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REVISED GUIDELINES ON THE UTILIZATION OF THE LEGAL ASSISTANCE FUND AS PROVIDED FOR IN THE MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995, OR REPUBLIC ACT NO. 8042, AS AMENDE...

DFA MEMORANDUM CIRCULAR NO. 07-13, April 15, 2013

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Section 1. Purpose. This Circular is issued, as mandated under Section 24(a) of the Migrant Workers and Overseas Filipinos Act of 1995, or Republic Act No. 8042 as amended by Republic Act No. 10022, to provide the guidelines, procedures and criteria for the utilization of the Legal Assistance Fund (LAF) for Overseas Filipinos.

Section 2. Persons Qualified to Avail of the LAF. The LAF may be availed of by any distressed Overseas Filipino, whether documented or not, who is unable to engage the services of private counsel, and who is in a country where there is no system of legal aid and public defenders, or where there is no access to counsel de officio, or any lawyer provided by the foreign host government.

An Overseas Filipino is distressed if he is in urgent need of legal services in a criminal case, labor related disputes, or other analogous legal proceedings including, among others, actions for tort, immigration detention, unlawful detention by foreign government authorities, or other legal proceedings necessary for the Overseas Filipino to enforce his rights, protect his liberties, or seek redress for injury, as provided under the laws of the foreign host country, under international human rights law, or Philippine law.

Legal assistance to victims of Trafficking in Persons shall be given, utmost priority.

In cases where both adverse parties are Filipinos, the LAF shall be made available only to the party who is aggrieved, or has suffered an injustice as determined by the Undersecretary for Migrant Workers' Affairs.

Section 3. Authorized Use of the LAF: The LAF created under the Migrant Workers and Overseas Filipinos Act of 1995 shall be used exclusively to provide legal services as authorized by the Undersecretary for Migrant Workers Affairs for Filipinos overseas in distress. Costs for such legal services that may be paid out of the LAF include, among others:

- Professional Fees, whether time-based or fixed charges, for services rendered by private lawyers, foreign or domestic, including those for initial consultations, acceptance fee, appearance fee, legal opinions and pleadings; Provided, that the total of such fees shall not exceed the following maximum rates per client.

For Criminal cases:
Europe and Americas – US$8,000.00
Middle East and Africa – US$6,000.00
Asia and Pacific – US$6,000.00

In criminal cases, where the overseas Filipino is the accused, the total expenses for legal services rendered from detention or indictment to rendition of judgment should be within the above limits prescribed therein.

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Labor related dispute:

Europe and Americas – US$7,000.00
Middle East and Africa – US$5,000.00
Asia and Pacific – US$5,000.00

The maximum rates for analogous cases, or those involving special procedures such as a class action will be authorized on a case by case basis.

- Filing fees, docket fees, court fees, notarial fees, and other necessary administrative charges, or costs imposed by courts or tribunals not to exceed US$5,000.00 per client.

- Incidental litigation expenses and out-of-the pocket expenses including transportation and communication costs, costs for messenger, courier and postage, representation costs, printing and reproduction costs and other fees incidental to engaging or providing legal services not to exceed US$5,000.00.

- Bail bonds to secure temporary release of Filipinos under detention overseas. Provided, that the concerned Philippine foreign service post independently certifies that evidence of guilt is not strong, and there is no risk that the accused will abscond, not to exceed US$5,000.00 per accused.

- Expenses necessary to secure and preserve documentary or testimonial evidence, not to exceed US$1,000.00.

- Expenses for the protection, and to ensure cooperation of indispensible witnesses, not to exceed US$3,000.00 each.

- Honoraria, representation allowance and reimbursements for incidental expenses given to counsel de officio, or other foreign government authorities, or counsel pro bono to ensure their preferential attention in handling, or processing cases of Filipinos, that are meritorious not to exceed US$3,000.00.

- Expenses incurred by Philippine foreign service post, or the Office of the Undersecretary of Migrant Workers Affairs incidental to investigations on applications for legal assistance services, to procurement and delivery of legal services, and to the monitoring of pending cases. Such costs include those for transportation, daily subsistence allowance (hotel and per diems), communication and other such expenses for officers and staff on official time, in accordance with existing rules and regulations.

- Payment for the procurement of goods, or contracts of service for retained lawyers, translators or other support staff, deployed domestically or abroad, authorized by the Undersecretary of Migrant Workers Affairs as necessary to fulfill his function to provide and coordinate all legal assistance services to Filipino overseas, and to administer the LAF.

- Expenses for public information campaign conducted or sponsored by the Department of Foreign Affairs to render legal advice to migrant workers or Overseas Filipinos in distress on their legal rights and responsibilities under the laws of their host country, international human rights law, or relevant international conventions.

Section 4. Limitations on the Use of the LAF: In order to afford equal protection of the laws considering the finite nature of the fund and the number of Filipinos overseas, disbursements of the LAF shall be capped for every applicant in the amounts fixed in this Circular. Such capped amount shall be subject to periodic review and revision by the Undersecretary for Migrant Workers' Affairs at least annually, based on the amount of LAF available and a survey on the average cost of decent legal services in host countries. Provided, that in extremely exceptional cases, the Undersecretary for Migrant Workers' Affairs may authorize disbursements beyond the prescribed limits.

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Section 5. Prohibited Use of the LAF: The LAF shall not be used if it appears that the case has no chance of success, or is intended merely to harass or injure the opposite party or to work oppression or wrong.

Further, the LAF shall not be used to cover payments for appeal of cases, amicable settlement of cases, and for blood money, damages, or other forms of compensation, attorney's fees, cost of suits, or fines ordered by court, agency or tribunal to be paid by a Filipino overseas as penalty, or to make restitution for his unlawful acts, or for debts he has incurred, or guaranteed. Provided, that such payments may be authorized, partly or wholly, from the LAF if there is a manifest violation of due process, or evident miscarriage of justice as determined by the Undersecretary for Migrant Workers' Affairs or in appeal of cases where the Filipino accused is meted the penalty of life imprisonment or death, or for amicable settlement of cases where the accused Filipino does not appear guilty of the offense charge as determined by the Head of Post.

Section 6. Procedure for Approval of Applications for Legal Assistance and Disbursement of the LAF: Post shall document all applications made by Overseas Filipinos for legal assistance, and report and recommend action, whether to approve or disapprove, on each application to the Undersecretary for Migrant Workers Affairs within ten (10) working days from receipt of application.

The Undersecretary shall affirm or reverse the Post's recommendation, or may require additional information. If Post is unable to furnish such information, the Undersecretary may send a legal assistance mission to the host country to investigate, make recommendations, and provide the necessary legal assistance to the applicant, as directed by the Undersecretary.

The Undersecretary may sub-allot a portion of the LAF to Post with historically high number of disbursements.

Every disbursement out of the LAF shall be subject to the approval by the Undersecretary for Migrant Workers Affairs, or in his absence, the person officially designated to perform his functions in an acting capacity.

6.1

Additional requirements for request for disbursement by Philippine Foreign Service Posts: Request for disbursements of the LAF made by Post for payment of lawyer's fees, bail bonds, court fees, and other necessary or incidental expenses shall not be approved unless supported adequately by documents that justify the amount requested. The determination of the reasonable amount to be granted to Post rests on the Undersecretary for Migrant Workers' Affairs, after careful and thorough evaluation of the request and its supporting documents.

6.2

Reports on Disbursements: The Philippine foreign service post concerned shall submit a report on the actual use of the LAF to the Undersecretary for Migrant Workers Affairs and Office of Fiscal Management (OFM) within fifteen (15) working days upon receipt of the authority to disburse the amount requested. Failure to comply with this requirement shall bar replenishment of the Post's working funds.

In cases of unutilized LAF allocation or any part thereof, the Undersecretary shall advise OFM whether the balance of the fund shall continue to be allocated for the same purpose, or realigned to other LAF purposes, as may be deemed appropriate.

OFM shall make a weekly report of disbursements which should include status of funds, itemized expenditures and list of beneficiaries charged against the LAF. The weekly report shall be endorsed by the Internal Audit Service (IAS) before submission to the Secretary of Foreign Affairs, copy furnished the Undersecretary for Migrant Workers and the Resident Auditor.

6.3

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Requirements for Procurement: All Disbursements for LAF shall be subject to existing accounting and auditing rules and regulations. In accordance with existing regulations on the procurement of services and as a matter of good internal control, proposals for disbursement should be accompanied by at least three (3) quotations from qualified and independent providers.

Provided that, the Undersecretary for Migrant Workers' Affairs may grant exemption from quotations, and other requirements of Republic Act No. 9184 or the Government Procurement Act, when circumstances warrant urgent action, or no other comparable providers are readily available, as certified by the head of the Philippine foreign service post.

Section 7. Reimbursement of LAF: To ensure the continued availability of the LAF and to prevent unjust enrichment, in case of tort, or other analogous cases where legal assistance services is granted to the Filipino victim to pursue his claim for damages, disbursement of LAF shall be treated as advances to be reimbursed by the said client upon successful outcome of litigation out of any damages awarded by the court or tribunal, and actually collectable from the guilty party, or from any amount received by the victim from an amicable settlement. In no case, however, shall client be required to pay as reimbursement more than fifty percent (50%) of all damages awarded, and settlement received.

Section 8. Interpretation: In case of conflict in the interpretation of the provisions of this Memorandum Circular, the opinion given by the Undersecretary for Migrant Workers' Affairs shall prevail.

Section 9. Grievance Procedure: In case of inability of Post to address applications for legal assistance, to provide satisfactory legal assistance in meritorious cases, or to make regular, or requested reports and updates to the Undersecretary for Migrant Workers' Affairs within a reasonable period, the Undersecretary, motu proprio or upon a complaint from the public, shall send a legal assistance mission to the host country to investigate the circumstances, make the necessary recommendations, and acquire, or directly provide the necessary legal assistance to the distressed Overseas Filipino. The administrative costs, allowances and other incidental costs of the mission shall be sourced from the LAF as provided under Section 3 of this Circular.

Section 10. Repealing Clause: All previous guidelines on the utilization of the LAF issued by the Department of Foreign Affairs including its Memorandum Circulars Nos. 12-08 and 12-08-A are hereby repealed in their entirety, and without effect. Any provision of other Memorandum Circulars, Department Orders, and other administrative issuances that are inconsistent with any provisions of this Circular are hereby repealed, or amended accordingly.

Section 11. Separability Clause: If for any reason, any portion or provision of this Memorandum Circular is declared unconstitutional, or contrary to law by competent authority, other parts not covered by such declaration shall continue to be in full force and effect.

Section 12. Effectivity Clause: This Memorandum Circular shall take effect fifteen (15) days after it is filed with the Office of the National Administrative Register in accordance with the Administrative Code of 1987, Book VII, Chapter 2, Section 3.

Issued by:

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