

法律援助

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法律援助署
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改善法律援助服務的措施

政府一直致力讓更多市民獲得法律援助的服務，最近完成就評定法援申請人財務資格準則每五年進行一次的全面檢討，並制定新的規例，可讓更多市民符合申請法援的財務資格。在新的規例實施之前，政府就根據這些規例會推行的新措施諮詢法律援助服務局、立法會司法及法律事務委員會，以及兩個法律專業團體的意見。他們對這些措施均表示支持和同意。

新制定的《2005年法律援助(評定資源及分擔費用)(修訂)規例》於二〇〇六年二月二十日生效。新規例實施後，法援申請人接受經濟審查以評定是否符合申請法援的財務資格時，從其收入或資產中可獲扣減/豁免計算的項目會較以前為多。新增的可扣減項目包括：(i) 贍養費及(ii) 申請人於工作期間為沒有能力照顧自己的受養人提供照顧的開支。在新規例生效之前，申請人給予分居或離婚配偶及子女的贍養費並不列作可扣減項目，而他如有年幼子女，在其受僱工作期間需要聘請他人代為照顧，除法定個人豁免額外，他可獲扣減的項目只包括照顧受養人的開支。根據新規例，申請人不論是受僱或自僱人士，在工作期間，如受養人因身體或精神狀況而無法照顧自己，需要僱用他人提供照顧，則有關開支可予扣減。此外，根據新規例，申請人受傷後收到須用作治療的保險賠款，在他就該次意外提出法援申請時，法律援助署不會把這些款項計入其資產內。

一般來說，法律援助署署長會按申請人及其個案的個別情況作出考慮，如認為合理，才會批准扣減這些項目及其扣減的金額，法庭頒令支付的贍養費則除外。

政府除新增計算申請人的財務資源時可扣減的項目外，還把透過法律援助輔助計劃勝訴的受助人需要在賠償中撥入法律援助輔助基金的分擔費百分比下調。如申請人在大律師獲委聘代其出庭後取得賠償，撥入法律援助輔助基金的百分比會由原來的百分之十二減至百分之十。換言之，勝訴受助人討回賠償後，可保留的賠償金額，會較以往多百分之二。

另一項令勝訴的法援受助人受惠的重要改善措施，是更改計算第一押記息率的方式。如法律援助署在訴訟中為受助人收回或保留任何財產，受助人便須承擔第一押記，向署長償還法律援助署所支付的訴訟及其他費用。不過，如從訴訟中收回或保留的財產需用作受助人或其受養人的居所，署長可酌情押後執行第一押記，即延遲出售物業以套取款項償還法律援助署所支付的訴訟及其他費用，但受助人須支付利息，目前的息率固定為年息十釐。

在《法律援助(財產的押記)(利率)規例》於二〇〇六年六月一日生效後，原來固定為年息十釐的息率將不再適用。屆時，第一押記的息率會根據一個新的程式而隨每年市場走勢浮動，從而計算出一個較市場上最優惠貸款利率為低的息率。由於受助人須負擔的息率，不論何時都會較銀行採用的息率為低，這會令透過法援收回財產的受助人(尤其在息率偏低時)受惠。

Measures to improve legal aid services

As part of the continued efforts by the Government to widen public access to the legal aid services in Hong Kong, new regulations have been introduced which will effectively enable more people to become financially eligible for legal aid. The new regulations were the result of a comprehensive review of the criteria for assessing the financial eligibility of legal aid applicants undertaken by the Government once every five years. Prior to their introduction, the Government has consulted the Legal Aid Services Council, the LegCo Panel on Administration of Justice and Legal Services and the two legal professional bodies on the new measures and solicited their views. The new measures embodied in the regulations therefore have the support and endorsement of these bodies.

The new regulations, namely, Legal Aid (Assessment of Resources and Contributions) (Amendment) Regulation 2005 came into effect on 20 February 2006 and allow legal aid applicants to claim additional items that can be deducted/disregarded against their income or capital when they have their means tested to determine their financial eligibility for legal aid. Items that can be deducted from the legal aid applicant's income have been expanded to cover (i) maintenance payment and (ii) provision for the care of dependants who cannot take care of themselves while the applicant is at work. Previously, no allowance was given for maintenance payment by an applicant to his separated or divorce spouse and child and an applicant could only claim the dependant care allowance on top of the statutory personal allowance if he has infant child that required care when he was at work as an employee. Under the new regulations, any applicant, whether employed or self-employed who has dependants who are unable to care for themselves by reason of their physical or mental condition while he is at work and incur expenses to hire someone to look after such dependants can make a claim for deduction. Under the new regulations, insurance monies received by the applicant that are required to meet his medical needs following an injury to which the legal aid claim relates are also disregarded as part of the applicant's capital for the purpose of the means test.

In general, the new allowances and the amount to be allowed save for maintenance payment paid pursuant to an order of the court would be granted only if the Director of Legal Aid considers reasonable to do so having regard to the particular circumstances of the applicant and his case.

Apart from bringing in new deductibles for calculating the financial resources of an applicant, the Government also reduces the rate of contribution that an aided person who is successful in his claim under the Supplementary Legal Aid Scheme has to pay towards the fund out of the damages he receives. The rate has been reduced to 10% from 12% if he is given the damages after counsel is briefed to appear in the hearing of the trial of his claim. This effectively means that an aided person with a successful claim will now be able to retain 2% more of the damages recovered.

Another major improvement that will benefit successful legally aided person is the change in the calculation of the first charge interest rate. The first charge arises in the event that property is recovered or preserved on behalf of a legally aided person in the aided proceedings. When that happens, the Director is entitled to be paid back the costs and expenses incurred in the aided person's case out of the property. However, if the property recovered or preserved is the home of the aided person or his dependants, the Director may defer enforcing the charge, i.e. delay selling the property to pay for the costs and expenses incurred by the Department. A requirement for deferring the enforcement of the first charge is that interest is payable. The interest rate is at present fixed at 10% per annum.

On 1 June 2006 when the Legal Aid (Charge on Property) (Rate of Interest) Regulation comes into effect, instead of using a fixed rate of 10% per annum, a new formula will be used whereby the first charge interest rate would vary annually according to market movement and produce a rate that is lower than the commercial best lending rate. The new arrangement for calculating the interest rate will work in favor of legally aided persons who have recovered property through the assistance of legal aid especially in times of low interest rates as they will be charged an interest rate that will always be lower than those charged by the commercial banking institutions.

提高個人豁免額

要符合獲取法律援助的資格，申請人必須證明其財務資源不超過財務資格限額。財務資源是指在扣除某些扣減項目後，把申請人的每年可動用收入總額與可動用資產相加所得的數額。

其中一項可扣減的項目是個人豁免額，而這豁免額已由二〇〇六年二月六日起調高。

單身申請人的個人豁免額由3,830元提高至3,890元，而須供養一名人士的申請人，其個人豁免額亦由6,990元提高至7,090元。新的個人豁免額詳列如下：

住戶人數	總額
申請人	3,890元
申請人及一名受養人	7,090元
申請人及兩名受養人	9,750元
申請人及三名受養人	11,490元
申請人及四名受養人	13,630元
申請人及五名受養人	14,200元
申請人及六名或以上受養人	16,540元

個人豁免額按甲類消費物價指數於每年二月調整一次，另按政府統計署的最新住戶開支統計調查結果每五年再調整一次。

有關計算法律援助申請人的可動用收入及財務資源的詳情，可參考由本署出版的《怎樣計算你的財務資源及分擔費》小冊子。該小冊子可於本署的網頁下載 (<http://www.lad.gov.hk>) 或在本署各辦事處索取。

Adjustment in Personal Allowances

In order to qualify for legal aid, an applicant must show that his financial resources do not exceed the financial eligibility limit. The financial resources are the sum total of annual disposal income and disposal capital after certain deductions have been made.

One of the deductible items is the amount of personal allowances, which has been increased with effect from 6 February 2006.

For a single person applicant, the amount of personal allowances has been adjusted from \$3,830 to \$3,890 and for an applicant with one dependant increased from \$6,990 to \$7,090. Full details of the new personal allowances are as follows:

Household Size	Amount
Applicant only	\$3,890
Applicant with 1 dependant	\$7,090
Applicant with 2 dependants	\$9,750
Applicant with 3 dependants	\$11,490
Applicant with 4 dependants	\$13,630
Applicant with 5 dependants	\$14,200
Applicant with 6 or more dependants	\$16,540

The amounts of personal allowances are adjusted in February each year in line with Consumer Price Index A, and every five years in line with the latest Household Expenditure Survey conducted by the Census and Statistics Department.

Detailed information on the calculation of disposable income and financial resources of an applicant for legal aid can be found in the leaflet "How Your Financial Resources and Contributions are Calculated" published by the Department. It can be downloaded from the Department's website (<http://www.lad.gov.hk>) or obtained from the Department's offices.

刑事法援申請審查時間的服務指標提高至百分之九十

由二〇〇六年四月一日起，在刑事案件方面，有關上訴要求減刑及上訴要求推翻原判的法援申請審查時間的服務指標，將由現時的百分之八十五提高至百分之九十。

申請類別	審查申請所需的標準時間	服務指標
刑事案件		
■ 上訴 <ul style="list-style-type: none">● 要求減刑● 要求推翻判罪	由申請當日起計2個月內 由申請當日起計3個月內	85% → 90% 85% → 90%
■ 高等法院 原訟法庭/區域法院	由申請當日起計10個工作天內	90%
■ 交付審判程序	由申請當日起計8個工作天內	90%

Target on criminal legal aid applications raised to 90%

The performance targets for processing criminal legal aid applications in respect of appeal against sentence and appeal against conviction will be revised from 85% to 90% with effect from 1 April 2006.

Type of Applications	Standard Processing Time	Performance Targets
Criminal Legal Aid		
■ Appeals <ul style="list-style-type: none">● Appeal against sentence● Appeal against conviction	Within 2 months of the application Within 3 months of the application	85% → 90% 85% → 90%
■ Court of First Instance of the High Court/District Court	Within 10 working days of the application	90%
■ Committal proceedings	Within 8 working days of the application	90%

查詢 Enquiries

二十四小時查詢熱線

24-hour Hotline

2537 7677

法律援助署網頁

LAD Website

<http://www.lad.gov.hk>

法律援助署電子郵箱

LAD e-mail

ladinfo@lad.gov.hk

通訊地址 Correspondence Address

香港金鐘道六十六號金鐘道政府合署二十七樓

法律援助署——法援通訊小組委員會

電話：2867 2319 傳真：2869 0655

Legal Aid Department News Sub-committee

Legal Aid Department

27/F, Queensway Government Offices, 66 Queensway, Hong Kong.

Tel : 2867 2319 Fax : 2869 0655