

Chapter:	91B	LEGAL AID (ASSESSMENT OF RESOURCES AND CONTRIBUTIONS) REGULATIONS	Gazette Number	Version Date
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		Empowering section		30/06/1997
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(Cap 91, section 28)

[1 October 1984]

(Originally L.N. 327 of 1984)

Part:	I	INTRODUCTORY		30/06/1997
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Regulation:	1	Citation		30/06/1997
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These regulations may be cited as the Legal Aid (Assessment of Resources and Contributions) Regulations.

Regulation:	2	Interpretation		30/06/1997
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(1) In these regulations, unless the context otherwise requires-

"application" (申請) means application for a legal aid certificate;

"dependant" (受養人) means any person wholly maintained by the person concerned; (L.N. 105 of 1988)

"Director" (署長) includes any public officer acting under the authority of regulation 3(2);

"disposable capital" (可動用資產) or "disposable income" (可動用收入) means disposable capital or disposable income as determined or to be determined by the Director under these regulations;

"income" (收入) means income as determined or to be determined by the Director and includes benefits and privileges;

"period of computation" (計算期間) means the period of 12 months next ensuing from the date of the application for a certificate, or such other period of 12 months as in the particular circumstances of any case the Director may consider to be appropriate;

"person concerned" (有關人士) means the person whose financial resources, income, disposable income or disposable capital is to be determined or redetermined or the person whose resources are to be treated as the resources of any other person, under these regulations. (L.N. 195 of 1992)

(2) For the purposes of these regulations, the income of the person concerned includes any sums payable to that person for the purpose of the maintenance of an infant and any sum so payable under an order of a court or under any instrument. (L.N. 195 of 1992)

(3) Where a person resides in more than one dwelling in which he has an interest his main dwelling shall, for the purposes of these regulations, be that determined by the Director.

Regulation:	2A	Assessment of financial resources		30/06/1997
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For the purpose of the definition "financial resources" (財務資源) in section 2 of the Ordinance, the financial resources of an aided person shall be assessed by multiplying that person's monthly disposable income by 12 and adding his disposable capital to that sum.

(L.N. 195 of 1992)

Regulation:	3	Director to determine capital and income		30/06/1997
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(1) The financial resources, income, disposable income or disposable capital of a person and the extent of his liability to contribute in respect of any proceedings shall be determined by the Director. (L.N. 195 of 1992)

(2) Any public officer may act on behalf of the Director under this regulation.

Part:	II	DETERMINATION OF INCOME, DISPOSABLE INCOME AND DISPOSABLE CAPITAL		30/06/1997
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Regulation:	4	Determination of income, disposable income and disposable capital		30/06/1997
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Save as otherwise provided by these regulations-

- (a) the income of the person concerned shall be determined in accordance with Part I of Schedule 1 and his disposable income in accordance with Parts I and II of Schedule 1; and
- (b) the disposable capital of the person concerned shall be determined in accordance with Schedule 2.

Regulation:	5	Subject matter of dispute		30/06/1997
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(1) In computing the financial resources, income, disposable income or disposable capital of the person concerned there shall be excluded the value of the subject matter of the dispute in respect of which application has been made. (L.N. 195 of 1992)

(2) Periodical payments of maintenance made under an order of a court shall not be treated as the subject matter of the dispute for the purposes of subregulation (1).

Regulation:	6	Application in representative or fiduciary capacity		30/06/1997
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Where an application is made by a person who is concerned in the proceedings only in a representative or fiduciary capacity, then for the purpose of determining the financial resources, income or disposable income and disposable capital of that person and, where appropriate, the amount of any contribution under section 18(1)(b) of the Ordinance, the Director-

- (a) shall determine the value of any property or estate or the amount of any fund out of which that person is entitled to be indemnified and the financial resources, income or disposable income and disposable capital and maximum contribution of any persons (including that person if appropriate) who might benefit from the outcome of the proceedings; but
- (b) shall otherwise disregard the financial resources of that person.

(L.N. 195 of 1992)

Regulation:	7	Resources of a spouse	L.N. 148 of 2000; L.N. 230 of 2000	03/07/2000
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(1) Except as otherwise provided in subregulation (2), in computing the financial resources, income or disposable income and disposable capital of the person concerned the resources of his or her spouse shall be treated as that person's resources. (L.N. 105 of 1988; L.N. 195 of 1992)

(2) The resources of the spouse of the person concerned shall not be treated as his or her resources if-

- (a) the spouse has a contrary interest in the dispute in respect of which application is made; or
- (b) the person concerned and the spouse are living separate and apart.

(3) A spouse, whose resources are to be treated under this regulation as the resources of the person concerned, shall, for the purposes of rule 8 of Schedule 1, be deemed to be a dependant of the person concerned. (L.N. 105 of 1988; L.N. 148 of 2000)

Regulation:	8	Resources of an applicant who is an infant		30/06/1997
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Where an application is made on behalf of an infant for the grant of legal aid, the infant's resources shall include any sum payable under an order of the court or under any instrument to any person for the maintenance of the infant.

(L.N. 195 of 1992)

Regulation:	8A	Resources of persons receiving Comprehensive Social Security Assistance	L.N. 148 of 2000; L.N. 230 of 2000	03/07/2000
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For the purposes of determining the financial resources of a person receiving assistance under the Comprehensive Social Security Assistance Scheme administered by the Director of Social Welfare, it shall be presumed that the financial resources of that person do not exceed the amount prescribed in subparagraph (a) of Part I of Schedule 3 unless there are reasonable grounds to believe or suspect that the financial resources of that person may be such as to render him ineligible for legal aid or liable to pay a contribution by virtue of section 18(1) of the Ordinance.

(L.N. 148 of 2000)

Regulation:	9	Deprivation or conversion of resources		30/06/1997
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If it appears to the Director that the person concerned has with intent to reduce the amount of his financial resources, income, disposable income or disposable capital-

- (a) directly or indirectly deprived himself of any resources; or
- (b) converted any part of his resources into resources which under these regulations are to be wholly or partly disregarded (including the repayment of money borrowed on the security of a dwelling), or in respect of which nothing is to be included in determining the resources of that person,

the resources of which he has so deprived himself or which he has so converted shall be treated as part of his resources or as not so converted as the case maybe.

(L.N. 195 of 1992)

Regulation:	10	Duty of the person concerned to report change in financial circumstances		30/06/1997
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The person concerned shall inform the Director of any change in the financial circumstances in reference to which the original determination was made where that person has reason to believe that such change may affect the terms or continuation of his certificate.

Regulation:	11	Re-determination on change of circumstances		30/06/1997
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(1) Where it appears to a Director that the circumstances in reference to which he has determined the financial resources of the person concerned have altered, the Director may re-determine that person's financial resources, income, disposable income or disposable capital. (L.N. 195 of 1992)

(2) If the Director does not after exercising his powers under subregulation (1) discharge or revoke that person's legal aid certificate, he may, except in the case of a certificate granted under the Supplementary Legal Aid Scheme, re-determine that person's maximum contribution.

Regulation:	12	Amendment of determination because of error or mistake		30/06/1997
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Where it appears to the Director that there has been an error or mistake in the determination of a person's financial resources, income, disposable income, disposable capital or maximum contribution or in any computation or estimate upon which such determination is based and that it would be just and equitable to correct the error or mistake, the Director may make an amended determination, which shall for all purposes be substituted for the original determination and shall have effect in all respects as if it were the original determination.

(L.N. 195 of 1992)

Part:	III	CONTRIBUTIONS		30/06/1997
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Regulation:	13	Contributions from legally aided persons		30/06/1997
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The maximum contribution of an aided person under section 18(1)(b) of the Ordinance shall be a contribution in

respect of his financial resources assessed in accordance with Part I of Schedule 3.

(L.N. 195 of 1992)

Regulation:	14	Contributions under the Supplementary Legal Aid Scheme	L.N. 148 of 2000; L.N. 230 of 2000	03/07/2000
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For the purposes of section 32 of the Ordinance and a grant of legal aid to any person under the Supplementary Legal Aid Scheme-

- (a) an interim contribution shall be payable by an aided person to the Director for the benefit of the Fund in an amount equivalent to the maximum contribution payable by an aided person under section 18(1) of the Ordinance whose financial resources are equal to the limit prescribed in section 5 of the Ordinance; and
- (b) a final contribution shall be payable by an aided person to the Director for the benefit of the Fund in an amount equivalent to-
 - (i) the sums paid or payable on his account out of the Fund;
 - (ii) the costs incurred on his behalf;
 - (iii) the percentage calculated in accordance with Part III of Schedule 3 of the value of any property (wherever situate) recovered or preserved for the aided person in such proceedings whether on his own behalf or on behalf of another, less any application fee paid under regulation 3(3) of the Legal Aid Regulations (Cap 91 sub. leg. A)

(L.N. 148 of 2000)

Regulation:	15	Contributions for employee's compensation and common law damages		30/06/1997
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A person who is issued with 2 legal aid certificates, one for employee's compensation and the other for common law damages arising out of the same circumstances, is liable to pay only one amount of contributions for the 2 certificates.

(L.N. 489 of 1995)

Schedule:	1		L.N. 84 of 2011	18/05/2011
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[regulations 4(a) & 7(1)]

PART I

RULES FOR COMPUTING INCOME

1. The income of the person concerned from any source shall be taken to be the income which that person may reasonably expect to receive (in cash or in kind) during the period of computation, that income in the absence of other means of ascertaining it being taken to be the income received during the preceding year.
2. The income in respect of any emolument, benefit or privilege receivable otherwise than in cash shall be estimated at such a sum as in all the circumstances is just and equitable.
3. (1) The income from a trade, business or gainful occupation other than an employment at a wage or salary shall be deemed to be the profits therefrom which have accrued or will accrue to the person concerned in respect of the period of computation, and, in computing such profits, the Director may have regard to the profits of the last accounting period of such trade, business or gainful occupation for which accounts have been made up.
(2) In ascertaining the profits for the purpose of paragraph (1) there shall be deducted all sums necessarily expended to earn those profits, provided that no deduction shall be made in respect of the living expenses of that person or any member of his family or household, except in so far as such member of his family or household shall be wholly or mainly employed in such trade or business and such living expenses form part

of his remuneration.

4. In computing the income from any source there shall be disregarded such amount, if any, as the Director considers to be reasonable having regard to the nature of the income or to any other circumstances of the case.

PART II

DEDUCTIONS IN COMPUTING DISPOSABLE INCOME

5. Where the income of the person concerned consists, wholly or in part, of a wage or salary from employment there shall be deducted, if it is reasonable to do so, an amount to provide for-
- (a) the expenses for the care of a dependant who is-
 - (i) an infant; or
 - (ii) unable to take care of himself by reason of his mental or physical condition, during the time that that person is at work (whether that person is absent from home or not); (L.N. 224 of 2005)
 - (b) any payment made by that person by way of contribution to a pension or retirement scheme; and (L.N. 224 of 2005)
 - (c) any payment made by that person for salaries tax.

(L.N. 195 of 1992)

- 5AA. Where the income of the person concerned consists, wholly or in part, of profits from a trade, business or gainful occupation other than an employment at a wage or salary, there shall be deducted, if it is reasonable to do so, the expenses to provide for the care of a dependant who is-

- (a) an infant; or
- (b) unable to take care of himself by reason of his mental or physical condition, during the time that that person is at work (whether that person is absent from home or not).

(L.N. 224 of 2005)

- 5A. Income arising from any capital asset which has been included in the computation of the disposable capital of the person concerned, shall not be taken into account in the computation of the disposable income of the person concerned.

(L.N. 195 of 1992)

6. (1) Where the person concerned is a householder, there shall be a deduction in respect of rent of his main or only dwelling of the amount of the net rent payable, or such part thereof as is reasonable in the circumstances:

Provided that-

- (a) the deduction shall not exceed one half of the income of the person concerned unless the Director is satisfied that in the circumstances of the case it is reasonable to deduct a greater sum;
- (b) where any person or persons other than the person concerned, his or her spouse or any dependant of his or hers is accommodated, otherwise than as a sub-tenant, in the premises for which the rent is paid, the Director may deem the rent to be reduced by an amount reasonably attributable to such other person.

(2) In this rule-

"net rent" (租金淨額) means the rent less any proceeds of sub-letting any part of the dwelling in respect of which the said rent is paid or the outgoings incurred;

"rent" (租金) means-

- (a) the rent payable in respect of a year; and
- (b) a sum in respect of the yearly outgoings borne by the person concerned including, in particular, rates, insurance and any annual instalment (whether of interest or capital) payable in respect of a mortgage debt charged on the dwelling or on any interest therein.

7. If the person concerned is not a householder, there shall be a deduction in respect of the cost of his living accommodation of such amount as is reasonable in the circumstances.

8. (1) An amount equivalent to the 50-percentile household expenditure shall not be taken into account in relation to the person concerned and his dependants, if any.
- (2) For the purposes of this rule-
 - (a) the expression **50-percentile household expenditure** (住戶開支第50個百分值) means the level of expenditure of households of a particular size, excluding expenditure for rent, as obtained in the 5-yearly Household Expenditure Survey conducted by the Census and Statistics Department, so that 50% of the households of that size have household expenditure below that level and 50% of the households have household expenditure above that level; (L.N. 35 of 2011)
 - (b) (Repealed L.N. 35 of 2011)
 - (c) the amount that, in any particular year, shall not be taken into account for a particular household size shall be calculated in February of that particular year according to the following formula rounded to the nearest \$10 amount-

$$E_i \times \frac{\text{CPI(A) excluding rent component, j-1}}{100}$$

Where-

- (i) "E_i" is the 50-percentile household expenditure (excluding expenditure for rent) for a particular household size "i" based on the results of the latest round of the Household Expenditure Survey conducted by the Census and Statistics Department;
- (ii) "CPI(A) excluding rent component, j-1" is the average monthly Consumer Price Index (A) which excludes the result derived from the item for "rent, including rates and government rents" in year "j-1", with the base period of the Index being the same as the survey period of the Household Expenditure Survey mentioned in sub-subparagraph (i);
- (iii) "j" represents that particular year;
- (d) only the person concerned and his dependants, if any, are to be taken into account in determining the size of household; and
- (e) in ascertaining whether a person is a dependant, regard shall be had to his income and other resources. (L.N. 148 of 2000)

(L.N. 105 of 1988;L.N. 35 of 2011)

9. (1) Subject to paragraphs (2) and (3), where the person concerned makes regular payments for the maintenance of-
 - (a) a spouse living separate and apart or a former spouse; or
 - (b) a child,
 there shall be a deduction in respect of those payments.
- (2) The deduction under paragraph (1) may only be made if the spouse or child (as the case may be) is not taken into account as a dependant of the person concerned in calculating the amount equivalent to the 50-percentile household expenditure referred to in rule 8(1). (L.N. 35 of 2011)
- (3) The amount to be deducted under paragraph (1) shall be-
 - (a) where the payment is made under a court order, the amount actually paid; or
 - (b) in any other case, the amount specified in paragraph (4).
- (4) The amount to be deducted under paragraph (3)(b) shall be such amount as the Director considers to be reasonable having regard to the circumstances of the case, but shall not exceed whichever is the lower of the following-
 - (a) the amount actually paid as maintenance;
 - (b) the 50-percentile household expenditure differential. (L.N. 35 of 2011)
- (5) In this rule, **50-percentile household expenditure differential** (住戶開支第50個百分值差額) means the difference in amount between the 50-percentile household expenditure (calculated in accordance with rule 8(2)) in- (L.N. 35 of 2011)
 - (a) the case where the person or persons (as the case may be) for whose maintenance the payment is made, is or are regarded as the only dependant or dependants of the person concerned; and
 - (b) the case where the person concerned is regarded as having no dependant.

(L.N. 224 of 2005)

Schedule:	2	RULES FOR COMPUTING DISPOSABLE CAPITAL	L.N. 84 of 2011	18/05/2011
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[regulation 4(b)]
(L.N. 148 of 2000)

1. Subject to the provisions of these regulations or rules, there shall be included in the computation of the amount of the capital of the person concerned the amount or value of every resource of a capital nature ascertained as on the date of the application:
Provided that, where it is brought to the notice of the Director that, between the date of application and his determination there has been a substantial fluctuation in the value of a resource or there has been a substantial variation in the nature of a resource affecting the basis of computation of its value, or any resource has ceased to exist or a new resource has come into the possession of the person concerned, the Director shall compute the capital resources of that person in the light of such facts and the resources as so computed shall be taken into account in the Director's determination.
2. So far as any resource does not consist of money, the amount or value thereof shall be taken to be the amount which that resource would realize if sold in the open market or, if there is only a restricted market for that resource, the amount which it would realize in that market, or shall be taken to be the amount or value thereof assessed in such manner as appears to the Director to be just and equitable.
3. Where money is due to the person concerned, whether immediately payable or otherwise and whether the payment thereof is secured or not, the value shall be taken to be the present value thereof.
4. If the person concerned stands in relation to a company in a position analogous to that of a sole owner or partner in the business of that company, the Director may, in lieu of ascertaining the value of his stocks, shares, bonds or debentures in that company, treat that person as if he were such sole owner or partner and compute the amount of his capital in respect of that resource in accordance with rule 5.
5. Where the person concerned is or is to be treated as the sole owner of or a partner in any business, the value of such business or his share therein to that person shall be taken to be either-
 - (a) such sum, or his share of such sum, as the case may be, as could be withdrawn from the assets of such business without substantially impairing the profits of such business or the normal development thereof; or
 - (b) such sum as that person could borrow on the security of his interest in such business without injuring the commercial credit of that business,
 whichever is the greater.
6. The value of any interest in reversion or remainder on the termination of a prior estate, whether legal or equitable, in any real or personal property or in a trust or other fund, whether the person concerned has the sole interest or an interest jointly or in common with other persons or whether his interest is vested or contingent, shall be computed in such manner as is both equitable and practicable.
7. Save in exceptional circumstances, nothing shall be included in the amount of capital of the person concerned in respect of-
 - (a) the household furniture and effects of main or any dwelling house occupied by him;
 - (b) articles of personal clothing; and
 - (c) the personal tools and equipment of his trade, not being part of the plant or equipment of a business to which the provisions of rule 5 of this Schedule apply.
8. (1) The value of any interest in the only or main dwelling in which the person concerned resides shall be disregarded in computing the amount of his capital. (L.N. 195 of 1992)
(2) Where the person concerned resides in more than one dwelling in which he has an interest, the Director shall take into account in respect of the value to him of any interest in a dwelling which is not the main dwelling any sum which might be obtained by borrowing money on the security thereof.

9. Where the person concerned has received or is entitled to receive from a body of which he is a member a sum of money by way of financial assistance towards the cost of the proceedings in respect of which a certificate is applied for, such sum shall be disregarded.
10. The value of any life assurance or endowment policy shall be taken to be the amount which the person concerned could readily borrow on the security thereof.
11. (Repealed L.N. 195 of 1992)
12. Where an application relates to a claim for damages arising from personal injuries to, or the death of, any person, there shall be disregarded the amount of any compensation received by the person concerned under-
- (a) the Employees' Compensation Ordinance (Cap 282);
 - (b) the Pneumoconiosis and Mesothelioma (Compensation) Ordinance (Cap 360); or (6 of 2008 s. 40)
 - (c) the Occupational Deafness (Compensation) Ordinance (Cap 469).
- (L.N. 186 of 1989; L.N. 107 of 1990; 21 of 1995 s. 45)
- 12A. (1) Where an application relates to a claim for damages arising from personal injury to a person, and monies have been received by the person concerned under an insurance policy in respect of the injury, there shall be disregarded such amount as the Director considers to be reasonable to provide for the care and medical treatment and appliance which are likely to be required by the injured person as a result of the injury over the 3-year period commencing on the date of application.
- (2) In determining the amount to be disregarded under subsection (1), the Director shall have regard to the circumstances of the case, including but not limited to-
- (a) the amount, if any, actually incurred to provide for the care and medical treatment and appliance required by the injured person as a result of the injury during the 12-month period immediately preceding the date of application; and
 - (b) the medical evidence, if any, as to the care and medical treatment and appliance which are likely to be required by the injured person as a result of the injury.
- (L.N. 224 of 2005)
13. In computing the amount of the disposable capital of the person concerned, there shall be disregarded-
- (a) the amount of any moneys paid to him from the assistance fund established under section 3 of the Traffic Accident Victims (Assistance Fund) Ordinance (Cap 229);
 - (b) the amount of any interim payment made to him in accordance with an order made under the Rules of the High Court (Cap 4 sub. leg. A), or in accordance with an agreement having the same effect as such an order; and (25 of 1998 s. 2)
 - (c) such amount or value, if any, of a donation or gift received by him, as the Director considers to be reasonable having regard to the amount, value and nature of the donation or gift.
- (L.N. 186 of 1989)
14. If the person concerned is of or over 60 years of age, in computing the amount of the disposable capital of the person, an amount equivalent to that specified in section 5(1) of the Ordinance in respect of financial resources is to be disregarded.
- (L.N. 35 of 2011)

Schedule:	3	CONTRIBUTIONS	L.N. 114 of 2007	15/06/2007
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[regulations 8A, 13 & 14]
(L.N. 148 of 2000)

PART I

The maximum contribution of an aided person under section 18(1)(b) of the Ordinance shall-

- (a) if his financial resources do not exceed \$20000, be nil; (L.N. 148 of 2000)

- (b) except as provided in subparagraph (c), if his financial resources exceed the amount indicated in column A but do not exceed the amount indicated opposite in column B, be the amount or, as the case may be, the percentage of his financial resources indicated opposite in column C as follows-

A	B	C
If his financial resources exceed	But do not exceed	Then, in relation to his financial resources, his maximum contribution is
\$20000	\$40000	\$1000
\$40000	\$60000	\$2000
\$60000	\$80000	5%
\$80000	\$100000	10%
\$100000	\$120000	15%
\$120000	\$144000	20%
\$144000	the amount of financial resources specified in section 5(1) of the Ordinance	25%;

and (L.N. 148 of 2000; L.N. 141 of 2006; L.N. 114 of 2007)

- (c) if his certificate is for proceedings in which a breach of the Hong Kong Bill of Rights Ordinance (Cap 383) or an inconsistency with the International Covenant on Civil and Political Rights as applied to Hong Kong is an issue and-

- (i) if his financial resources exceed the amount indicated in column A but do not exceed the amount indicated opposite in column B, be the amount or, as the case may be, the percentage of his financial resources indicated opposite in column C as follows-

A	B	C
If his financial resources exceed	But do not exceed	Then, in relation to his financial resources, his maximum contribution is
\$20000	\$40000	\$1000
\$40000	\$60000	\$2000
\$60000	\$80000	5%
\$80000	\$100000	10%
\$100000	\$120000	15%
\$120000	\$144000	20%
\$144000	the amount of financial resources specified in section 5(1) of the Ordinance	25%
the amount of financial resources specified in section 5(1) of the Ordinance	\$269700	30%
\$269700	\$369700	35%
\$369700	\$469700	40%
\$469700	\$569700	45%
\$569700	\$669700	50%
\$669700	\$769700	55%
\$769700	\$869700	60%
\$869700	\$1200000	65%;

- or (L.N. 141 of 2006; L.N. 114 of 2007)
- (ii) if his financial resources exceed \$1200000, be 67% of his financial resources. (L.N. 148 of 2000)
- (L.N. 85 of 1997; L.N. 83 of 2004)

PART II

(Repealed L.N. 195 of 1992)

PART III

CONTRIBUTIONS UNDER THE SUPPLEMENTARY LEGAL AID SCHEME

3. Subject to paragraph 4, the rate of contribution is 10%. (L.N. 224 of 2005)
4. Where a claim is settled prior to delivery of a brief for attendance at trial to counsel, the rate of contribution is 6%. (L.N. 224 of 2005)

PART IV

(Repealed L.N. 489 of 1995)