

For information

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

**2019 Policy Address
Policy Initiatives of the Chief Secretary for Administration's Office**

INTRODUCTION

This paper explains for Members' information the policy initiatives of the Chief Secretary for Administration's Office (CSO) in relation to the Judiciary and legal aid¹ in the 2019 Policy Address and the Policy Address Supplement.

OUR VISION

2. An independent and efficient Judiciary is cardinal to Hong Kong's governance, which is founded on the rule of law. Judicial independence is the cornerstone of Hong Kong's success. We strive to render all necessary support to the Judiciary in promoting the effective, efficient and equitable administration of justice in Hong Kong.

3. Legal aid services form an integral part of the legal system in Hong Kong. We strive to ensure reasonable accessibility of legal aid and free legal advice services to the public which is conducive to upholding the principle of equality before the law.

NEW INITIATIVES

Legal Aid

Increasing the Financial Eligibility Limits of Legal Aid Applicants

4. The policy objective of legal aid is to ensure that all those who meet the criteria set out in the Legal Aid Ordinance (LAO) (Cap. 91) and have

¹ We have implemented the initiative as announced in the Chief Executive's 2017 Policy Address to transfer the responsibilities for formulating legal aid policy and housekeeping the Legal Aid Department (LAD) from the Home Affairs Bureau to CSO. The transfer took effect on 1 July 2018.

reasonable grounds for pursuing or defending a legal action in the courts of Hong Kong will not be denied access to justice due to a lack of means. To qualify for legal aid, a person must satisfy both the means test and merits test as provided by the LAO.

5. At present, a person whose financial resources² do not exceed the statutory financial eligibility limit (FEL) of \$307,130³ is eligible for legal aid under the Ordinary Legal Aid Scheme (OLAS) which covers committal proceedings in the Magistrates' Courts (MC), civil and criminal proceedings in the District Court (DC) or courts at levels above. Apart from OLAS, LAD also operates a Supplementary Legal Aid Scheme (SLAS) to provide additional legal aid support on certain types of civil cases⁴ to the "sandwich class" who may not meet the means test criterion of OLAS. Those with financial resources exceeding the FEL of OLAS (i.e. \$307,130) but below \$1,535,650⁵ may apply for legal aid under SLAS. Since 1999, the Government has been making annual adjustments to the two FELs with reference to the general price movement based on the Consumer Price Index (C) (CPI(C)). Upon our previous review, a one-off adjustment was made in 2011 to increase the FELs of OLAS and SLAS by 48% and 166% respectively with a view to enhancing the public's access to justice.

6. As announced in the 2019 Policy Address Supplement, the Government proposes to increase the FELs of OLAS and SLAS by about 30%, i.e., from the current level of \$307,130 to \$400,000 for OLAS and from \$1,535,650 to \$2,000,000 for SLAS.

² "Financial resources" means the aggregate of an applicant's yearly disposable income and disposable capital. A person's disposable income is his / her gross income minus deductible items as allowed under the Legal Aid (Assessment of Resources and Contributions) Regulations ("the Regulations") (Cap. 91B). A person's disposable capital consists of all assets of a capital nature, such as the sum of his / her credit balance, money due to him / her, the value of the person's interest in non-money resources, the value of business or share in a company etc, unless such items should be excluded from calculation under the Regulations.

³ In the previous annual review covering July 2016 to July 2017, the FEL of the Ordinary Legal Aid Scheme was adjusted upwards by 1.7% from \$302,000 to \$307,130 in accordance with the change in CPI(C) during the reference period. With LegCo's approval, the adjusted FEL came into effect on 23 November 2018.

⁴ OLAS covers both civil and criminal proceedings in the District Court or courts above in accordance with the LAO, while the scope of SLAS is more limited and covers only certain types of civil cases, e.g., cases involving personal injury or death, professional negligence claims against eleven professions including doctors, dentists and lawyers. It also covers 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, where the claim for damages is likely to exceed \$60,000.

⁵ In the previous annual review covering July 2016 to July 2017, the FEL of SLAS was adjusted upwards by 1.7% from \$1,509,980 to \$1,535,650 in accordance with the change in CPI(C) during the reference period. The adjusted FEL came into effect on 23 November 2018.

7. We have reviewed and propose to increase the FEL of OLAS from \$307,130 to \$400,000 having regard to the higher increase in legal costs than that of general price movement since the last one-off adjustment in 2011, as well as the affordability of private litigation services to OLAS applicants. In the absence of any representative data on private litigation costs, we have made reference to the average cumulative change of a series of indices relevant to legal professionals' expenses, including civil litigation costs of legally aided cases, nominal wage indices and rental indices for private offices for comparison with that of CPI(C) for the purpose.

8. We separately propose to increase the FEL of SLAS from \$1,535,650 to \$2,000,000. Apart from making provision for the increase in legal costs as compared with price changes, we see merit in providing a modest buffer for sandwich class applicants with financial resources marginally higher than the current FEL of SLAS particularly for elderly applicants who are living on savings (not regular income) who may otherwise need to exhaust all their assets to cope with tremendous legal costs for the more complicated cases.

9. Legal aid is a subsidised instead of an entirely free service, as all successful applicants are required to pay a contribution according to the level of their financial resources⁶. For SLAS cases, an additional percentage up to 20% of the value recovered will be deducted and paid to the independent Supplementary Legal Aid Fund (the Fund) should the aided person win the case. This is to ensure the financial sustainability of the Fund which operates on a self-financing basis. Following the proposed increase in the FELs, we will continue to rely on the existing statutory safeguards, including the merits test, as well as the caps on deductible household expenditure and rent from

⁶ The contribution to be paid under OLAS according to the level of the aided person's financial resources is provided in the table below –

Financial resources	Contribution rates	Contribution payable
\$0 - \$38,391	-	\$0
\$38,392 - \$76,782	2%	\$768 - \$1,536
\$76,783 - \$115,173	2.5%	\$1,920 - \$2,879
\$115,174 - \$153,565	5%	\$5,759 - \$7,678
\$153,566 - \$191,956	10%	\$15,357 - \$19,196
\$191,957 - \$230,347	15%	\$28,793 - \$34,552
\$230,348 - \$268,738	20%	\$46,070 - \$53,748
\$268,739 - \$307,130	25%	\$67,185 - \$76,783

For SLAS, the interim contribution is 25% of FEL under OLAS (i.e. \$76,783) for Type I proceedings; and 10% of the assessed financial resources of the aided person or 25% of the FEL under OLAS (i.e. \$76,783), whichever is higher, for Type II proceedings.

Type I proceedings include personal injuries or death, employees' compensation and the representation for employees in appeals against awards made by the Labour Tribunal, which are more closely related to the livelihood of the individuals and generally carry a lower risk of litigation. Type II proceedings include professional negligence, negligence claims against insurers or their intermediaries for personal insurance products, and monetary claims against first-hand residential properties vendors.

income and assets in calculating financial resources in the means test. This is to ensure that our legal aid system will not be abused by more well-off applicants.

10. In addition to the above 30% increase, we will continue to make regular adjustments to the FELs to take into account the change in CPI(C) for the two-year period between July 2017 and July 2019 in accordance with the annual review mechanism. For the reference period from July 2017 to July 2018, the Government informed this Panel in April 2019 that a 2.3% increase in CPI(C) was recorded. As for the following reference period from July 2018 to July 2019, there was a 2.8% increase in CPI(C) according to the latest available statistics. The adjustments based on CPI(C) movements (+5.1% on aggregate) will be made on top of the 30% increase in FELs announced in the 2019 Policy Address Supplement. In sum, the Government proposes to increase the FELs from the current level of \$307,130 to \$420,400 for OLAS and from \$1,535,650 to \$2,102,000 for SLAS.

11. To give effect to these upward adjustments of the FELs, we will introduce legislative amendments into the Legislative Council (LegCo) by way of subsidiary legislation within the 2019-20 legislative session. We will take forward this legislative exercise in conjunction with two other legislative items relating to the reviews of criminal legal aid fees and Director of Legal Aid's (DLA) first charge as elaborated in the ongoing initiatives relating to legal aid below (paragraphs 19 and 20 below).

12. Looking ahead, we will continue to make annual adjustments to the FELs of OLAS and SLAS with reference to the general price movement based on CPI(C). We will also continue to work closely with the two legal professional bodies in keeping abreast of the changes to legal costs and affordability of legal aid applicants with a view to considering the need for making one-off adjustments to either or both of the two FELs as and when necessary.

ONGOING INITIATIVES

Judiciary

Extension of Statutory Retirement Ages for Judges and Judicial Officers

13. To help retain senior and experienced judicial talents and ease recruitment difficulties for the Judiciary, the Government introduced the Judicial Officers (Extension of Retirement Age) (Amendment) Bill 2019 into LegCo in March 2019. Following the passage of the Bill by LegCo on 27

November 2019, the Judicial Officers (Extension of Retirement Age) (Amendment) Ordinance 2019 (Ordinance) came into effect on 6 December 2019 upon gazettal.

14. In gist, the Ordinance has extended the statutory retirement ages for Judges and Judicial Officers⁷ (JJOs) to 70 (for judges at the level of the Court of First Instance of the High Court (HC) and above) and 65 (for judicial officers below the HC level). In addition, while their retirement age is maintained at 65, District Judges are provided with a discretionary extension of term of office up to an aggregate of five years. Discretionary extension arrangements are also available for other levels of Court⁸.

The New High Court and the New District Court

15. To address the long-term accommodation needs of the Judiciary, the Chief Executive announced in her 2017 Policy Address that the Government planned to construct a new HC at Site 5 and the site south of Site 5 at the new Central harbourfront to relocate the existing HC Building in Admiralty; and a new DC at Caroline Hill Road (CHR) to house the DC, the Family Court and the Lands Tribunal. The Central Steering Committee for the Development of the High Court and the District Court, established under the Judiciary, has been overseeing the implementation of the two projects.

16. For the HC, interfacing issues with infrastructure projects in the vicinity, such as the proposed North Island Line, are being considered in consultation with the relevant bureaux/departments. The Architectural Services Department (ArchSD), as the works agent of the HC project, has been providing technical advice on the preliminary planning to the Judiciary and relevant bureaux/departments to facilitate early confirmation of the tentative development plan.

17. For the DC, the Technical Feasibility Statement prepared by ArchSD was approved in January 2019. Meanwhile, the Planning Department (PlanD) has commenced the statutory rezoning procedures for the CHR site⁹ in

⁷ “Judges” refer to officers in the grades of Chief Justice, Court of Final Appeal; Judge, Court of Final Appeal; Judge of the High Court; and Judge of the District Court. “Judicial Officers” refer to officers in the grades of Registrar, High Court; Registrar, District Court; Member, Lands Tribunal; Magistrate; Presiding Officer, Labour Tribunal; Adjudicator, Small Claims Tribunal; Coroner; and Special Magistrate. Special Magistrates are not included in the proposals as they would be gradually phased out.

⁸ The discretionary extension arrangements beyond the statutory retirement ages for JJOs at all other levels of court (i.e. two periods of three years for Court of Final Appeal Judges, and five years in aggregate for other JJOs) have been maintained.

⁹ From “Other Specified Use” annotated “Sports and Recreation Club” and “Government, Institution or Community” to “Commercial (2)” and “Government, Institution or Community (2)” (G/IC(2)) for the entire CHR site. The portion where the DC will be located is rezoned from “G/IC” to “G/IC(2)”.

May 2019. Barring unforeseen circumstances, the rezoning process is expected to be completed in mid-2020. In tandem with the rezoning of the CHR site, the Lands Department has commenced the statutory procedures for road improvement works in support of the development in September 2019. The gazetting procedure is expected to be completed in 2020 according to the provision of the Roads (Works, Use and Compensation) Ordinance.

Legal Aid

Review of SLAS

18. To follow up on the Legal Aid Services Council (LASC)'s recommendation to expand the scope of SLAS to cover monetary claims against certain financial intermediaries as well as derivatives claims¹⁰, LegCo recently approved the relevant subsidiary legislation through the completion of the negative vetting procedure. The expansion proposals will take effect from 1 April 2020. LASC has already embarked on the next round of review with a view to further expanding the scope of SLAS on an incremental basis. In particular, LASC is looking into the possibility of expanding SLAS to include claims against the incorporated owners of multi-storey buildings.

Review of Criminal Legal Aid Fees

19. Pursuant to the report to LegCo Finance Committee in October 1992, criminal legal aid fees¹¹, prosecution fees¹² and duty lawyer fees¹³ are subject to review on a biennial basis to take into account changes in CPI(C) during the reference period. For the latest biennial review covering the reference period of July 2016 to July 2018, we reported the outcome to Members who indicated

¹⁰ The scope of SLAS will be expanded to cover civil proceedings in respect of monetary claims –

- (a) for professional negligence against financial intermediaries licensed or registered for Type 1 (dealing in securities), Type 2 (dealing in futures contracts) or Type 8 (securities margin financing) regulated activities with the meaning of the Securities and Futures Ordinance; and
- (b) in respect of derivatives of securities, currency futures or other futures contracts on the basis that the person seeking legal aid was induced to deal in those derivatives, futures or contracts by fraud, deception or misrepresentation.

The Government also took the opportunity of the legislative amendment exercise to revise the minimum claim amount for proceedings to which SLAS applies in order to tie in with the Judiciary's increase of the jurisdictional limit of the Small Claims Tribunal to \$75,000 (which took effect on 3 December 2018).

¹¹ Fees payable to lawyers in private practice who undertake litigation work in respect of criminal cases by LAD.

¹² Fees payable to lawyers in private practice engaged by the Department of Justice on a standard briefing-out basis to prosecute criminal cases on fiat.

¹³ Fees payable to duty lawyers engaged under the Duty Lawyer Scheme, which provides legal representation to eligible defendants appearing in all MCs.

support in January 2019. We will introduce the legislative amendments into LegCo by way of subsidiary legislation within the 2019-20 legislative session (concurrently with the other two legislative items relating to FELs and DLA's first charge if possible) to implement the proposed adjustments.

Review of Director of Legal Aid's First Charge

20. The Government has completed a review on the amounts specified in sections 18A(5) and 19B(1)(a) of the LAO relating to the Director of Legal Aid's first charge¹⁴ and briefed this Panel in April 2018 on the outcome and the way forward. Members supported our proposal to make one-off adjustments by 48% to the two amounts¹⁵ with a view to bringing them in line with inflationary changes from July 1999 to July 2017 as well as other developments. The two amounts will also be further adjusted to take into account the inflationary changes from July 2017 to July 2019, i.e. from \$4,800 to \$9,100 and from \$57,400 to \$108,850 respectively. The Government plans to introduce the legislative amendments into LegCo by way of subsidiary legislation (concurrently with the other two legislative items relating to FELs and criminal legal aid fees) within the 2019-20 legislative session to implement the proposed adjustments.

ADVICE SOUGHT

21. Members are invited to note the policy initiatives in relation to the Judiciary and legal aid as set out above.

**Administration Wing,
Chief Secretary for Administration's Office
February 2020**

¹⁴ According to these two sections of the LAO, if a legally-aided person is successful in recovering or preserving any money or property in the legally aided proceedings, he/she will be required to repay the Director of Legal Aid (DLA) all sums paid or payable on his/her behalf out of the money or property recovered or preserved (periodical maintenance for spouse or former spouse up to the first \$4,800 per month and periodical maintenance for children exempted). This repayment is called DLA's first charge. DLA may waive his first charge for an amount not exceeding \$57,400 in cases of serious hardship.

¹⁵ Taking into account the inflationary changes as measured by CPI(C) from July 1996 to July 2017 as well as the substantial increase in the FEL of OLAS by 48% in May 2011, Members supported the one-off adjustments to the amount specified in section 18A(5) from \$4,800 to \$8,660 and the amount specified in 19B(1)(a) from \$57,400 to \$103,510. To take into account the change in price movement up to July 2019 (i.e. two years from July 2017 as in the original proposal), we will further adjust the two amounts concerned to \$9,100 and \$108,850 respectively.