

**For Information on
24 November 2008**

**Legislative Council
Panel on Administration of Justice and Legal Services
Provision of Legal Aid Services**

Purpose

The paper sets out the major aspects of legal aid services in Hong Kong for Members' information.

The Legal Aid Regime

2. The objective of legal aid policy is to ensure that no one with reasonable grounds for taking or defending a legal action in Hong Kong is prevented from doing so because of a lack of means. Legal aid service is an integral part of Hong Kong's legal system. The legal aid system in Hong Kong has undergone many changes over the years to ensure that the policy objective and the changing social needs are met.

3. The Legal Aid Department (LAD) provides legal representation to eligible applicants by a solicitor and, if necessary, a barrister in civil or criminal proceedings. Any person, whether or not resident in Hong Kong and who is involved in the relevant court proceedings¹ may apply for legal aid. Legal aid will be granted if the applicant is able to satisfy the statutory criteria as to the financial eligibility and the merits for taking or defending the legal proceedings.

Ordinary Legal Aid Scheme

4. The Ordinary Legal Aid Scheme (OLAS) covers civil proceedings in District Court and above. The types of cases covered include matrimonial cases, traffic accident claims, landlord and tenant disputes, claims in respect of industrial accidents, employees' compensation, immigration matters, breach of contract, professional negligence, seamen's wage claims, employees' wages and severance pay, Mental Health Review Tribunal cases, and Coroners' inquests involving interests of public justice. Currently, the financial eligibility limit for

¹ Legal aid is available for cases in the District Court, the Court of First Instance, the Court of Appeal and the Court of Final Appeal. It is also available for committal proceedings in the Magistrates' Courts.

OLAS is \$165,700. The Director of Legal Aid (DLA) may waive the financial eligibility limit in cases where a 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 is an issue.

5. Legal aid is not free. Legal aid policy requires the aided person to contribute towards the costs of the aided proceedings out of his/her own resources. An aided person is required to pay a contribution according to a statutory scale if his financial resources exceed \$20,000. And, if property (including money) is recovered or preserved on his behalf, he/she needs to reimburse the DLA any outstanding legal costs incurred out of the property recovered or preserved.

6. The major types of cases for which legal aid is granted are matrimonial cases, personal injuries cases, employees' compensation cases and wages' claims.

Supplementary Legal Aid Scheme

7. The Supplementary Legal Aid Scheme (SLAS) provides legal assistance to persons whose financial resources exceed the upper limit allowed under the OLAS in certain types of cases. It is a self-financing civil legal aid scheme available to those whose financial resources are above \$165,700 but not exceeding \$460,300. SLAS 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. It also covers claims under the Employees' Compensation Ordinance irrespective of the amount of the claim.

8. An aided person is required to pay an interim contribution. If he is successful in the proceedings, he will be required to contribute, out of the damages recovered, a percentage of the damages stipulated in the Legal Aid Ordinance as well as to repay the Director any outstanding legal costs incurred.

9. The majority of cases aided under SLAS are personal injuries and employees' compensation claims. As at 30 September 2008, the fund balance of SLAS was \$89.7 million.

Legal Aid in Criminal Cases

10. Legal aid is available for criminal proceedings at District Court and above, as well as in committal proceedings in the Magistrates' Court. Applicants will need to pass both the means and merits tests in order to be eligible for legal aid in criminal cases.

11. The financial eligibility limit is the same as that of OLAS. The DLA has the discretion to grant legal aid in a criminal case even if the applicant's 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 the applicant's payment of a contribution. In practice, the DLA seldom refuses to grant legal aid in criminal cases solely on means.

The Government's Financial Commitment to Legal Aid Services

12. In 2008-09, the approved estimates for the LAD are \$758.9 million, out of which legal aid costs account for \$528 million. The financial position of LAD in the past two financial years is set out below –

	2006-07 Actual Expenditure \$M	2007-08 Actual Expenditure \$M	2008-09 Approved Estimates \$M
Personal Emoluments and Personnel Related Expenses	194.8	201.2	213.7
Departmental Expenses	15.3	17.4	17.2
Legal Aid Costs	418.7	428.2	528.0
Total	628.8	646.8	758.9

Home Affairs Bureau
 Legal Aid Department
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