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## New Legal Aid Means Test – More Straightforward, More Efficient, More Flexible

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Amendments to the Legal Aid and Advice Act (Cap. 160) (**LAAA**) were made in November 2018. The significant amendments that were not related to the Legal Aid means test were explained in the May 2019 *Singapore Law Gazette* article “*Strengthening Access to Justice – Key Amendments to the Legal Aid and Advice Act*”. This article discusses the means test-related amendments to the LAAA, which came into force on 16 October 2019. They simplify the means criteria for legal aid, and provide for flexibility to grant aid to applicants who do not satisfy the means criteria.

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## Introduction

The Legal Aid Bureau (**LAB**)<sup>1</sup> provides legal services to Singapore citizens and permanent residents of limited means, including representation in court (legal aid), oral advice on civil matters (legal advice), and the drafting of wills and deeds of separation (legal assistance). LAB<sup>2</sup> receives about 9,000 applications each year for legal aid, advice and assistance.

Under the LAAA, applicants must pass both the means and merits test in order to qualify for legal aid. The means test assesses their financial eligibility, and the merits test assesses whether they have a reasonable case to bring or defend in court. The purpose of the means and merits tests is to ensure that help goes to those who cannot afford basic private legal services, and that public funds are not spent pursuing fruitless

claims.

On 19 November 2018, the Legal Aid and Advice Amendment Bill was passed. The first phase of amendments to the LAAA, which seek to improve the administration of legal aid, was implemented on 31 May 2019.<sup>3</sup> On 16 October 2019, the Ministry enacted the second phase of amendments, which were the means test related amendments. These amendments simplify the means criteria for legal aid, and provide greater flexibility to assist applicants who do not satisfy the means criteria, but, due to extenuating circumstances, may still be unable to afford basic legal services.

## Simpler and More Efficient Means Test Process

The former means criteria (prior to the amendments to the LAAA) were set out in the Second Schedule to the LAAA. In order to pass this means test, applicants needed to have an annual *disposable* income<sup>4</sup> of no more than \$10,000 (in the 12 months preceding the date of the application for legal aid) and *disposable* capital<sup>5</sup> of no more than \$10,000 (at the date of the application for legal aid). Applicants were required to provide documentary proof of their income and assets, and the various deductibles, such as the applicant's and the spouse's CPF contributions, rent payment, value of the subject-matter of the legal proceeding, and the surrender value of life policies.

The amendments to the LAAA have removed the Second Schedule, and empower the Minister for Law to prescribe new means criteria in subsidiary legislation. The new criteria are set out in the First Schedule to the Legal Aid and Advice Regulations. They require an assessment of the applicant's Per Capita Gross Monthly Income (**PCHI**)<sup>6</sup> and Annual Value of the applicant's residence, savings and investments, instead of the applicant's disposable income and disposable capital. This is similar to the means criteria used by many other social support schemes

To pass the new means test, an applicant must meet the following criteria:

- a. The average of the applicant's PCHI must be \$950 or lower for the last 12 months prior to date of application for legal aid;
- b. The annual value of the applicant's place of residence must be \$13,000 or lower;<sup>7</sup> and
- c. The applicant's savings and non-CPF investments must be \$10,000 or lower.<sup>8</sup>

This will simplify and shorten the application process for legal aid since applicants will no longer need to provide various documentary proof of deductibles, such as proof of rental payment, surrender value of insurance policies and motor vehicle logbooks. Therefore, an applicant will likely take less time to prepare documents for the application. The example below illustrates the changes to the means criteria:

The applicant earns a gross monthly income of \$1500 as a warehouse supervisor. The applicant's spouse earns a gross monthly income of \$1200 as a freelance make-up artist. The couple live in a rented HDB flat with one child, paying \$500 per month on rent. The applicant has \$8,000 worth of savings, and owns a motorcycle, which he uses for work.

	<b>Before 16 October 2019</b>	<b>After 16 October 2019</b>
<b>Income criteria</b>	<p>After the deductibles given to the applicant (for self, spouse, dependant, CPF contributions, and rent), the Disposable Income is assessed to be \$4080</p> <p>(Disposable income is calculated by taking the past 12 months' income of the applicant and his spouse, deducting \$6,000 for the applicant, \$6,000 for the spouse, and \$6,000 for the child. The rent and CPF contributions are also deducted.)</p>	<p>The applicant's monthly PCHI is \$900.</p> <p>[Monthly PCHI is calculated by taking the total gross income of the applicant and his household over the past 12 months, divided by 12, then divided by the number of people in the household (3, including the child).]</p>
<b>Assets criteria</b>	<p>Disposable Capital of the applicant is \$8,000. The motorcycle he owns is not included, as it is a deductible (tools of trade).</p>	<p>The applicant's total savings and investments is \$8,000.</p> <p>The applicant does not own property, and is therefore not subject to the annual value criterion.</p>
<b>Means test result</b>	<p>The applicant would pass the means test under the former or new means criteria. However, he would not need to produce proof of rent payment and his vehicle logbook under the new means test.</p>	

\*The example is fictional. Any similarity to real cases is coincidental.

The new means criteria have no material impact on the number of households eligible for legal aid, and will maintain the coverage at about 25 per cent of resident households.

## Independent Panel to Examine Cases with

# Extenuating Circumstances

Under the old means test regime, the Director of Legal Aid (**Director**) had the discretion to make certain adjustments to the means test requirements for applicants in specific situations, if it seemed reasonable to do so to relieve hardship, namely:

- a. Where the applicant lived apart from his or her spouse;<sup>9</sup>
- b. Where the applicant had a sudden physical or mental disability, permanently and severely restricting his capacity to earn an income;<sup>10</sup>
- c. Where the applicant had a sudden loss of income and required legal aid urgently;<sup>11</sup> or
- d. Where the applicant was involved in certain family proceedings involving children, or protection orders between spouses or ex-spouses.<sup>12</sup>

The Director did not have power to grant aid to applicants who failed the means test, but who might have other extenuating circumstances, such as illness that required major expenditure or extremely onerous caregiving obligations.

However, under the amended LAAA, the Minister for Law will now have the discretion to grant aid to applicants, if he is of the opinion that it is “just and proper” to do so.<sup>13</sup> The Minister may appoint any person, including a Panel of persons, to exercise this power.<sup>14</sup>

The Ministry has since set up the Civil Legal Aid Means Test Panel to exercise the Minister’s new discretion. The independent Panel consists of seven members with background in law, social services and grassroots service. They help review means test appeals and repeat applications on a case-by-case basis, taking into account the detailed circumstances of the case.<sup>15</sup> The Panel will consider deserving applicants for legal aid who may not satisfy the means criteria, but due to their extenuating circumstances,<sup>16</sup> would not be able to afford basic legal services without causing significant hardship to themselves and their families.

## Conclusion

The LAAA amendments discussed in this article seek to strengthen access to justice through simplifying the civil legal aid means test process, and providing greater flexibility to assist applicants with extenuating circumstances. These measures will support LAB’s mission to provide quality legal services to Singapore citizens and permanent residents with limited means.

LAB aims to provide quality legal aid, advice and assistance to persons of limited means. We offer legal representation in a wide range of civil matters including divorce, monetary claim, custody of

children, estate matters and claim for compensation in injury or medical negligence cases. Additionally, LAB is supported by a panel of volunteer lawyers, known as Assigned Solicitors. These lawyers handle cases that require special expertise, such as cases involving Syariah Law.

For further information, please refer to our website at: <https://lab.mlaw.gov.sg>.

## Endnotes

1.	We wish to thank Ms Leow Lay May (Community Legal Services Division, Ministry of Law) and Mr Jay Teo (Ministry of Law Services Centre) for their comments on an earlier draft of this article.
2.	For more information on the Legal Aid Bureau, see our website at <a href="https://lab.mlaw.gov.sg">https://lab.mlaw.gov.sg</a> ; and “ <i>Help with a Heart— Stories from the Legal Aid Bureau</i> ,” an E-Publication produced for LAB’s 60 <sup>th</sup> Anniversary in 2018, see <a href="https://www.mlaw.gov.sg/flipbook/index.html">https://www.mlaw.gov.sg/flipbook/index.html</a> .
3.	For more details on these amendments which are not related to the means test, please refer to the article “ <i>Strengthening Access to Justice – Key Amendments to the Legal Aid and Advice Act</i> ” in the May 2019 issue of the Singapore Law Gazette, at <a href="https://lawgazette.com.sg/news/updates/strengthening-access-to-justice-key-amendments-to-the-legal-aid-and-advice-act/#">https://lawgazette.com.sg/news/updates/strengthening-access-to-justice-key-amendments-to-the-legal-aid-and-advice-act/#</a> .
4.	Disposable income is the income of the applicant together with the income (if any) of the applicant’s spouse for the 12 months immediately preceding the date of the application, after deducting \$6,000 for the applicant, \$6,000 from the income of the applicant’s spouse, up to \$6,000 for the maintenance of each dependant of the applicant or the applicant’s spouse, up to \$20,000 for rent, and the applicant and the applicant’s spouse’s CPF contributions.
5.	Disposable capital is the property which an applicant is possessed of, or to which he is entitled to, excluding the subject matter of the proceeding, the applicant’s wearing apparel, the applicant’s tools of trade, the applicant’s household furniture used in his place of residence, a dwelling-house with an annual value of up to \$13,000 or an HDB flat, savings of the applicant up to \$30,000 if he is 60 or above, moneys standing to the credit of the applicant’s account in the CPF, and the total surrender value of the applicant’s life policies up to \$46,000.
6.	The Average <i>PCHI</i> is the the average gross monthly household income of the applicant’s household over the 12 months before the date of application, divided by the total number of household members (including the applicant for legal aid). “Household members” refers to persons related by blood, marriage, and/or legal adoption and have the same residential address reflected on the NRIC as the applicant for legal aid.
7.	The Applicant must not own property other than his or her place of residence. The property can either be an HDB flat or a private property.
8.	The savings and investment limit for applicants aged 60 and above is \$40,000.
9.	The spouse’s income could be disregarded in the calculation of disposable income.
10.	The Director could in determining the disposable capital of the applicant exclude savings of the applicant of up to \$30,000 and in determining the disposable income deduct a further amount equal to \$1000, in the case of an applicant who has also suffered a sudden loss of income and requires legal aid urgently, or \$2,000 in any other case.
11.	The Director may assess the applicant’s income over a period of 6 months (instead of 12 months)

	preceding the date of the application for legal aid.
12.	The Director could give an additional deduction of \$5,000 in the calculation of disposable capital, and also disregard the value of a property owned and used by the applicant and his family as their home if the annual value was not more than \$20,000 (instead of \$13,000).
13.	See section 8(4)(b) of the LAAA.
14.	See section 8(5) of the LAAA.
15.	Although the applicants may “clear” the means test because of the Panel’s decision, the grant of aid is still subject to their passing the merits test.
16.	For example, a serious illness for which the applicant has to pay for major medical procedures, or caregiving obligations that prevent the applicant from working and earning an income.

**Tags:** L2



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