



HOW TO APPLY HOW TO APPLY HOW TO APPLY HOW TO APPLY HOW TO APPLY

how to apply

Legal Aid
in Criminal Cases



For more details relating to financial eligibility limits for legal aid and scale of contribution, please see the leaflet “How Your Financial Resources and Contribution are calculated” and the “Financial Information Sheet”.

HOW TO APPLY FOR LEGAL AID IN CRIMINAL CASES

What Is Criminal Legal Aid And What Does It Cover?

Legal aid is a means by which eligible applicants can obtain legal representation by a solicitor and, if necessary, a barrister in proceedings before the courts in Hong Kong. The service is provided by the Legal Aid Department (LAD) to any person in Hong Kong, both residents and non-residents. Criminal legal aid covers committal proceedings in the Magistrates’ Courts, cases tried in the District Court, the Court of First Instance and all criminal appeals.

Legal aid is not available in the Magistrates’ Courts for cases other than committal proceedings. If you are charged with an offence in Magistrates’ Courts, you should approach the liaison office of the Duty Lawyer Scheme at the appropriate Magistrates’ Courts.

How Do You Qualify For Legal Aid?

To successfully apply for legal aid, you must pass the merits test and the means test.

- **Merits Test:** Legal Aid will be granted to you if the Director of Legal Aid (the Director) is satisfied that it is desirable in the interests of justice to do so. The Director will consider all the circumstances of the case, e.g. the seriousness of the offence(s), question(s) of law involved, guarantee of a fair trial, etc. Generally speaking, for trials in the District Court or the Court of First Instance, if you pass the Means Test, legal aid will be granted for you to defend your case or for mitigation if you decide to plead guilty. For appeal cases, legal aid will be granted if you have reasonable grounds for appeal.
- **Means Test:** You will be eligible if your ‘financial resources’ do not exceed the financial eligibility limit. If your financial resources exceed the financial eligibility limit, the Director may waive the limit if he is satisfied that it is desirable in the interests of justice to do so and subject to payment by you of a contribution on higher rates calculated in accordance with your financial resources.

Your financial resources are the sum total of your annual disposable income and your disposable capital after deducting certain allowable deductions. You can learn more about the calculation of your financial resources from the leaflet ‘How Your Financial Resources and Contribution are Calculated’ and the ‘Financial Information Sheet’ which you can get from LAD’s offices or view online on LAD’s website at www.lad.gov.hk

An instant and more convenient way of finding out whether you are likely to qualify for legal aid on means is to make use of the means test calculator by visiting LAD’s website. The test result is for reference only and your eligibility for legal aid cannot be determined until LAD carries out a means test after you have made an application.

Change In Financial Circumstances

If your application for legal aid is refused on means, you may re-apply for legal aid when as a result of changes in your financial circumstances, your financial resources are reduced to a level at or below that of the applicable financial eligibility limit. However, the Director may refuse legal aid if you have disposed of any capital or income or failed to maximise your earning potential so as to expend or reduce your financial resources for the purpose of satisfying the financial eligibility limit.

Is Legal Aid Free?

Not necessarily. If your financial resources are within the financial eligibility limit but exceed a certain amount, you have to pay a contribution. If the Director exercises his discretion to grant you legal aid notwithstanding that your financial resources exceed the financial eligibility limit, you have to pay a contribution on higher rates calculated in accordance with your financial resources.

How And Where To Apply?

If you are in custody, you can tell the staff of the Correctional Services Department that you want to apply for legal aid. They will help you fill in the application form and forward it to the LAD.

If you are not in custody, you can apply by attending the office of the LAD at:

Crime Section
25/F, Queensway Government Offices
66 Queensway, Hong Kong

Office hours:

Monday to Thursday	8:45 a.m. – 1:00 p.m. 2:00 p.m. – 5:45 p.m.
Friday	8:30 a.m. – 1:00 p.m. 2:00 p.m. – 6:00 p.m.

24-hour enquiry hotline: 2537 7677

Email: ladinfo@lad.gov.hk

When you apply in person, you should bring along all documents relating to your case and your means, such as bank statements/passbooks, salary slips, rental receipts, mortgage repayment schedule, salaries tax assessment, proof of Comprehensive Social Security Assistance. You do not have to pay an application fee.

Online

If no date has been fixed for the hearing of your case, you can submit pre-application information online as a first step towards making an application for legal aid through the Legal Aid Electronic Services Portal (LAESP) via LAD's website at www.lad.gov.hk

By accessing LAESP, you can download the "Legal Aid Pre-application Information Form" after answering some key questions. The form, once filled in, can be forwarded online to LAD. LAD will acknowledge receipt of the information through LAESP and assign you a transaction reference number. Once LAD has checked that the information supplied is in order, you will be given an appointment to make a formal application.

How Soon Will You Know Whether Your Application Is Successful?

Normally you will be informed of the result within 8 working days of the application for committal proceedings, and 10 working days for trials in the District Court or Court of First Instance. For appeals against sentence, you will be notified of the outcome within 2 months, and for appeals against conviction, within 3 months.

If a decision on your application cannot be made within the periods mentioned, you will be kept informed of the position. Whether you apply in person or online, you can check the status of your application through the LAESP but this can only be done if you have your own electronic certificate.

What Should You Do When You Are Offered Legal Aid?

You should read all the terms of the offer very carefully, especially the part about the amount of your contribution. If the terms are acceptable, you must sign and date the “Offer of Legal Aid” form and return it together with your contribution payment, if required, to the Department within 14 days. Once you have accepted the offer, a Legal Aid Certificate will be issued which confirms that you have been granted legal aid.

If you do not have to pay a contribution, you will simply be sent a Legal Aid Certificate.

Who Pays The Legal Costs Of Your Case?

The Director will pay for the costs and expenses incurred. Any contribution you pay will be used towards payment of these costs and expenses. If the contribution you pay is more than the costs and expenses incurred, you will receive a refund for the difference.

What If You Are Refused Legal Aid?

If you are refused legal aid because your case/appeal lacks merits, the judge hearing your case/appeal may grant you legal aid provided you are eligible on means. If your case/appeal involves an offence endangering national security the maximum penalty for which is life imprisonment, murder or an offence under section 19 of the Crimes Ordinance (piracy with violence), the judge hearing your case/appeal may grant you legal aid and exempt you from the means test and the payment of contribution. If your application for legal aid to appeal to the Court of Final Appeal is refused, you may apply to a Review Committee made up of the Registrar of the High Court and a representative each of the Hong Kong Bar Association and the Law Society of Hong Kong. The decision of the Review Committee is final.

Warning

You commit a criminal offence if you make false statement in order to obtain legal aid. This will also lead to the cancellation of your Legal Aid Certificate whereupon you will be required to pay back the costs and expenses incurred by LAD.

Other Leaflets In This Series:

- Legal Aid in Civil Cases
- Supplementary Legal Aid Scheme
- Legal Services

This leaflet is for information only and should not be regarded as an authoritative statement of the law.

CRIMINAL LEGAL AID APPLICATION PROCEDURES

Processing of Application

Application Received

LAD staff obtains information from applicant and where necessary, transcript of proceedings in the lower court

LAD lawyer considers financial resources of applicant and merits of application

Outcome of Application

Application Approved

Applicant offered Legal Aid **without** contribution

Applicant's financial resources exceed statutory eligibility limit but DLA is satisfied it is desirable in the interests of justice to exercise discretion in applicant's favour

subject to applicant's payment of a higher contribution (application successful)

Applicant accepts offer and pays contribution

Legal Aid Certificate issued

Applicant does not pay contribution

Application Refused

Cases other than appeals to CFA

Applicant's financial resources exceed statutory eligibility limit but DLA is not satisfied that it is desirable in the interests of justice to exercise discretion in applicant's favour (application unsuccessful)

For applicant who passes the means test but **DLA refused on merits**, the court may grant legal aid to the applicant

For an offence endangering national security, the maximum imprisonment, murder or an offence under section 19 of the Crimes Ordinance (piracy with violence), applicant may apply to a judge for granting of legal aid, exemption from means tests and payment of contribution

Judge grants legal aid

Applicant may apply to the Review Committee chaired by the Registrar of the High Court for a review of our refusal

Review Committee allowed the appeal

Review Committee dismissed the appeal

Appeals to CFA

