



Legal Aid Department

VISION

- To be a cornerstone of the rule of law in Hong Kong by delivering quality legal aid services.

MISSION

We are committed:

- To ensure that no one who qualifies for legal aid is denied access to justice because of lack of means.
- To maintain the highest standards of professional excellence and ethics.
- To develop and maintain a highly-motivated, dynamic, well-trained and committed workforce.
- To work in partnership with the legal profession to reach our vision.
- To anticipate and meet the ever-changing needs of society.

VALUES

- Independence
- Commitment
- Efficiency and effectiveness
- Professionalism
- Teamwork
- Caring and responsive



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Chapter 1

WHAT IS LEGAL AID?

Legal aid is a means by which eligible applicants can obtain the services of a solicitor and, if necessary, a barrister to represent them in proceedings before the courts in Hong Kong.

Legal aid is available for proceedings in:

- the District Court
- the Court of First Instance and the Court of Appeal (both part of the High Court)
- the Court of Final Appeal
- the Magistrate's Court (committal proceedings only)
- Mental Health Review Tribunal
- Coroner's Court (in cases where the Director of Legal Aid (the Director) is of the opinion that the interests of public justice require that legal aid be given)

How to Qualify for Legal Aid?

To qualify for civil legal aid, applicants must pass a means test and a merits test (see Chapters 3 and 4), regardless of whether or not they are a Hong Kong resident.

For criminal legal aid, please refer to Chapter 6.

Funding

The Legal Aid Department (the Department) obtains its funding from the Government of the Hong Kong Special Administrative Region through the annual allocation exercise.



The Three Different Legal Aid Schemes

- Ordinary Legal Aid
- Criminal Legal Aid
- Supplementary Legal Aid

Choice of Lawyer

Civil proceedings for which legal aid is granted will be handled either by the Department's in-house litigation lawyers or by assigned solicitors and counsel in private practice.

The Director maintains panels of counsel and solicitors who are willing to undertake legal aid work. Except where the case is assigned in-house, the aided person can nominate a lawyer on the legal aid panel

to represent him. If the Director considers the selected lawyer to be unsuitable, he will discuss this with the aided person.

Where cases are assigned out, the Department will monitor their progress and costs.

Is Legal Aid Free?

Not necessarily. A person receiving legal aid may be required to contribute towards the costs and expenses incurred by the Department out of his financial resources and/or in civil legal aid cases out of the money or property recovered or preserved on his behalf, as the case may be, except where :

- the financial resources of the aided person are below a certain amount; and
- no money or property were recovered or preserved in the civil proceedings for which legal aid is granted (please refer to Chapter 2).



Chapter 2

CIVIL LEGAL AID

Ordinary Legal Aid Scheme

To qualify for legal aid under the Ordinary Legal Aid Scheme, in addition to passing the merits test, applicants' financial resources must not exceed the financial eligibility limit. The Director may waive the limit in meritorious cases involving a possible breach of the Hong Kong Bill of Rights Ordinance or an inconsistency with the International Covenant on Civil and Political Rights ("BOR cases").

Types of Cases Covered

The major types of cases covered by the Ordinary Legal Aid Scheme are:

- family and matrimonial disputes
- personal injury claims
- employment disputes
- contractual disputes
- immigration matters
- professional negligence claims

What Proceedings are not Covered?

Legal aid is not available for certain proceedings, including:

- defamation (other than defending a counter-claim alleging defamation)
- Small Claims Tribunal matters
- Labour Tribunal matters
- money claims in derivatives of securities, currency futures or other futures contracts
- election petitions except involving a possible breach of the Hong Kong Bill of Rights Ordinance or an inconsistency with the International Covenant on Civil and Political Rights as applied to Hong Kong



Contribution

Applicants are required to pay a contribution calculated in accordance with their financial resources. A different scale of contribution at higher rates applies to BOR cases where the applicants' financial resources exceed the financial eligibility limit for the Ordinary Legal Aid Scheme.

Director's First Charge

Where no contribution is payable or the contribution paid does not cover the costs and expenses incurred by the Department (including legal costs which cannot be recovered from the opposite party), the Director has a

right to recover the costs and expenses incurred or any shortfall from property recovered or preserved in the proceedings. This right is known as the Director's first charge.

Property recovered or preserved in the proceedings includes land or interest in land such as the matrimonial home in a divorce case as well as pecuniary awards such as a lump sum or monthly maintenance payment for a spouse or for children, employees' compensation, damages in personal injury cases, wages arrears and severance payment. All maintenance for children and maintenance for the spouse not exceeding a certain amount each month are exempted from the Director's first charge.



Registration and Interest

If the property recovered or preserved is the home of the aided person or his dependants, the Director may defer enforcing the first charge (i.e. delay selling the property to pay for the costs and expenses incurred by the Department). Instead, he may register the charge against the property in the Land Registry.

If enforcement of the charge is deferred, the aided person is further liable to pay simple interest at a prescribed rate on the amount of the charge plus costs and disbursements incurred by the Director in connection with the registration of the charge in the Land Registry.

The Director has the discretion to waive or reduce the interest if he considers that charging it would cause serious hardship to the aided person, or if he considers that it is just and equitable to do so. An aided person may apply in writing to the Director to have the interest waived or reduced at the time of satisfaction of the charge and should give reasons in support.

What Happens if a Case is Unsuccessful?

If your case is unsuccessful, any contribution paid by you will be used to offset the costs and expenses incurred by the Department. If the contribution has been partially paid and the amount paid is less than the costs and expenses incurred, you will be asked to pay an amount up to the full amount of the contribution payable to cover the difference. If the contribution paid is more than the costs and expenses incurred, you will receive a refund for the difference.



For further details of contribution and the Director's first charge, please ask for a copy of the booklet "Contribution towards Costs of Legal Aid Case and Director of Legal Aid's First Charge".

Supplementary Legal Aid Scheme

This scheme provides legal representation to people who are financially not eligible for legal aid under the Ordinary Legal Aid Scheme but whose financial resources are below a certain amount.

Types of Cases Covered

Under this scheme legal aid is available for cases involving personal injury or death, as well as medical, dental or legal professional negligence, where the claim for damages is likely to exceed \$60,000. The scheme also covers claims under the Employees' Compensation Ordinance irrespective of the amount of the claim.





Contribution

The Supplementary Legal Aid Scheme is a self-financing scheme funded by contribution and damages or compensation recovered. Applicants must pay an initial application fee plus an interim contribution upon acceptance of legal aid. The Director may allow, in appropriate circumstances, payment of the interim contribution, by not more than six monthly instalments.

If the proceedings are successful, the aided person pays a percentage of the damages recovered into the Supplementary Legal Aid Fund (the Fund). If the case

is settled before counsel is briefed to attend trial, the amount to be paid to the Fund will be reduced. In addition, all costs and expenses incurred by the Fund (including costs which cannot be recovered from the opposite party) will be deducted from the damages recovered. However, the total sum deducted will be reduced by the application fee and the interim contribution already paid.

If the proceedings are not successful, the application fee and the interim contribution will not be refunded. However, if the amount of interim contribution paid is more than the actual amount of the costs and expenses incurred, the difference will be refunded.



Chapter 3

THE MEANS TEST

The means test evaluates whether an applicant's financial resources exceed the financial eligibility limit allowed for ordinary legal aid or for supplementary legal aid.

Legal aid can be refused if the applicants' financial resources exceed the appropriate limit or if the applicant has disposed of any assets or failed to maximise his or her earning potential to make himself or herself eligible for legal aid.

Financial resources are taken as an applicant's monthly disposable income multiplied by 12, plus his or her disposable capital.

Disposable Income

Monthly disposable income is calculated as the net monthly income after allowable deductions have been made from gross income. The deductions include items such as rent, rates, care allowance for dependants who are unable to care for themselves, maintenance payment and statutory personal allowances for the living expenses of the applicant and his or her dependants.

Disposable Capital

Disposable capital consists of all assets of a capital nature, such as cash, bank savings, jewellery, antiques, stocks and shares and property. Some assets are excluded from the calculation of an applicant's capital, for example:

- the property in which the applicant lives
- household furniture and effects, clothing, and the tools and implements of the applicant's trade



Does Spouse's Income Count?

In calculating an applicant's financial resources, a spouse's income and assets will also be taken into account except when:

- the applicant is separated from his or her spouse
- the spouse has an opposing interest in the dispute for which the legal aid application is being made



Application on behalf of an Infant or Another Person

If the person applying on behalf of an infant or another person is concerned in the proceedings only in a representative or fiduciary capacity, the financial resources of that person will be disregarded, and only the financial resources of the infant or the other person on whose behalf the application is made will be taken into account. An infant is defined in the Legal Aid Ordinance as an unmarried person who has not attained the age of 18.

For further details on computation of financial resources, please ask for a copy of the leaflet "How Your Financial Resources and Contribution are Calculated".



Chapter 4

THE MERITS TEST

The merits test enables the Director to determine whether an applicant has a reasonable claim or defence. In order for him to do this, the applicant has to provide all the information relevant to his or her case.

In the course of assessing the merits of an application, the Director may obtain information from other sources, including the opposite parties in the case. For example, he may need transcripts of court proceedings, records of decisions or medical reports.

Based on the facts put forward and the law relating to them, the Director must be satisfied that the case or defence has a reasonable chance of success. In some cases, notably those seeking public law remedies or judicial review, he may seek the opinion of counsel or solicitors in private practice before making a decision.





For applications which involve challenging the decision of a public body by way of judicial review, the Director will generally grant legal aid if the court has already given leave for the judicial review or seems likely to do so. However, he will also take into account the ultimate prospects for the application and may refuse legal aid if these prospects are hopeless.

Apart from the prospect of success, the Director must also be satisfied that it is reasonable that the applicant should be granted legal aid. Accordingly, the Director will take into account all factors which would influence a private client considering taking proceedings. Therefore legal aid may be refused if the intended proceedings are of a nature where a solicitor would not normally be employed or if the benefits to be obtained in the proceedings do not justify the likely costs. For example, legal aid may be refused if only a trivial advantage would be gained by the applicant from the intended proceedings, or where it is unlikely that a judgement could be enforced because the opposite party is uninsured and has no valuable assets or cannot be located.



There are, however, cases where the benefits to be obtained cannot be measured in purely monetary terms. In such cases, the Director will still make an objective and careful assessment of the cost benefit, but he will also give due weight to the importance of the case to the applicant in deciding whether to grant legal aid.

Legal aid can be refused if an applicant fails to pass the merits test as described above. Legal aid can also be refused for one or more of the reasons specified in the Legal Aid Ordinance such as if having made the application, the applicant has left Hong Kong and stayed outside Hong Kong for any continuous period of six months. Legal aid may also be refused if the applicant has failed to provide information or attend an interview as required by the Director.





Chapter 5

DISCHARGE OR REVOCATION OF LEGAL AID

The Director can **discharge**, i.e. discontinue, legal aid for one or more of the reasons specified in the Legal Aid Ordinance, such as if:

- the financial circumstances of the aided person change to the extent that his or her financial resources exceed the financial eligibility limit
- the aided person requires the proceedings to be conducted or continued unreasonably
- the aided person fails to give his counsel or solicitor the assistance necessary or desirable for the proper conduct of the case

The Director **must discharge** legal aid if there is no longer any merit in continuing the proceedings, or if it is unreasonable for the aided person to continue to receive legal aid.

The Director can also **revoke** legal aid for one or more of the reasons specified in the Legal Aid Ordinance such as if the aided person:

- fails to make a full and true disclosure of his or her financial resources
- fails to provide information or attend an interview as required by the Director
- fails to report change in financial circumstances
- has made a false statement or representation in furnishing information



Upon **discharge** of legal aid, the person receiving legal aid shall cease to enjoy the benefits and protection accorded to an aided person. Upon **revocation** of legal aid, the person receiving legal aid shall be treated as never having received legal aid and shall be liable for all costs incurred or payable by the Director on his behalf.

Before legal aid is discharged or revoked, the aided person may be given an opportunity to make representation. Upon discharge or revocation of legal aid, the aided person will be informed of the reasons and made aware of their right of appeal.

Appeals

An applicant who has been refused legal aid or aided person whose legal aid has been discharged or revoked and is aggrieved by the Director's decision can appeal to the Registrar of the High Court, or to a Committee of Review for proceedings in the Court of Final Appeal. The decision of the Registrar or the Committee is final.





Chapter 6

CRIMINAL LEGAL AID

Legal aid is available for representation in:

- committal proceedings in the Magistrate's Court where the prosecution is seeking committal of an accused to the Court of First Instance
- cases tried in the District Court and the Court of First Instance of the High Court
- appeals from the Magistrate's Court, and to the Court of Appeal of the High Court or the Court of Final Appeal.

Legal aid is not available in the Magistrate's Court for cases other than committal proceedings. Those charged

with an offence in the Magistrate's Court can contact the liaison office of the Duty Lawyer Service at the appropriate Magistrate's Court.

Means Test

Applicants for criminal legal aid have to pass the means test under the same financial resources criteria as for civil cases. An applicant charged with murder, treason or piracy with violence can apply to a judge for exemption from the means test and from legal aid contribution.





The Director has the discretion to grant legal aid in criminal cases to an applicant whose financial resources exceed the financial eligibility limit if he is satisfied that it is desirable in the interests of justice to do so, subject to payment of a contribution on higher rates calculated in accordance with the financial resources of the applicant.

Merits Test

If it is desirable in the interests of justice, legal representation will be provided to an accused for committal proceedings and for trials in the District Court and the Court of First Instance as long as he passes the means test. This is irrespective of whether he pleads guilty or not guilty to the charges, or the nature of his defence.

For criminal appeals, legal representation will be provided if it is shown there is meritorious grounds for appeal except for cases involving a charge of murder, treason or piracy with violence. There is a statutory requirement to grant legal aid in such cases even if there are no meritorious grounds for appeal.





Contribution

A successful applicant is expected to pay a contribution calculated in accordance with his financial resources as in the case of civil legal aid unless the financial resources of the applicant are below a certain amount.

What if Legal Aid is Refused?

Appeal is not available in respect of refusal to grant legal aid on means or merits, unless the application is for an appeal to the Court of Final Appeal and legal aid is refused on merits.

If legal aid is refused on means in cases involving charges of murder, treason or piracy with violence, the accused can apply to a judge for granting of legal aid, and exemption from the means test and from payment of contribution.

For refusal on merits in all other cases, a judge can grant legal aid to the accused provided he passes the means test.

For refusal in respect of an appeal to the Court of Final Appeal, the appellant can apply to a Committee of Review chaired by the Registrar of the High Court and comprising a barrister and a solicitor appointed by their respective professional bodies for a review of the refusal.



Chapter 7

WHERE TO APPLY

Applications for Civil Legal Aid

For civil cases, applications for legal aid can be made in person at the following offices of the Department:

Headquarters

24/F Queensway
Government Offices
66 Queensway
Hong Kong

Kowloon Branch Office

G/F Mongkok Government
Offices
30 Luen Wan Street
Mong Kok
Kowloon

Office hours

Monday to Friday 8:45 a.m.–1:00 p.m.

2:00 p.m.–5:15 p.m.

Saturday 9:00 a.m.–12:00 noon

Applicants are required to supply all documents relating to their case and all documents showing their financial status (for example, bank book, salary slips, rent receipts, mortgage repayment schedule, Salaries Tax assessment, documentary proof of Comprehensive Social Security Assistance, etc).

No application fee is needed except for applications under the Supplementary Legal Aid Scheme.



Applications for Criminal Legal Aid

For criminal cases, applicants who have been remanded in custody can apply through the Correctional Services Department. In most cases, an officer of the Department will visit the applicant in prison and assist with the application.

Applicants on bail can apply in person at the following office of the Department:

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.

Enquiries

24-hour Enquiry Hotline

Tel: 2537 7677

Facsimile No

2869 0655

Homepage on Internet

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

E-mail Address

ladinfo@lad.gov.hk



Useful Contacts

Tel-Law

(24-hour recorded legal information provided by the Duty Lawyer Service)

Tel: 2521 3333, 2522 8018

Free legal advice (in the evenings at District Offices, operated by the Duty Lawyer Service)

Tel: 2835 2500 (for enquiries)

Legal assistance in the Magistrate's Court:

Duty Lawyer Service

Rooms 2707-8

Gloucester Tower

The Landmark

11 Pedder Street

Central

Hong Kong

Tel: 2526 5969 (for enquiries)

Law Society of Hong Kong

3/F Wing On House

71 Des Voeux Road Central

Hong Kong

Tel: 2846 0500

Bar Free Legal Service Scheme:

Hong Kong Bar Association

LG2 The High Court

38 Queensway

Hong Kong

E-mail: bflss@hkba.org



Statutory Provision

This guide serves to explain the provision of legal aid services in the Hong Kong Special Administrative Region. For further details, reference should be made to the Legal Aid Ordinance (CAP.91) and regulations made under it in relation to civil legal aid and Legal Aid in Criminal Cases Rules of the Criminal Procedure Ordinance (CAP.221) in relation to criminal legal aid.

