

Q4	For cases assigned by LAD to represent an AP, can I submit fee note for advance payment before conclusion of proceedings?
A4	Yes. Assigned counsel (AC) can submit fee note through the assigned solicitors (AS) for advance payment before conclusion of proceedings.
Q5	When should I present my fee note? Any restriction on the number or frequency of advance payment?
A5	<p>There is no restriction on the number or frequency of advance payment.</p> <p>After you have completed your work, for example settling pleadings, rendering legal advice, attending court hearings and conferences, you may present your fee notes to LAD through AS to claim fees for your work done.¹ Upon receiving your fee notes from AS, the case handling officer will consider the amount of advance payment to be made to you, prior to a full assessment of your fees.</p>
Q6	To expediate payment, should I send my fee-note to LAD direct instead of through AS?
A6	As the instructions were given by AS, AC should send their fee notes to LAD through AS for verification of the work instructed and done. This would also facilitate AS to have a complete picture of the amount of fees and disbursements already incurred.
Q7	How much will LAD pay me as an advance payment? Why didn't LAD pay me 75% of my claim under fee note?
A7	<p>According to Regulation 6(1) of the Legal Aid (Scale of Fees) Regulations, prior to taxation, LAD may make an advance payment of fee to assigned lawyer, which shall NOT exceed 75% of the amount which <u>in LAD's opinion would have been allowed if there had been taxation.</u>²</p> <p>The yardstick is the amount estimated by LAD to be allowed upon taxation, NOT the amount claimed by the assigned lawyers.</p> <p>Assessment of a lawyer's fee is not a science. It is challenging to determine what is fair and reasonable in all the circumstances. LAD will consider a variety of factors (such as court level, complexity of the issues / facts in dispute ... etc.) and take a broad-brush approach to determine the percentage of advance payment.</p> <p>As our experience shows, quite often lawyers' fees are allowed in the range of 70% to 80% upon taxation. The following examples illustrate how the percentage of advance payment is calculated:</p> <p>If an assigned lawyer claims a fee at \$100 and LAD estimates that the fee would have been taxed and allowed at \$70, the maximum advance payment would be $\\$70 \times 75\% = \\52.5 (i.e. around 50% of the amount claimed).</p> <p>If LAD estimates that the fee would have been taxed and allowed at \$80, the maximum advance payment would be $\\$80 \times 75\% = \\60 (i.e. around 60% of the amount claimed).</p>

¹ See also Para 9.12(b) of the Code of Conduct of the Bar of the HKSAR ("Bar Code").

² See Para 7.4 of the Guidance Notes to Counsel Handling Civil Cases (Chapter 6) of the Manual for Legal Aid Practitioners ("Guidance Notes").

	<p>The above examples explain an advance payment of up to 75% of the amount which would have been allowed on taxation may be around 50% - 60% of the amount claimed.</p> <p>If the amount of costs finally allowed on taxation is less than the amount paid by LAD in advance, the assigned lawyer has to refund the excess to LAD (see Q18 & A18 below). Unfortunately, LAD faces much difficulty in recovering the excess from assigned lawyers who have retired / ceased practice / left Hong Kong for good. Furthermore, LAD would not be responsible for arranging refund of profit / salaries tax (or the excess part thereof) already paid by the assigned lawyers (on the basis of a higher pre-taxation amount) in the event of a subsequent taxing down, from the Inland Revenue Department back to the assigned lawyers.</p>
Q8	What should I include on my fee note for DLA's assessment and payment?
A8	<p>You should provide breakdown of the items of work done and the time spent as well as your hourly rate.³ To facilitate our assessment in a fair and reasonable manner, you should provide sufficient particulars, instead of a general description (e.g. general legal advice, general case handling, legal research / analysis), of your work done.⁴ For example, if you have rendered an advice, please specify the scope or issues, such as advice on liability, quantum and evidence. The purposes and issues covered in frequent or lengthy telephone conversation or conferences should also be indicated.</p> <p>To avoid duplicate claims, you should not include work which had been covered by previous interim fee notes.</p> <p>Charging on a periodic basis without breakdown of any substantial work done is not acceptable.</p>
Q9	When AS discusses settlement with the opposite parties (OP), can AS agree and receive my fees with OP direct without LAD's consent?
A9	<p>For Party and Party costs (P & P costs) and disbursements recoverable from OP or their insurers, AS can agree costs and disbursements including AC's fees with OP direct. However, all the agreed P & P costs and disbursements must be paid to LAD direct pursuant to S.19A of LAO. LAD will arrange balance payment after deducting the advance payments. Assigned legal team should also pay attention to interests on costs which should also be paid to LAD direct pursuant to S.19C of LAO for transfer to the general revenue.</p> <p>If the P & P costs and disbursements have to be settled out of public fund or moneys of AP such as damages, employees' compensation, lump sum maintenance or property recovered or preserved for AP (i.e. DLA's 1st Charge pursuant to S.18A of LAO) and / or contribution paid by AP upon acceptance of legal aid, e.g. OP is uninsured and does not have the financial ability to settle the costs ordered to be paid by him/her, the agreement is not binding on LAD / AP unless taxed / with our written consent.</p> <p>Common fund costs (CF costs) and disbursements, which means costs and disbursements not ordered to be paid by OP but can be recovered from LAD in accordance with the Legal Aid Regulations on common fund basis (e.g. extra costs and disbursements incurred due to AP's request for re-assignment of legal team, unfavourable AC advice, preparing report letters to</p>

³ See Para 7.1 of the Guidance Notes.

⁴ See also Para 9.13(b) of the Bar Code.

	<p>LAD) should not be agreed with AP direct without LAD's consent even if the same will be fully paid out of AP's moneys i.e. DLA 1st Charge property and / or contribution paid by AP.</p> <p>For cases involving infants / mentally incapacitated persons (MIP), usually the court would order OP to bear costs on CF costs basis. No CF costs and disbursements should be further deducted from the moneys of infants / MIP without court's approval.</p>
Q10	When will LAD conduct a full assessment of my fees? What will happen if the case is re-assigned or if the Legal Aid Certificate is discharged or revoked during the course of the proceedings?
A10	<p>Full assessment of CF costs and disbursements will be made only <u>after</u> the P & P costs had been agreed between the parties upon the conclusion of the assigned case, despite you had been re-assigned or the legal aid certificate discharged or revoked in the midst of proceedings.</p> <p>We understand that the original assigned lawyer(s) may feel frustrated because sometimes it may take a long time to wait for the conclusion of the proceedings (especially if AP acts in person or OP does not proceed with the case expeditiously) and the original assigned lawyer(s) do not know the progress of the same. LAD will keep monitoring the continued merits and progress of active cases. For cases already discharged or revoked in the midst of proceedings, LAD will take steps to check the final costs order and settle the costs of all the assigned lawyers as soon as possible.</p>
Q11	Why doesn't LAD assess / tax my fee note earlier? Why is it necessary to await conclusion of the proceedings?
A11	<p>The final order on costs will only be made upon conclusion of the proceedings, where the liability of costs and the scale of costs (e.g. on P & P / indemnity / CF basis) would become certain; besides, the reserved costs would have to be determined before assessment of fees can be done. Please see <u>Order 62, rule 9D of the Rules of the High Court (Cap 4A)</u> and also <u>Big Boss Investment Ltd v So Lai Kei [2010] 1 HKLRD 793</u>.</p> <p>For cases involving appeal / failure to beat sanctioned payment / wasted costs order / argument over liability pursuant to S.16C of LAO / personal costs order against AP pursuant to S.17 of LAO, more time will be needed to finalize / clarify the liability of costs and scale of costs.</p>
Q12	Will LAD ask me to produce record or documents during the assessment of fees? If so, under what circumstances? Do I need to retain all the case paper even after the case is concluded or after I am re-assigned?
A12	<p>Since public fund is involved, LAD may ask for supporting documents, such as attendance notes, correspondence, court documents, written advice rendered, for assessment of your fees.</p> <p>Although it is the primary duty of AS to provide such record or documents on LAD's request, there may be occasions where AS fails to do so (e.g. due to cessation of practice etc.) or takes more time than expected to do so. To avoid delay in our assessment of your fees, LAD may in appropriate cases request you to provide the supporting documents.</p> <p>To save costs and paper, you may provide the electronic version of those documents.</p>

	You are therefore advised to retain the case papers until the final disposition of the case and its subsequent appeal or re-trial. ⁵
Q13	I noticed that some of my fee notes previously presented to AS had not yet been paid by LAD, what should I do?
A13	<p>If you do not receive payment within 6 weeks after you have sent your fee notes to AS, you should contact AS and check whether AS has sent your fee notes to LAD. You may also write to LAD direct to check whether LAD had received your fee note(s) from AS.</p> <p>In the event that the case had been concluded with DLA's 1st Charge over property recovered / preserved, DLA needs to arrange the release of interim payment(s) to AP after having considered the amount to be withheld, based on AS's estimate of the total costs and disbursements incurred (including AC's fees) and to be incurred in the aided proceedings. Any delay in the presentation of AC's fee notes may cause inaccuracy in our assessment of interim payment to AP. Such delay may be considered as unsatisfactory performance on the part of AS and/or AC.</p> <p>Furthermore, since LAD heavily relies upon AS's estimate on costs and disbursements (including AC's fees) to assess and release interim payment to AP and LAD does not have any separate fund to make up any deficit, you should ensure that all your fee notes had been presented to AS in a timely manner. Updating or upward variation of the amount of costs and disbursements provided by AS for the purpose of considering the amount of interim payment to AP would only be allowed if there are substantial and justifiable changes in the circumstances.</p>
Q14	I was told that LAD would not pay the balance of my taxed fees until the damages have been fully recovered. Is this correct?
A14	<p>This is a common misunderstanding. LAD will not withhold settling the balance of agreed / taxed fees (e.g. costs and disbursements incurred before judgment / settlement) until the damages have been fully recovered.</p> <p>Sometimes it may be necessary to take out enforcement actions against OP and it takes time and further costs to complete the same. LAD will only finalize account after all the enforcement actions, if appropriate, have been completed and enforcement costs agreed / taxed.</p>
Q15	If I was representing an AP and a non-legally-aided person in the same proceedings, or the same AP in more than one set of aided proceedings but being heard together, how should my fee note be issued?
A15	Where any item of costs is to be claimed on more than one assigned case and/or you had been representing an AP as well as non-legally-aided party(ies), this fact should be spelt out on your fee notes, together with the proportion of the time and costs attributed to each matter or party.
Q16	If I was representing more than one AP (e.g. a couple) in the same proceedings, or a group of AP (e.g. a group of occupiers) in the same proceedings, how should my fee note be issued?
A16	This fact should be spelt out on your fee notes, together with the proportion of the time and costs attributed to each AP as the amount of contribution paid by each AP may be different. Facts / legal arguments of each and every AP may also be different.

⁵ See also Para 9.13(a) of the Bar Code.

Q17	If I was representing an AP in the proceedings but the scope of the legal aid certificate was limited, how should my fee note be issued?
A17	<p>In some aided proceedings, the scope of work covered by the legal aid certificate is limited, for example legal aid may be granted to a defendant to defend a case but it does not cover counterclaim or some interlocutory applications may not be covered by legal aid. Under these circumstances, you should apportion the fees to reflect the time spent on work covered by legal aid. For example, if you are instructed by AS to draft the Defence and Counterclaim but legal aid only covers the defence, you should claim fees from LAD for drafting the Defence part only.</p> <p>If you are in doubt about the scope of legal aid, you should clarify with AS before you start working on the task instructed. DLA will not be liable to pay for your work if it is not within the scope of legal aid, even if the instruction was given by AS / AP.</p>
Q18	Is it possible that LAD’s assessment of my fees is lower than the aggregate sum of the advance payments I had already received?
A18	<p>Yes. The fact that advance payment had been made (by the Application & Processing Division in the course of proceedings on a broad-brush approach) and the amount of any or all of the advance payments made shall not preclude or prejudice LAD from making any representations in subsequent taxation hearings (separately and independently by the Costing Unit under the Policy & Administration Division when the case concluded) as to the proper level of fees payable to you.⁶</p>
Q19	If I do not agree with LAD on the assessment of my fees, what can I do?
Q19	<p>If you do not agree with LAD’s assessment on your fees, you may through AS make a counteroffer of your fees for re-assessment.</p> <p>You may also provide particulars on the complexity of the case, novelty of legal issues, etc for LAD’s consideration on re-assessment of your fees. You may refer to Para 1(2), Part II, First Schedule of Order 62 of the Rules of the High Court (Cap 4A) and the Rules of the District Court (Cap 336H).</p>
Q20	Can I reach an agreement on my brief fee, refresher and/or hourly rate with AS, AP or LAD before or upon accepting the assignment / trial?
A20	<p>No.</p> <p>According to Regulation 4 of the Legal Aid (Scale of Fees) Regulations (Cap 91C), the fees payable by LAD to AC acting for an AP shall be such as may be allowed on taxation or, in default of taxation, as may be fixed by LAD, not exceeding such amount as in the opinion of LAD would have been allowed if there had been taxation. Hence, even if you had provided your quotation or estimate of fee or hourly rate to AS / AP before you were assigned, your fees would still be subject to DLA’s assessment and/or taxation, if applicable.</p>
Q21	How long does it take for my fees to be assessed by LAD and why is that I am asked to wait sometimes?

⁶ See Para 7.4 of the Guidance Notes and also Rule 6(2) of the Legal Aid (Scale of Fees) Regulations (Cap 91C).

A21	<p>It depends on the time needed to conclude the case. Please see Q10 & A10 above. Full assessment of your fee claimed under CF basis will be made only after the P & P costs had been agreed between the parties, upon the conclusion of the assigned case, when the final cost order would be available. Your fee notes presented before the conclusion of the case would not be assessed, although advance payment would be made pursuant to Regulation 6 of the Legal Aid (Scale of Fees) Regulations.</p> <p>Other common factors affecting the time to be spent on the assessment of your fees include:</p> <ul style="list-style-type: none"> (a) the complexity of the proceedings; (b) changes of the legal teams causing extra time spent on sorting out bills issued by the former AS and AC; (c) AS has ceased practice / has been intervened by the Law Society; (d) discharge or revocation of legal aid in the midst of the proceedings where the former AP subsequently acts in person; (e) proceedings left in abeyance after discharge or revocation of legal aid; (f) pending appeal or retrial; (g) lack of documentation relating to entitlement and/or quantum; (h) bills or fee notes which lack details of the work done; and (i) failure on the part of AS to respond to our requests for clarifications and/ or supporting documentation.
Q22	What if the proceedings were left in abeyance after discharge or revocation of legal aid? Would LAD withhold assessment indefinitely?
A22	<p>LAD will take steps to check the final costs order and settle the costs of all the assigned lawyers as soon as possible. For cases which have been dormant for a few years, LAD would, where appropriate, try to assess and settle the costs of all the assigned lawyers and arrange payment, subject to the assigned lawyers' undertaking to refund the difference if the costs are eventually taxed when the case is concluded.</p>
Q23	If I have any comment or submission on the assessment of my fees, can I contact the assessing officers directly?
A23	<p>Full assessment of the assigned lawyers' costs / fees would be conducted by the staff of the Costing Unit under the purview of the Policy & Administration Division. Costing Unit may write to AS / AC for supporting documents and AS / AC can reply to Costing Unit direct. If AS / AC have any comment or submission on Costing Unit's assessment, AS / AC are welcome to send their observation and counter-offer in writing to LAD. Costing Unit will consider AS / AC's submission and counter-offer and re-assess costs / fees, if appropriate.</p> <p>However, as a corruption prevention measure, <u>during the pre-taxation stage, all negotiation on costs</u> MUST be handled via the staff of the Application and Processing Division. Assigned lawyers, AP, OP or OP's legal representatives should not contact staff of Costing Unit direct for negotiation on costs.</p>

Q24	LAD has already assessed my fee and we reached an agreement on the amount, why can't LAD pay the agreed fees immediately?
A24	If AP has made a contribution and/or where there is DLA's 1st Charge over any property recovered or preserved, LAD must first obtain the written consent from AP on the amount of common fund costs as agreed between LAD and you, which will be paid out of the contribution paid and/or the property subject to DLA's 1st charge, before making the final payment to you. If AP's consent cannot be obtained, taxation proceedings have to be commenced and final payment can be made only upon conclusion of taxation. If AP has passed away or family members are applying for the grant of probate or letter of administration, more time would be needed to obtain valid written consent.

Important Note: This FAQ serves as a quick guide on DLA's assessment and payment of fees claimed by AC in civil cases. It is intended for general reference only and is not intended to be an authoritative statement of the law. In case of any discrepancy, LAO and its subsidiary legislations shall prevail. AC should refer to and be familiar with the relevant law and practice, including but not limited to the LAO, Legal Aid Regulations (Cap 91A), Legal Aid (Scale of Fees) Regulations (Cap 91C) and Manual for Legal Aid Practitioners (<https://www.lad.gov.hk/eng/lap/pf.html>) as may be updated from time to time. Counsel should also refer to the correspondence from LAD in the particular assigned case. Please note that the handling of fee assessment and payment may vary depending on the specific circumstances of the case. If in doubt, AC is encouraged to contact the handling officer of the assigned case for clarification.