

**立法會**  
**Legislative Council**

LC Paper No. CB(4)230/18-19(06)

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**Panel on Administration of Justice and Legal Services**

**Meeting on 26 November 2018**

**Background brief on community legal assistance in Hong Kong**

**Purpose**

This paper provides background information on community legal assistance in Hong Kong. It also summarizes the major views and concerns of Legislative Council ("LegCo") Members on the subject and related matters.

**Background**

2. At present, publicly-funded free or subsidized legal assistance to the public in Hong Kong is provided through services administered by the Legal Aid Department ("LAD"), the Chief Secretary for Administration's Office ("CSO"), the Judiciary and the council of the Duty Lawyer Service. According to the Administration, legal aid services form an integral part of the legal system in Hong Kong and it strives to ensure the accessibility of legal aid and free legal advice services to the public to contribute towards upholding the value of everyone being equal before the law.

Legal Aid Department

3. The Administration's stated policy objective on legal aid is to ensure that no one with reasonable grounds for pursuing or defending a legal action in the Hong Kong courts is denied access to justice due to a lack of means. 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, heard in courts at the District Court level and above (except for certain types of civil proceedings specified in the Legal Aid Ordinance (Cap. 91) ("LAO")). To qualify for legal aid, a person is required by law to satisfy both the means and merits tests as provided by LAO.

## The Chief Secretary for Administration's Office

4. CSO's Legal Advice Scheme for Unrepresented Litigants on Civil Procedures ("the Procedural Advice Scheme")<sup>1</sup> provides free legal advice on civil procedural matters for unrepresented litigants who satisfy the income eligibility limit<sup>2</sup> and have not engaged lawyers nor been granted legal aid. At present, the Procedural Advice Scheme covers litigants who are parties to civil legal proceedings (including commencement of proceedings) in the Lands Tribunal, District Court, Family Court, Court of First Instance and the Court of Appeal of the High Court and the Court of Final Appeal.

## The Judiciary

5. The Resource Centre for Unrepresented Litigants ("Resource Centre") set up by the Judiciary provides assistance to unrepresented litigants who are parties to or about to commence civil proceedings in the High Court or the District Court except those relating to matrimonial, lands, employees' compensation and probate matters. The assistance provided at Resource Centre is confined to procedural matters only. To maintain judicial impartiality, the staff of Resource Centre will not give legal advice or make any comments on the merits of the case.

## Duty Lawyer Service

6. Four schemes of legal assistance administered by the council of the Duty Lawyer Service, which includes representatives from The Law Society of Hong Kong ("the Law Society"), the Hong Kong Bar Association ("the Bar Association") and lay members, are subvented by the Administration. These schemes include:

- (a) the Duty Lawyer Scheme ("DLS") which rosters barristers and solicitors in private practice to appear in the Magistrates' and Juvenile Courts on a remunerated basis;
- (b) the Free Legal Advice Scheme, staffed by over 1 000 volunteer lawyers, operates 12 sessions per week at nine evening centres and the scheme is not means tested;
- (c) a free Tel-Law Service offers trilingual (Cantonese, Putonghua and English) taped information on 80 topics with eight telephone lines operating 24 hours and descriptions available online; and

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<sup>1</sup> The Procedural Advice Scheme was first launched as a pilot scheme in March 2013 and became a regular Government programme in April 2016.

<sup>2</sup> The income eligibility limit of the Procedural Advice Scheme is currently set at a monthly income of \$50,000 or an annual income of \$600,000.

(d) Convention Against Torture & Non-Refoulement Claimants Scheme.

7. Besides the publicly-funded legal assistance mentioned in paragraphs 3 to 6 above, free legal advice services are also provided by the two legal professional bodies such as the Bar Free Legal Service Scheme provided by the Bar Association, and the Free Legal Consultation Service and Free Legal Helpline provided by the Law Society.

### **Major views and concerns of Legislative Council Members**

8. Over the years, LegCo Members had expressed views about various aspects and issues relating to the provision of publicly-funded legal aid and free legal advice services, and the community legal assistance more generally, at meetings of the Council and the Panel on Administration of Justice and Legal Services ("the Panel"). The major views and concerns of Members raised in the Fifth and Sixth LegCo are summarized in the ensuing paragraphs.

#### Improvements to the legal aid regime

9. At a number of the Panel meetings, members had expressed concerns that the high legal costs had thwarted many, even the middle class, in taking legal actions to protect their legitimate interest and rights. They suggested that a comprehensive review of the legal aid regime should be conducted to cover all the long-standing issues such as further expansion of SLAS, relaxation of the financial eligibility limits for OLAS and SLAS, and the difference in the criminal and civil legal aid fees structure, etc.

10. In response, the Administration said that it would continue to review the various mechanisms under the legal aid regime on a need basis. The Administration briefed the Panel in April 2017 on the Legal Aid Services Council ("LASC")'s review of SLAS and its recommendations on the proposed expansion of the scope covered by SLAS. It then briefed the Panel in April 2018 on the proposed legislative amendments pursuant to the above review, and informed members that it would introduce the legislative amendments into LegCo in the 2018-2019 legislative session with a view to implementing the expansion proposals in the first half of 2019.

11. Some members reckoned that setting up an independent legal aid authority to administer legal aid in place of LAD would be the ideal arrangement. On the other hand, some members considered that the legal aid regime in Hong Kong was well established and effective and there was no pressing need for setting up an independent legal aid authority, while some expressed concerns about the possible abuse of legal aid.

12. The Administration responded that there had been safeguards in statute and in practice to ensure the operational independence of LAD. All legal aid applications would be assessed by the means and merits tests as provided under LAO. There was also a statutory appeal mechanism under which appeals against LAD's decisions in civil legal aid applications could be lodged to the Judiciary.

Provision of legal advice services for persons detained in police stations

13. In February 2016, LASC recommended that a publicly-funded scheme should be made available to ensure that detainees could have access to legal advice on their rights once their liberty was restricted. It proposed that the service be introduced on a pilot basis, implemented in stages, kept under review and that four representative police stations be identified for the pilot scheme which should be implemented for no longer than two years. An interim review and a comprehensive review should be conducted after the first and second year respectively and, subject to the outcome of the review, the service might be extended to other police stations and law enforcement agencies.

14. At the Panel meeting on 18 July 2017, the Administration briefed members on the findings and recommendations of LASC's proposals as mentioned above. During the deliberations, some members were concerned about whether a time limit would be imposed on the service provided by a lawyer to the detainee. On the other hand, some members pointed out that legal aid was available for criminal cases tried in the District Court or above whereas people being charged of an offence in the Magistrates' Court would have to approach the liaison officer of DLS for legal assistance at the appropriate Magistrates' Court instead. They suggested that the proposed scheme of legal advice for persons detained in police station should be incorporated into DLS instead of the existing legal aid scheme. Consideration should also be given to extending the list of DLS for the purpose of listing as attending lawyers for legal advice services for persons detained in police stations.

15. Some members at the Panel meeting on 30 October 2017 asked about the timetable of studying LASC's recommendation on providing legal advice services for persons detained in police stations. In response, the Administration advised that LASC's proposal involved the collaboration of various bureaux and departments and would entail substantial financial and operational implications for them. Relevant bureaux and departments were in the process of carefully examining the feasibility and implications of the proposal. Upon completion of internal deliberation, the Administration would report to the Panel again on the recommended way forward.

### Provision of early legal advice at the preliminary stage of cases

16. During the debate on the Government motion on "Proposed resolution under the Criminal Procedure Ordinance" at the Council meeting of 22 November 2017, a Member pointed out that under the Procedural Advice Scheme, the waiting time for members of the public who had booked appointments for using the service normally exceeded eight weeks, while the interview session for obtaining legal advice might just last for 30 minutes. When some members of the public had rather urgent needs for legal service, hoping to seek legal advice on cases of injustice like eviction by a landlord or unreasonable dismissal by an employer, they were often kept waiting for ages.

17. The Member also cited a study conducted by The Global Network for Public Interest Law (PILnet) which pointed out that there were a number of loopholes in the existing legal aid service. For example, the existing legal aid service focused on providing those service seekers with representation without offering early legal advice at the preliminary stage of cases; most defendants in criminal cases were denied access to support from lawyers or duty lawyers at the level of Magistrates' Courts and legal representation was arranged for them only before their first hearing when they had already gone through the police investigation process at a police station. In this connection, the Member considered that the parties concerned should be offered legal aid or legal representation during detention and before their first appearance in court.

### **Latest position**

18. The Administration plans to brief members on matters relating to community legal assistance in Hong Kong at the Panel meeting to be held on 26 November 2018.

### **Relevant papers**

19. A list of the relevant papers is in **Appendix**.

## Background brief on community legal assistance in Hong Kong

## List of relevant papers

Date of meeting	Meeting	Minutes/Paper	LC Paper No.
22.1.2013	Panel on Administration of Justice and Legal Services	Administration's paper on the 2013 Policy Address—policy initiatives of Home Affairs Bureau	CB(4)321/12-13(04) <a href="https://www.legco.gov.hk/yr12-13/english/panels/ajls/papers/aj0122cb4-321-4-e.pdf">https://www.legco.gov.hk/yr12-13/english/panels/ajls/papers/aj0122cb4-321-4-e.pdf</a>
		Minutes of meeting	CB(4)688/12-13 <a href="https://www.legco.gov.hk/yr12-13/english/panels/ajls/minutes/aj20130122.pdf">https://www.legco.gov.hk/yr12-13/english/panels/ajls/minutes/aj20130122.pdf</a>
25.6.2013	Panel on Administration of Justice and Legal Services	Consultancy study on the feasibility and desirability of establishing an independent legal aid authority	<a href="https://www.legco.gov.hk/yr12-13/english/panels/ajls/papers/aj0625-ppr201303-e.pdf">https://www.legco.gov.hk/yr12-13/english/panels/ajls/papers/aj0625-ppr201303-e.pdf</a>
		Executive summary of the report of the consultancy study on the feasibility and desirability of establishing an independent legal aid authority issued in March 2013	CB(4)747/12-13(03) <a href="https://www.legco.gov.hk/yr12-13/english/panels/ajls/papers/aj0625cb4-747-3-e.pdf">https://www.legco.gov.hk/yr12-13/english/panels/ajls/papers/aj0625cb4-747-3-e.pdf</a>
		Minutes of meeting	CB(4)247/13-14 <a href="https://www.legco.gov.hk/yr12-13/english/panels/ajls/minutes/aj20130625.pdf">https://www.legco.gov.hk/yr12-13/english/panels/ajls/minutes/aj20130625.pdf</a>
28.1.2014	Panel on Administration of Justice and Legal Services	Administration's paper on the policy initiatives of the Home Affairs Bureau	CB(4)322/13-14(04) <a href="https://www.legco.gov.hk/yr13-14/english/panels/ajls/papers/aj0128cb4-322-4-e.pdf">https://www.legco.gov.hk/yr13-14/english/panels/ajls/papers/aj0128cb4-322-4-e.pdf</a>

Date of meeting	Meeting	Minutes/Paper	LC Paper No.
		Minutes of meeting	CB(4)498/13-14 <a href="https://www.legco.gov.hk/yr13-14/english/panels/ajls/minutes/aj20140128.pdf">https://www.legco.gov.hk/yr13-14/english/panels/ajls/minutes/aj20140128.pdf</a>
24.6.2014	Panel on Administration of Justice and Legal Services	Administration's paper on the Legal Aid Services Council's recommendations on the independence of legal aid	CB(4)822/13-14(05) <a href="https://www.legco.gov.hk/yr13-14/english/panels/ajls/papers/aj0624cb4-822-5-e.pdf">https://www.legco.gov.hk/yr13-14/english/panels/ajls/papers/aj0624cb4-822-5-e.pdf</a>
		Minutes of meeting	CB(4)94/14-15 <a href="https://www.legco.gov.hk/yr13-14/english/panels/ajls/minutes/aj20140624.pdf">https://www.legco.gov.hk/yr13-14/english/panels/ajls/minutes/aj20140624.pdf</a>
26.1.2015	Panel on Administration of Justice and Legal Services	Administration's paper on policy initiatives of the Home Affairs Bureau	CB(4)367/14-15(04) <a href="https://www.legco.gov.hk/yr14-15/english/panels/ajls/papers/ajls20150126cb4-367-4-e.pdf">https://www.legco.gov.hk/yr14-15/english/panels/ajls/papers/ajls20150126cb4-367-4-e.pdf</a>
		Minutes of meeting	CB(4)703/14-15 <a href="https://www.legco.gov.hk/yr14-15/english/panels/ajls/minutes/ajls20150126.pdf">https://www.legco.gov.hk/yr14-15/english/panels/ajls/minutes/ajls20150126.pdf</a>
16.2.2015	Panel on Administration of Justice and Legal Services	Administration's paper on the proposed amendment of the Legal Aid (Assessment of Resources and Contributions) Regulations (Cap. 91B) and adjustment of the financial eligibility limits of the Ordinary and Supplementary Legal Aid Schemes	CB(4)493/14-15(04) <a href="https://www.legco.gov.hk/yr14-15/english/panels/ajls/papers/ajls20150216cb4-493-4-e.pdf">https://www.legco.gov.hk/yr14-15/english/panels/ajls/papers/ajls20150216cb4-493-4-e.pdf</a>

Date of meeting	Meeting	Minutes/Paper	LC Paper No.
		Minutes of meeting	CB(4)743/14-15 <a href="https://www.legco.gov.hk/yr14-15/english/panels/ajls/minutes/ajls20150216.pdf">https://www.legco.gov.hk/yr14-15/english/panels/ajls/minutes/ajls20150216.pdf</a>
23.3.2015	Panel on Administration of Justice and Legal Services	Administration's paper on the provision of legal aid and assignments of lawyers to legally aided persons by the Legal Aid Department	CB(4)658/14-15(03) <a href="https://www.legco.gov.hk/yr14-15/english/panels/ajls/papers/ajls20150323cb4-658-3-e.pdf">https://www.legco.gov.hk/yr14-15/english/panels/ajls/papers/ajls20150323cb4-658-3-e.pdf</a>
		Minutes of meeting	CB(4)1205/14-15 <a href="https://www.legco.gov.hk/yr14-15/english/panels/ajls/minutes/ajls20150323.pdf">https://www.legco.gov.hk/yr14-15/english/panels/ajls/minutes/ajls20150323.pdf</a>
25.1.2016	Panel on Administration of Justice and Legal Services	Administration's paper on the 2016 Policy Address—policy initiatives of the Home Affairs Bureau	CB(4)485/15-16(04) <a href="https://www.legco.gov.hk/yr15-16/english/panels/ajls/papers/ajls20160125cb4-485-4-e.pdf">https://www.legco.gov.hk/yr15-16/english/panels/ajls/papers/ajls20160125cb4-485-4-e.pdf</a>
		Minutes of meeting	CB(4)1268/15-16 <a href="https://www.legco.gov.hk/yr15-16/english/panels/ajls/minutes/ajls20160125.pdf">https://www.legco.gov.hk/yr15-16/english/panels/ajls/minutes/ajls20160125.pdf</a>
22.2.2016	Panel on Administration of Justice and Legal Services	Administration's paper on the proposed increase of criminal legal aid fees	CB(4)604/15-16(05) <a href="https://www.legco.gov.hk/yr15-16/english/panels/ajls/papers/ajls20160222cb4-604-5-e.pdf">https://www.legco.gov.hk/yr15-16/english/panels/ajls/papers/ajls20160222cb4-604-5-e.pdf</a>
		Minutes of meeting	CB(4)826/15-16 <a href="https://www.legco.gov.hk/yr15-16/english/panels/ajls/minutes/ajls20160222.pdf">https://www.legco.gov.hk/yr15-16/english/panels/ajls/minutes/ajls20160222.pdf</a>



Date of meeting	Meeting	Minutes/Paper	LC Paper No.
19.12.2016	Panel on Administration of Justice and Legal Services	Administration's paper on the biennial review of criminal legal aid fees, prosecution fees and duty lawyer fees	CB(4)303/16-17(03) <a href="https://www.legco.gov.hk/yr16-17/english/panels/ajls/papers/ajls20161219cb4-303-3-e.pdf">https://www.legco.gov.hk/yr16-17/english/panels/ajls/papers/ajls20161219cb4-303-3-e.pdf</a>
		Minutes of meeting	CB(4)679/16-17 <a href="https://www.legco.gov.hk/yr16-17/english/panels/ajls/minutes/ajls20161219.pdf">https://www.legco.gov.hk/yr16-17/english/panels/ajls/minutes/ajls20161219.pdf</a>
23.1.2017	Panel on Administration of Justice and Legal Services	Administration's paper on the 2017 Policy Address— policy initiatives of the Home Affairs Bureau	CB(4)426/16-17(04) <a href="https://www.legco.gov.hk/yr16-17/english/panels/ajls/papers/ajls20170123cb4-426-4-e.pdf">https://www.legco.gov.hk/yr16-17/english/panels/ajls/papers/ajls20170123cb4-426-4-e.pdf</a>
		Minutes of meeting	CB(4)1189/16-17 <a href="https://www.legco.gov.hk/yr16-17/english/panels/ajls/minutes/ajls20170123.pdf">https://www.legco.gov.hk/yr16-17/english/panels/ajls/minutes/ajls20170123.pdf</a>
24.4.2017	Panel on Administration of Justice and Legal Services	Administration's paper on the review of the Supplementary Legal Aid Scheme	CB(4)817/16-17(03) <a href="https://www.legco.gov.hk/yr16-17/english/panels/ajls/papers/ajls20170424cb4-817-3-e.pdf">https://www.legco.gov.hk/yr16-17/english/panels/ajls/papers/ajls20170424cb4-817-3-e.pdf</a>
		Minutes of meeting	CB(4)75/17-18 <a href="https://www.legco.gov.hk/yr16-17/english/panels/ajls/minutes/ajls20170424.pdf">https://www.legco.gov.hk/yr16-17/english/panels/ajls/minutes/ajls20170424.pdf</a>
26.6.2017	Panel on Administration of Justice and Legal Services	Minutes of meeting	CB(4)143/17-18 <a href="https://www.legco.gov.hk/yr16-17/english/panels/ajls/minutes/ajls20170626.pdf">https://www.legco.gov.hk/yr16-17/english/panels/ajls/minutes/ajls20170626.pdf</a>

Date of meeting	Meeting	Minutes/Paper	LC Paper No.
18.7.2017	Panel on Administration of Justice and Legal Services	Administration's paper on the Legal Aid Services Council's proposals on the provision of legal advice services for persons detained in police stations	CB(4)1386/16-17(05) <a href="https://www.legco.gov.hk/yr16-17/english/panels/ajls/papers/ajls20170718cb4-1386-5-e.pdf">https://www.legco.gov.hk/yr16-17/english/panels/ajls/papers/ajls20170718cb4-1386-5-e.pdf</a>
		Minutes of meeting	CB(4)281/17-18 <a href="https://www.legco.gov.hk/yr16-17/english/panels/ajls/minutes/ajls20170718.pdf">https://www.legco.gov.hk/yr16-17/english/panels/ajls/minutes/ajls20170718.pdf</a>
30.10.2017	Panel on Administration of Justice and Legal Services	Administration's paper on the Chief Executive's 2017 Policy Address — policy initiatives of the Home Affairs Bureau	CB(4)24/17-18(02) <a href="https://www.legco.gov.hk/yr17-18/english/panels/ajls/papers/ajls20171030cb4-24-2-e.pdf">https://www.legco.gov.hk/yr17-18/english/panels/ajls/papers/ajls20171030cb4-24-2-e.pdf</a>
		Minutes of meeting	CB(4)562/17-18 <a href="https://www.legco.gov.hk/yr17-18/english/panels/ajls/minutes/ajls20171030.pdf">https://www.legco.gov.hk/yr17-18/english/panels/ajls/minutes/ajls20171030.pdf</a>
22.11.2017	Council meeting	Official record of proceedings	<a href="https://www.legco.gov.hk/yr17-18/english/counmtg/hansard/cm20171122-translate-e-e.pdf#nameddest=mot">https://www.legco.gov.hk/yr17-18/english/counmtg/hansard/cm20171122-translate-e-e.pdf#nameddest=mot</a>
27.11.2017	Panel on Administration of Justice and Legal Services	Administration's paper on the transfer of legal aid portfolio	CB(4)240/17-18(04) <a href="https://www.legco.gov.hk/yr17-18/english/panels/ajls/papers/ajls20171127cb4-240-4-e.pdf">https://www.legco.gov.hk/yr17-18/english/panels/ajls/papers/ajls20171127cb4-240-4-e.pdf</a>
		Minutes of meeting	CB(4)961/17-18 <a href="https://www.legco.gov.hk/yr17-18/english/panels/ajls/minutes/ajls20171127.pdf">https://www.legco.gov.hk/yr17-18/english/panels/ajls/minutes/ajls20171127.pdf</a>

<b>Date of meeting</b>	<b>Meeting</b>	<b>Minutes/Paper</b>	<b>LC Paper No.</b>
30.4.2018	Panel on Administration of Justice and Legal Services	Administration's paper on the proposed legislative amendments pursuant to the review of the Supplementary Legal Aid Scheme	CB(4)965/17-18(06) <a href="https://www.legco.gov.hk/yr17-18/english/panels/ajls/papers/ajls20180430cb4-965-6-e.pdf">https://www.legco.gov.hk/yr17-18/english/panels/ajls/papers/ajls20180430cb4-965-6-e.pdf</a>
29.10.2018	Panel on Administration of Justice and Legal Services	Administration's paper on the 2018 Policy Address—policy initiatives of the Chief Secretary for Administration's Office	CB(4)20/18-19(02) <a href="https://www.legco.gov.hk/yr18-19/english/panels/ajls/papers/ajlscb4-20-2-e.pdf">https://www.legco.gov.hk/yr18-19/english/panels/ajls/papers/ajlscb4-20-2-e.pdf</a>

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