



## **Supplementary Legal Aid Fund**

**Annual Report 2016**



## **1. Overview**

The provision of legal aid is an integral part of Hong Kong's legal system. Our policy objective is to ensure that no one with reasonable grounds for pursuing or defending a legal action is denied access to justice because of a lack of means. The Legal Aid Ordinance (Cap.91) (LAO), enacted in 1967, sets out the legal framework for the administration of legal aid. The Legal Aid Department (LAD) provides legal aid for civil proceedings under the Ordinary Legal Aid Scheme (OLAS) and Supplementary Legal Aid Scheme (SLAS), as well as for criminal proceedings under OLAS. To qualify for legal aid, a person is required by law to satisfy both the means and merits tests as provided by the LAO.

## **2. Supplementary Legal Aid Scheme**

SLAS came into operation in 1984 and aimed at providing legal assistance to people whose financial resources exceeded the statutory limit allowed under OLAS, but was below the amount specified for SLAS. SLAS is a self-financing scheme. SLAS by design aimed at cases which involved monetary claims of a reasonable size, with a high success rate and a reasonably good chance of recovering costs and damages to ensure its financial viability. It is funded by an initial seed money of \$1 million from the Lotteries Fund and an injection of \$27 million and a further injection of \$100 million by the Government in 1995 and 2012 respectively to support the operation of the expanded SLAS. Its income sources also include the application fees payable by applicants, the interim contributions from aided persons and the final contributions from a percentage deduction of the damages recovered in successful cases.

## **3. Financial Eligibility Limit of SLAS**

At present, SLAS is available to applicants whose financial resources exceed the statutory limit of \$290,380 for OLAS but is below \$1,451,900. The costs of SLAS are met from the Supplementary Legal Aid Fund (SLAF), which is financed by the applicants' contributions and

damages or compensation recovered. In making an application, an applicant has to pay a non-refundable application fee of \$1,000 for Type I Proceedings or \$5,000 for Type II Proceedings (see section 4 below on the types of proceedings). Upon approval of the application, the aided person is required to pay an interim contribution. For Type I Proceedings, the interim contribution is calculated at 25% of the financial eligibility limit for OLAS, which is currently \$72,595. For Type II proceedings, the interim contribution is equivalent to 10% of the financial resources of the aided person, or the maximum amount paid under OLAS currently at \$72,595, whichever is the higher. On successful conclusion of the case, the aided person is also required to pay a final contribution from any damages recovered to the SLAF. The rates of final contribution for personal injuries and employees' compensation claims and the provision of legal representation to employees for appeals against awards made by the Labour Tribunal range from 6% to 10%. For the remaining types of proceedings, the contribution rates range from 15% to 20%.

#### **4. Scope of SLAS**

The scope of SLAS initially covered claims for damages for personal and fatal injuries. It was subsequently extended to cover employees' compensation claims in 1992 and medical, dental as well as legal professional negligence in 1995. It was significantly expanded in November 2012 and currently covers the following types of cases –

##### Type I Proceedings

- claims brought under the Employees' Compensation Ordinance (Cap. 282) irrespective of the amount of the claim;
- representation for employees in appeals against awards made by the Labour Tribunal irrespective of the amount in dispute; and
- fatal and non-fatal personal injuries claims where the claim is likely to exceed \$60,000.

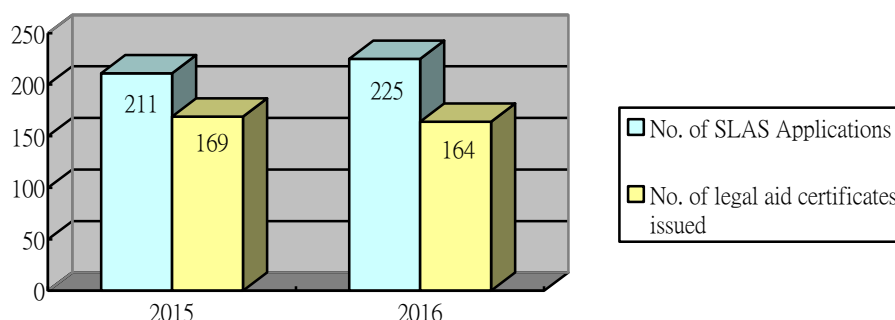
##### Type II Proceedings (where the claim is likely to exceed \$60,000)

- medical and dental negligence claims;

- professional negligence claims against lawyers, certified public accountants (practising), registered architects, registered professional engineers, registered professional surveyors, registered professional planners, authorized land surveyors, registered landscape architects and estate agents;
- negligence claims against insurers or their intermediaries in respect of the taking out of the personal insurance products; and
- monetary claims against vendors in the sale of completed or uncompleted first-hand residential properties.

## 5. Applications and Legal Aid Certificates granted

In 2016, there were 225 SLAS applications and 164 legal aid certificates were issued under SLAS.



Note: Certificates may not be granted in the same year as the applications were received.

## 6. Finance

The financial year of the SLAF runs from 1 October of one year to 30 September of the following year. For the year ended on 30 September 2016, a surplus of \$3,840,379 in the SLAF was recorded as compared with a surplus of \$2,319,392 in the year ended on 30 September 2015. As at 30 September 2016, the SLAF had a balance of \$193.0 million. The Report of the Director of Audit is at **Appendix**.

## Supplementary Legal Aid Fund

Financial Statements for the year ended 30 September 2016

# ***Report of the Director of Audit***



**Audit Commission**

**The Government of the Hong Kong Special Administrative Region**

## **Independent Audit Report**

I certify that I have audited the financial statements of the Supplementary Legal Aid Fund set out on pages 3 to 11, which comprise the balance sheet as at 30 September 2016, and the income and expenditure account, statement of changes in equity and statement of cash flows for the year then ended, and a summary of significant accounting policies and other explanatory information.

### **Director of Legal Aid's Responsibility for the Financial Statements**

The Director of Legal Aid is responsible for the preparation of financial statements that give a true and fair view in accordance with and section 31(1) of the Legal Aid Ordinance (Cap. 91) and Hong Kong Financial Reporting Standards, for such internal control as the Director of Legal Aid determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

### **Auditor's Responsibility**

My responsibility is to express an opinion on these financial statements based on my audit. I conducted my audit in accordance with section 31(2) of the Legal Aid Ordinance and the Audit Commission auditing standards. Those standards require that I comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation of financial statements that give a true and fair view in order to design audit procedures

that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the Director of Legal Aid, as well as evaluating the overall presentation of the financial statements.

I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion.

### **Opinion**

In my opinion, the financial statements give a true and fair view of the financial position of the Supplementary Legal Aid Fund as at 30 September 2016, and of its financial performance and cash flows for the year then ended in accordance with Hong Kong Financial Reporting Standards and have been properly prepared in accordance with section 31(1) of the Legal Aid Ordinance.

LIANG Kar-lun, Ken  
Acting Principal Auditor  
for Director of Audit

20 October 2017

Audit Commission  
26th Floor  
Immigration Tower  
7 Gloucester Road  
Wanchai, Hong Kong

**SUPPLEMENTARY LEGAL AID FUND**  
**BALANCE SHEET AS AT 30 SEPTEMBER 2016**

|                                                                                             | Note | 2016<br>HK\$        | 2015<br>HK\$        |
|---------------------------------------------------------------------------------------------|------|---------------------|---------------------|
| <b>NON-CURRENT ASSETS</b>                                                                   |      |                     |                     |
| Accounts receivable pending finalisation of accounts of litigation cases                    | 3    | 20,468,511          | 23,522,994          |
| Placement with the Exchange Fund                                                            | 4    | 50,000,000          | -                   |
|                                                                                             |      | <u>70,468,511</u>   | <u>23,522,994</u>   |
| <b>CURRENT ASSETS</b>                                                                       |      |                     |                     |
| Accounts receivable pending finalisation of accounts of litigation cases                    | 3    | 4,428,105           | 473,691             |
| Interest receivable                                                                         |      | 1,568,755           | 646,976             |
| Time deposits with original maturity over three months                                      |      | 177,381,254         | 159,414,660         |
| Cash and cash equivalents                                                                   | 5    | 9,792,601           | 59,576,969          |
|                                                                                             |      | 193,170,715         | 220,112,296         |
| <b>CURRENT LIABILITIES</b>                                                                  |      |                     |                     |
| Accounts payable pending finalisation of accounts of litigation cases                       | 6    | (16,775,619)        | (8,007,518)         |
| Administration fee payable to the Government of the Hong Kong Special Administrative Region |      | (3,992,492)         | (3,382,656)         |
|                                                                                             |      | <u>(20,768,111)</u> | <u>(11,390,174)</u> |
| <b>NET CURRENT ASSETS</b>                                                                   |      | <u>172,402,604</u>  | <u>208,722,122</u>  |
| <b>TOTAL ASSETS LESS CURRENT LIABILITIES</b>                                                |      | 242,871,115         | 232,245,116         |
| <b>NON-CURRENT LIABILITIES</b>                                                              |      |                     |                     |
| Accounts payable pending finalisation of accounts of litigation cases                       | 6    | (49,908,131)        | (43,122,511)        |
| <b>NET ASSETS</b>                                                                           |      | <u>192,962,984</u>  | <u>189,122,605</u>  |
| <b>ACCUMULATED FUND</b>                                                                     |      |                     |                     |
| Capital                                                                                     |      | 127,000,000         | 127,000,000         |
| Accumulated surplus                                                                         |      | <u>65,962,984</u>   | <u>62,122,605</u>   |
|                                                                                             |      | <u>192,962,984</u>  | <u>189,122,605</u>  |

The accompanying notes 1 to 13 form part of these financial statements.



**SUPPLEMENTARY LEGAL AID FUND**  
**INCOME AND EXPENDITURE ACCOUNT**  
**FOR THE YEAR ENDED 30 SEPTEMBER 2016**

|                                                | Note | 2016<br>HK\$            | 2015<br>HK\$            |
|------------------------------------------------|------|-------------------------|-------------------------|
| <b>INCOME</b>                                  |      |                         |                         |
| Application fees                               | 7    | 60,040                  | 79,594                  |
| Percentage contributions                       | 8    | 5,227,866               | 5,130,409               |
| Interest income                                |      | <u>2,701,046</u>        | <u>2,673,859</u>        |
|                                                |      | <u>7,988,952</u>        | <u>7,883,862</u>        |
| <b>EXPENDITURE</b>                             |      |                         |                         |
| Administration fee                             |      | (3,992,492)             | (3,382,656)             |
| Bank charges                                   |      | (325)                   | (345)                   |
| Cash transportation services charges           |      | (15,080)                | -                       |
| Electronic payment services charges            |      | (138)                   | (74)                    |
| Expenses for interpretation services           |      | (574)                   | (574)                   |
| Legal costs and expenses for finalised cases   | 9    |                         |                         |
| Successful litigation                          |      |                         |                         |
| - costs to opposite parties                    |      | -                       | -                       |
| - other disbursements                          |      | -                       | (46,769)                |
|                                                |      | -                       | (46,769)                |
| Unsuccessful applications                      |      | (139,964)               | (244,284)               |
| Unsuccessful litigation                        |      |                         |                         |
| - costs to opposite parties                    |      | -                       | (537,158)               |
| - other disbursements                          |      | -                       | (1,352,610)             |
|                                                |      | -                       | (1,889,768)             |
|                                                |      | <u>(4,148,573)</u>      | <u>(5,564,470)</u>      |
| <b>SURPLUS FOR THE YEAR</b>                    |      | 3,840,379               | 2,319,392               |
| <b>OTHER COMPREHENSIVE INCOME</b>              |      | -                       | -                       |
| <b>TOTAL COMPREHENSIVE INCOME FOR THE YEAR</b> |      | <u><u>3,840,379</u></u> | <u><u>2,319,392</u></u> |

The accompanying notes 1 to 13 form part of these financial statements.

**SUPPLEMENTARY LEGAL AID FUND**  
**STATEMENT OF CHANGES IN EQUITY**  
**FOR THE YEAR ENDED 30 SEPTEMBER 2016**

|                                        | <b>CAPITAL</b><br>HK\$    | <b>ACCUMULATED<br/>SURPLUS</b><br>HK\$ | <b>TOTAL</b><br>HK\$      |
|----------------------------------------|---------------------------|----------------------------------------|---------------------------|
| Balance at 1 October 2014              | 127,000,000               | 59,803,213                             | 186,803,213               |
| Total comprehensive income for 2014-15 | <u>-</u>                  | <u>2,319,392</u>                       | <u>2,319,392</u>          |
| Balance at 30 September 2015           | 127,000,000               | 62,122,605                             | 189,122,605               |
| Total comprehensive income for 2015-16 | <u>-</u>                  | <u>3,840,379</u>                       | <u>3,840,379</u>          |
| Balance at 30 September 2016           | <u><u>127,000,000</u></u> | <u><u>65,962,984</u></u>               | <u><u>192,962,984</u></u> |

The accompanying notes 1 to 13 form part of these financial statements.

**SUPPLEMENTARY LEGAL AID FUND**  
**STATEMENT OF CASH FLOWS**  
**FOR THE YEAR ENDED 30 SEPTEMBER 2016**

|                                                                               | Note | 2016<br>HK\$            | 2015<br>HK\$             |
|-------------------------------------------------------------------------------|------|-------------------------|--------------------------|
| <b>Cash flows from operating activities</b>                                   |      |                         |                          |
| Surplus for the year                                                          |      | 3,840,379               | 2,319,392                |
| Adjustments for:                                                              |      |                         |                          |
| Interest income                                                               |      | (2,701,046)             | (2,673,859)              |
| Increase in accounts receivable                                               |      |                         |                          |
| pending finalisation of accounts of litigation cases                          |      | (899,931)               | (2,408,897)              |
| Increase in accounts payable                                                  |      |                         |                          |
| pending finalisation of accounts of litigation cases                          |      | 15,553,721              | 1,882,841                |
| Increase in administration fee payable to the                                 |      |                         |                          |
| Government of the Hong Kong Special Administrative Region                     |      | 609,836                 | 194,953                  |
| <b>Net cash from/(used in) operating activities</b>                           |      | <u>16,402,959</u>       | <u>(685,570)</u>         |
| <b>Cash flows from investing activities</b>                                   |      |                         |                          |
| Increase in placement with the Exchange Fund                                  |      | (50,000,000)            | -                        |
| (Increase)/Decrease in bank deposits with original maturity over three months |      | (17,966,594)            | 47,850,203               |
| Interest received                                                             |      | 1,779,267               | 3,461,735                |
| <b>Net cash (used in)/from investing activities</b>                           |      | <u>(66,187,327)</u>     | <u>51,311,938</u>        |
| <b>Net (decrease)/increase in cash and cash equivalents</b>                   |      | (49,784,368)            | 50,626,368               |
| <b>Cash and cash equivalents at beginning of year</b>                         |      | <u>59,576,969</u>       | <u>8,950,601</u>         |
| <b>Cash and cash equivalents at end of year</b>                               | 5    | <u><u>9,792,601</u></u> | <u><u>59,576,969</u></u> |

The accompanying notes 1 to 13 form part of these financial statements.

**SUPPLEMENTARY LEGAL AID FUND**  
**NOTES TO THE FINANCIAL STATEMENTS**

**1. GENERAL**

The Supplementary Legal Aid Fund (the Fund) was established for the purpose of granting legal aid to any person whose financial resources exceed HK\$290,380 (before 17 July 2015: HK\$269,620) but do not exceed HK\$1,451,900 (before 17 July 2015: HK\$1,348,100), for the civil proceedings mentioned in Part 1 of Schedule 3, except proceedings mentioned in Part 2 of that Schedule, in accordance with section 5A of the Legal Aid Ordinance (Cap. 91).

The address of the Fund's principal place of business is 24<sup>th</sup> - 27<sup>th</sup> Floors, Queensway Government Offices, 66 Queensway, Hong Kong.

**2. SIGNIFICANT ACCOUNTING POLICIES**

**(a) Statement of compliance**

The financial statements have been prepared in accordance with section 31(1) of the Legal Aid Ordinance and all applicable Hong Kong Financial Reporting Standards (HKFRSs) issued by the Hong Kong Institute of Certified Public Accountants.

**(b) Basis of preparation**

The financial statements have been prepared on an accrual basis and under the historical cost convention.

The preparation of financial statements in conformity with HKFRSs requires management to make judgements, estimates and assumptions that affect the application of policies and reported amounts of assets, liabilities, income and expenditure. The estimates and associated assumptions are based on experience and various other factors that are believed to be reasonable under the circumstances, the results of which form the basis for making judgements about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates.

The estimates and underlying assumptions are reviewed on an ongoing basis. Revisions to accounting estimates are recognised in the period in which the estimate is revised if the revision affects only that period, or in the period of the revision and future periods if the revision affects both current and future periods.

There are no critical accounting judgements involved in the application of the Fund's accounting policies. There are neither key assumptions concerning the future nor other key sources of estimation uncertainty at the balance sheet date that have a significant risk of causing a material adjustment to the carrying amounts of assets and liabilities in the next year.

(c) Adoption of new/revised HKFRSs

The Fund has adopted all new/revised HKFRSs which are effective and relevant to the Fund for the current accounting period.

The Fund has not early adopted any amendments, new standards and interpretations which are not yet effective for the current accounting period. The Fund is in the process of making an assessment of what the impact of these amendments, new standards and interpretations is expected to be in the period of initial adoption. So far, it has concluded that the adoption of them is unlikely to have a significant impact on the Fund's result of operations and financial position.

(d) Recognition of revenue and expenditure

- (i) Revenue (application fees and percentage contribution) and expenditure (legal costs and expenses) are recognised in the income and expenditure account in the year in which litigation and accounts of the cases are finalised.
- (ii) The amount of accounts receivable (Note 3) that cannot be fully recovered from the payments to the Fund for respective cases are taken up as legal costs and expenses in the income and expenditure account in the year in which litigation and accounts of the cases are finalised. The legal costs and expenses that can be recovered are deducted from the accounts payable (Note 6) of the corresponding cases and are not recognised as expenditure in the income and expenditure account.

(e) Interest income from bank deposits is recognised as it accrues using the effective interest method.

(f) Cash and cash equivalents

Cash and cash equivalents comprise cash on hand, demand deposits and other short-term highly liquid investments that are readily convertible to a known amount of cash and are subject to an insignificant risk of changes in value, having been within three months of maturity when acquired.

**3. ACCOUNTS RECEIVABLE PENDING FINALISATION OF ACCOUNTS OF LITIGATION CASES**

These are the legal costs and disbursements paid by the Fund for cases not yet finalised.

|                                                 | <b>2016</b><br>HK\$ | <b>2015</b><br>HK\$ |
|-------------------------------------------------|---------------------|---------------------|
| Accounts receivable expected to be realised     |                     |                     |
| - within 12 months after the balance sheet date | 4,428,105           | 473,691             |
| - over 12 months after the balance sheet date   | 20,468,511          | 23,522,994          |
|                                                 | <u>24,896,616</u>   | <u>23,996,685</u>   |

#### 4. PLACEMENT WITH THE EXCHANGE FUND

On 10 March 2016, an amount of HK\$50 million was placed with the Exchange Fund. The term of the placement is six years from the date of placement, during which the amount of the principal sum cannot be withdrawn. Interest on the placement is at a rate determined annually in January, being the average return of the Exchange Fund's Investment Portfolio for the past six years or the average annual yield of three-year government bond for the previous year subject to a minimum of zero percent, whichever is the higher. The interest rate has been fixed at 3.3% per annum for January to December 2016.

Placement with the Exchange Fund is analysed as follows:

|                           | 2016<br>HK\$      | 2015<br>HK\$ |
|---------------------------|-------------------|--------------|
| Principal sum             | 50,000,000        | -            |
| Interest receivable       | 924,180           | -            |
| Balance as at end of year | <u>50,924,180</u> | <u>-</u>     |
| Classified as:            |                   |              |
| Non-current assets        | 50,000,000        | -            |
| Current assets            | 924,180           | -            |
|                           | <u>50,924,180</u> | <u>-</u>     |

#### 5. CASH AND CASH EQUIVALENTS

|                                                             | 2016<br>HK\$     | 2015<br>HK\$      |
|-------------------------------------------------------------|------------------|-------------------|
| Bank deposits with original maturity<br>within three months | -                | 47,281,040        |
| Cash at bank                                                | 9,792,389        | 12,295,685        |
| Cash in hand                                                | 212              | 244               |
|                                                             | <u>9,792,601</u> | <u>59,576,969</u> |

#### 6. ACCOUNTS PAYABLE PENDING FINALISATION OF ACCOUNTS OF LITIGATION CASES

These are the application fees and contributions paid by the aided persons and damages, costs and disbursements recovered from the opposite parties for cases not yet finalised.

|                                                 | 2016<br>HK\$      | 2015<br>HK\$      |
|-------------------------------------------------|-------------------|-------------------|
| Accounts payable expected to be settled         |                   |                   |
| - within 12 months after the balance sheet date | 16,775,619        | 8,007,518         |
| - over 12 months after the balance sheet date   | 49,908,131        | 43,122,511        |
|                                                 | <u>66,683,750</u> | <u>51,130,029</u> |

## **7. APPLICATION FEES**

These are the application fees from cases finalised in the year less the amounts used to set off percentage contributions in accordance with regulation 14(1)(b)(iii) and 14(2)(b)(iii) of the Legal Aid (Assessment of Resources and Contributions) Regulations (Cap. 91 sub. leg. B).

## **8. PERCENTAGE CONTRIBUTIONS**

These are the percentage contributions payable to the Fund under section 32 of the Legal Aid Ordinance by those aided persons who are successful in the proceedings.

## **9. LEGAL COSTS AND EXPENSES**

These are the costs and disbursements paid by the Fund that cannot be recovered either from the aided persons and/or the opposite parties upon finalisation of a case.

## **10. FINANCIAL RISK MANAGEMENT**

The Fund's major financial instruments include the placement with the Exchange Fund, interest receivable and bank deposits. The risks associated with these financial instruments are set out below.

### **(a) Credit risk**

Credit risk is the risk that one party to a financial instrument will fail to discharge an obligation and cause the other party to incur a financial loss.

The Fund's maximum exposure to credit risk at the balance sheet date in relation to each class of financial assets is the carrying amount of the assets as stated in the balance sheet. For the placement with the Exchange Fund, the credit risk is considered to be low. For bank deposits, the Fund limits its exposure to credit risk by transacting with reputable licensed banks in Hong Kong.

### **(b) Interest rate risk**

Interest rate risk refers to the risk of loss arising from changes in market interest rates. This can further be classified into fair value interest rate risk and cash flow interest rate risk.

Fair value interest rate risk is the risk that the fair value of a financial instrument will fluctuate because of changes in market interest rates. Since the Fund's bank deposits bear interest at fixed rates, their fair value will fall when market interest rates increase. However, as they are all stated at amortised cost, changes in market interest rates will not affect their carrying amounts and the Fund's surplus and equity.

Cash flow interest rate risk is the risk that future cash flows of a financial instrument will fluctuate because of changes in market interest rates. The Fund is not exposed to material cash flow interest rate risk because interest income from financial instruments bearing interest at a floating rate is not significant.

(c) Liquidity risk

In the management of liquidity risk, the Fund maintains the level of cash and cash equivalents that is considered adequate to finance its operations and mitigate the effect of fluctuations in cash flows.

(d) Other financial risk

The Fund is exposed to financial risk arising from the placement with the Exchange Fund due to changes in the interest rate which is determined every January (Note 4). It was estimated that, as at 30 September 2016, a 50 basis point increase/decrease in the interest rates for 2016, with all other variable held constant, would increase/decrease the surplus and increase/decrease the equity by about HK\$140,000.

## **11. CAPITAL MANAGEMENT**

The capital structure of the Fund consists of capital and accumulated surplus. The Fund's objectives when managing capital are:

- (a) to comply with the Legal Aid Ordinance; and
- (b) to maintain a strong capital base for carrying out the purpose of the Fund as stated in note 1 above.

The Fund manages capital to ensure that its level is sufficient to fund future payments, taking into account the projected cash flow requirements, future financial obligations and commitments.

## **12. CONTINGENT LIABILITIES**

As at 30 September 2016, the contingent liabilities of the Fund was nil (2015: HK\$1.7 million for five litigations).

## **13. FAIR VALUES OF FINANCIAL ASSETS AND LIABILITIES**

All financial assets and liabilities are stated in the balance sheet at amounts equal to or not materially different from their fair values.





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