《法援條例》第18A(5)條，法援署署長第一押記不適用於就配偶或前度配偶的贍養而支付的款額，上限為每月支付的首9,100元。另外，在收到按《法援條例》第19條或第19A條付予法援署署長的一切款項後，法援署署長可根據《法援條例》第19B(1)(a)條行使酌情權，就任何人遭遇嚴重困苦，而在所有情況下均屬公正及公平的個案，減少其保留的款項，但款額以不超過108,850元為限。

根據在2018年的一次性檢討，兩項指定款額已由2020年6月起上調89.6%。政府亦已匯報說明這兩項款額會根據周年檢討調整，以反映丙類消費物價指數的變動。

政府根據參照期內（即2019年7月至2020年7月）的丙類消費物價指數（即下跌了0.1%），完成了最新一輪有關法援署署長第一押記的周年檢討工作。

Director of Legal Aid's First Charge

A legally aided person who is successful in recovering or preserving any money or property in the legally aided proceedings will be required to repay the Director of Legal Aid (DLA) all the costs and expenses incurred by DLA in the proceedings, as required under the LAO, out of the money or property so recovered or preserved in such proceedings. The sum of these costs and expenses is called the DLA's first charge. In practice, if money is recovered for the aided person, such costs and expenses will be deducted from the money first before the balance is released to the legally aided person. If the property involved in a piece of landed property, the DLA's first charge will operate by way of registering it against the property in the Land Registry so as to secure repayment of the costs and expenses to DLA. However, according to section 18A(5) of the LAO, DLA's first charge does not apply to maintenance payment for spouse or former spouse up to the first \$9,100 of each payment per month. Separately, upon receipt of all moneys paid to DLA pursuant to section 19 or 19A of the LAO, DLA may exercise discretion under the provision to section 19B(1)(a) of the LAO to reduce the amount to be retained by DLA by an amount not exceeding \$108,850 in cases of serious hardship to any person and that it is in all the circumstances just and equitable to do so.

Pursuant to a one-off review in 2018, the two specified amounts were adjusted upwards by 89.6% with effect from June 2020. The Government has also reported that the two amounts would be subject to an annual review to reflect the changes in CPI(C).

The Government had completed the latest round of annual review on DLA's first charge with reference to the CPI(C) for the reference period (i.e. July 2019 to July 2020), which had decreased by 0.1%.



未來路向

鑑於參照期內錄得的丙類消費物價指數變動輕微，對財務資格限額及法援署署長第一押記下兩項指定款額的相應影響極微，進行必需的立法程序所涉及的時間及行政費用與緊貼市場的需要未必相稱。因此，政府認為值得保留 0.1% 的減幅，並與下一次周年檢討的結果一併考慮。政府會監察丙類消費物價指數的變動，並在下一次涵蓋 2020 年 7 月至 2021 年 7 月的檢討得出結果後向本局報告。

Way Forward

In view of the insignificant change in CPI(C) recorded during the reference period and minimal corresponding impact of FELs and the two specified amounts for DLA's first charge, the time and administrative costs involved in the requisite legislative processes may not be commensurate with the need for keeping up with the market. The Government saw merits to reserve the 0.1% decrease and considered it together with the outcome of the next annual reviews. The Government would monitor the change in CPI(C) and report to the Council when the result of the next review covering the period July 2020 to July 2021 is ready.