

法律援助申请人财务资格限额的检讨及 法律援助署署长第一押记

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

法律援助申请人财务资格限额

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，例如该人的贷方结余总和、其他人须付予该人的款项、该人名下非金钱资源权益价值、其业务或在公司的业务中所占份额的价值等。

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，该计划涵盖了裁判法院的交付法律程序、《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和刑事诉讼，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。

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。财务资格限额已由2020年6月26日起上调5.1%，以反映由2017年7月至2019年7月丙类消费物价指数的累计变动。

政府根据参照期内（即2019年7月至2020年7月）的丙类消费物价指数（即下跌了0.1%），完成了最新一轮有关财务资格限额的周年检讨工作。

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%.

法律援助署署长第一押记

如法援受助人从获批法援的诉讼讨回或保留任何金钱或物业，便须按《法援条例》的规定，从有关诉讼所讨回或保留的金钱或物业，向法援署署长清还一切与诉讼相关的费用及开支。这些费用及开支的款项称为法援署署长第一押记。在实际上来说，如为受助人讨回金钱，有关费用及开支会先从该笔金钱中扣除，然后馀款才会发放给法援受助人。如涉及的物业为一项房地产，法援署署长会在土地注册处把其押记登记在有关物业上，以保证法援受助人向法援署署长清还费用及开支。不过，根据《法援条例》第18A(5)条，法援署署长第一押记不适用于就配偶或前度配偶的赡养而支付的款额，上限为每月支付的首9,100元。另外，在收到按《法援条例》第19条或第19A条付予法援署署长的一切款项后，法援署署长可根据《法援条例》第19B(1)(a)条行使酌情权，就任何人遭遇严重困苦，而在所有情况下均属公正及公平的个案，减少其保留的款项，但款额以不超过108,850元为限。

根据在2018年的一次性检讨，两项指定款额已由2020年6月起上调89.6%。政府亦已汇报说明这两项款额会根据周年检讨调整，以反映丙类消费物价指数的变动。

政府根据参照期内（即2019年7月至2020年7月）的丙类消费物价指数（即下跌了0.1%），完成了最新一轮有关法援署署长第一押记的周年检讨工作。

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%.



未来路向

鉴于参照期内录得的丙类消费物价指数变动轻微，对财务资格限额及法援署署长第一押记下两项指定款额的相应影响极微，进行必需的立法程序所涉及的时间及行政费用与紧贴市场的需要未必相称。因此，政府认为值得保留 0.1% 的减幅，并与下一次周年检讨的结果一并考虑。政府会监察丙类消费物价指数的变动，并在下一次涵盖 2020 年 7 月至 2021 年 7 月的检讨得出结果后向本局报告。

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.