

**“NATIONAL REPORT”**

**for**

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**prepared by  
Legal Aid Services Council,  
Hong Kong Special Administrative Region of  
the People’s Republic of China**

# **Legal Aid Services in the Hong Kong Special Administrative Region**

## **1. The legal system**

1.1 The legal system of the Hong Kong Special Administrative Region (HKSAR) differs from that of the Mainland China. It is based on the common law.

1.2 The constitutional framework of the HKSAR is provided by the Basic Law, enacted by the National People's Congress of the People's Republic of China under Article 31 of the Chinese Constitution. Both the Sino-British Joint Declaration and the Basic Law guarantee the continuance of the existing legal system after China resumed the exercise of sovereignty over Hong Kong on 1 July 1997.

## **2. Population**

Hong Kong has a population of about 7.4 million.

## **3. Gross domestic product**

For 2016 as a whole, Hong Kong's gross domestic product is estimated at HK\$2,489 billion [i.e. US\$319.1 billion].

## **4. The administration of the legal aid services**

4.1 Legal aid ensures a person who has reasonable grounds for taking or defending a legal action in the Hong Kong courts is not prevented from doing so because of a lack of means. Eligible applicants receive legal aid through the services of a solicitor and, if necessary, of a barrister. Publicly funded legal aid services are provided through the Legal Aid Department (LAD) and the Duty Lawyer Service. The former is a government department while the latter is an independent organization fully funded by the Government of the HKSAR and managed by the Hong Kong Bar Association and the Law Society of Hong Kong.

4.2 The administration of the legal aid services, both civil and criminal, provided by the LAD is overseen by the Legal Aid Services Council (LASC).

4.3 The LAD was set up in 1970. It has about 543 staff and 77 of them are lawyers including the Director of Legal Aid.

4.4 The LAD is organized into three divisions: Application and Processing Division, Litigation Division, and Policy and Administration Division.

4.5 The Application and Processing Division receives and determines applications for civil legal aid. When legal aid is granted, the case is assigned to lawyers in private practice or to in-house lawyers in the Litigation Division if the case is one concerning personal injuries including employees compensation claims or divorce and ancillary matter.

4.6 The Litigation Division comprises two sections: Civil Litigation Section and Crime Section. The Civil Litigation Section, apart from handling personal injuries and divorce cases, deals with the processing of applications for legal aid and the resulting litigation of wages claims from workers of insolvent employers. The Crime Section receives and determines applications for criminal legal aid. When legal aid is granted, the case is either assigned to lawyers in private practice or to in-house lawyers in the Crime Section.

4.7 The Policy and Administration Division supports the operation of LAD and consists of sections such as Administration, Accounts and Supplies, Policy and Development, Internal Audit and Training.

4.8 The LASC is an independent statutory body. It was established in 1996 to provide greater direct public participation in legal aid administration and policy formulation. It consists of a chairman, who is not a public officer or a barrister or solicitor; two barristers and two solicitors, each holding a practicing certificate issued under the Legal Practitioners Ordinance (Cap. 159, Laws of Hong Kong); four persons who are not connected in any way with the practice of law; and the Director of Legal Aid. The Chief Executive shall appoint the chairman and the other members of LASC except the Director of Legal Aid who is an *ex officio* member.

4.9 The LASC serves as the Chief Executive's advisory body on the policy of the government concerning the publicly funded legal aid services provided by LAD and shall advise on the eligibility criteria, scope of services, mode of service delivery, future plans for improvements, funding requirements and future development of legal aid policy. The LASC is also empowered to review the work of LAD from time to time and as such the LAD is accountable to the LASC for the provision of its services. However, legislation constituting the Legal Aid Services Council Ordinance (Cap. 489, Laws of Hong Kong) makes it clear that the LASC does not have power to direct LAD on staff

matters or the handling of individual cases. To facilitate its work, the LASC will set up working groups to handle specific matters on a need basis.

## **5. Legal aid schemes**

5.1 The LAD provides legal aid services to any person, irrespective of residence or nationality, who satisfies both the means and merits tests.

5.2 Legal aid for civil proceedings is available under two schemes pursuant to the Legal Aid Ordinance (Cap. 91, Laws of Hong Kong) i.e. the Ordinary Legal Aid Scheme (OLAS) and the Supplementary Legal Aid Scheme (SLAS).

5.3 To qualify for legal aid under the OLAS, applicants have to show that their financial resources (the aggregate of the person's annual disposable income and total disposable capital after deduction of a statutory allowance and certain deductible items) do not exceed HK\$290,380 [i.e. US\$37,228.2]. For applicants aged 60 or above, the means test disregards the first \$290,380 [i.e. US\$37,228.2] when calculating the amount of disposable capital. The merits test requires applicants to satisfy the Director of Legal Aid that there are reasonable grounds for bringing or defending the civil proceedings.

5.4 The SLAS helps people whose financial resources exceed the OLAS's limit, allowing an eligibility limit of HK\$1,451,900 [i.e. US\$186,141].

5.5 For criminal cases, an applicant's financial resources cannot exceed the financial eligibility limit allowed under OLAS. Applicants who pass the means test will receive legal aid for trial provided the Director of Legal Aid is satisfied it is in the interests of justice to grant legal aid. For appeals, it must be shown that there are reasonable grounds, except for appeals involving applicants charged with murder, treason or piracy with violence.

5.6 The financial eligibility limits are reviewed annually to take account of changes in the Consumer Price Index and on a biennial basis to take into account changes in private litigation costs. There is also a five-yearly review of the criteria for assessing financial eligibility of legal aid applicants.

5.7 The Director of Legal Aid may waive the statutory financial eligibility limit in meritorious civil cases where a breach of the Hong Kong Bill of Rights Ordinance (Cap. 383, Laws of Hong Kong), or an inconsistency with the International Covenant on Civil and Political Rights as applied to Hong Kong is an issue. For Criminal cases, the director has the discretion to grant legal aid where the applicant's financial resources exceed the eligibility limit, if the

director is satisfied that it is desirable in the interests of justice to do so, subject to the payment of a contribution.

## **6. Legal Aid Contributions**

6.1 Legal aid is not free. Applicants for legal aid whose assessed financial resources exceed HK\$36,297.5 [US\$4,653.5] are required to pay a sum by way of contribution upon acceptance of the offer of legal aid.

6.2 For OLAS and the legal aid scheme for criminal cases, the rate of contribution ranges from 2% [i.e. HK\$726 or US\$93.1] to 25% [i.e. HK\$72,595 or US\$9,307.1] depending on the applicant's assessed financial resources. For cases that the Director of Legal Aid exercises discretion and waives the financial eligibility limit, the amount of contribution payable ranges from 30% to 67% of the assessed financial resources of the applicant.

6.3 For SLAS cases, depending on the types of cases, applicants are required to pay an initial application fee of \$1,000 or \$5,000 and an interim contribution at the maximum level payable under OLAS or 10% of assessed financial resources, whichever is higher. The final contribution is: [all costs and expenses incurred by the Director of Legal Aid + percentage deduction] – [interim contribution + application fee paid + costs recovered from the opposite party]. Percentage deduction is 6% or 10%, depending on the type of case that was involved by the applicant and when the claim is settled.

## **7. Appeal mechanism**

An applicant who is refused legal aid for civil matters may appeal to the Registrar of the High Court. For criminal cases, if an applicant passes the means test but is refused legal aid, he may apply to a judge for legal aid to be granted to him. Applicants charged with or convicted of murder, treason or piracy with violence may apply to a judge for legal aid not only for the trial or appeal, but also for exemption from the means test or payment of a contribution. Appeals against refusal of legal aid for appeals to the Court of Final Appeal are heard by a Review Committee chaired by the Registrar of the High Court. A counsel certificate is required under the law to seek a review of such legal aid refusal. The legal aid appellant who has been refused legal aid other than on ground of means may apply to the LASC for the provision of a certificate by counsel free of charge.

## 8. Scope of the legal aid schemes

8.1 Legal aid in Hong Kong consists of representation by lawyers of the LAD or legal aid panel lawyers. It includes all assistance preliminary or incidental to any proceedings and such assistance is considered necessary to effect a compromise to bring an end to the proceedings.

8.2 The OLAS is available for civil proceedings in the District Court, Court of First Instance, Court of Appeal and the Court of Final Appeal, applications to the Mental Health Review Tribunal, and death inquests if the interests of public justice so require.

8.3 The types of cases covered by OLAS 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 wages claims;
- employees' wages and related employment benefits;
- Mental Health Review Tribunal cases;
- Coroner's inquests involving interests of public justice;
- judicial review; and
- monetary claims in derivatives of securities, currency futures or other futures contracts when fraud, misrepresentation or deception was involved in respect of the sale.

8.4 As regards the SLAS, legal aid is available to cover the following types of cases, where the claim is likely to exceed HK\$60,000 [i.e. US\$7,692.3]:

- personal injuries claims;
- medical, dental or legal professional negligence claims;
- professional negligence claims against 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.

SLAS also covers employees' compensation claims and representation for employees in appeals against awards made by the Labour Tribunal irrespective of the amount in dispute.

8.5 Since the scope of SLAS was expanded in 2012, there have been calls for further expansion in the society. The LASC was therefore invited to conduct a further review of the SLAS. The outcome of the study indicated that the Scheme should be further expanded on the basis that it will continue to be self-financing and financially viable. The LASC recommended that the SLAS should be expanded to cover monetary claims exceeding \$60,000 [US\$7,692.3] for professional negligence against financial intermediaries registered under the Securities and Futures Commission and required to have insurance cover; and in derivatives of securities, currency futures or other futures contracts when fraud, misrepresentation or deception was involved at the time of purchase. The recommendations have been accepted by the HKSAR Government.

8.6 For criminal cases, legal aid is available for trials in the Court of First Instance and the District court, committal proceedings in the Magistrates' Court, appeals against decisions of magistrates and for appeals to the Court of Appeal and the Court of Final Appeal.

## 9. Statistics

The following tables set out statistics on legal aid in years 2015 and 2016.

### Number of applications and certificates granted under the legal aid schemes

	Year 2015		Year 2016	
	No. of applications	No. of certificates granted	No. of applications	No. of certificates granted
Ordinary Legal Aid Scheme	14 954	6 889	14 508	6 714
Supplementary Legal Aid Scheme	211	169	225	164
Criminal Legal Aid	3 630	2 521	3 567	2 641

Scheme				
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Distribution of certificates issued for civil legal aid

	No. of Certificates Issued	
	Year 2015	Year 2016
Personal Injuries Claims	3 125	3 110
Matrimonial Cases	2 969	3 100
Land and Tenancy Disputes	145	131
Employment Disputes	94	82
Immigration Matters	52	35
Wages Claims	53	44
Others*	620	376
Total	7 058	6 878

\* “Others” include miscellaneous cases involving judicial review, medical and professional negligence claims, etc.

Distribution of certificates issued for criminal legal aid

	No. of Certificates Issued	
	Year 2015	Year 2016
Committal Proceedings in the Magistrates’ Court	574	510
District Court Trials	1 210	1 345
Court of First Instance Trials	532	548
Magistrates’ Court Appeals to the Court of First Instance	79	71
District Court Appeals to the Court of Appeal	48	62
Court of First Instance Appeals to the Court of Appeal	59	74
Appeals to the Court of Final Appeal	16	23
Others#	3	8
Total	2 521	2 641

# “Others” include such miscellaneous matters as bail applications.

## 10. Legal aid expenditure

	<b>OLAS</b>	<b>CRIME</b>	<b>SLAS</b>
	HK\$'000	HK\$'000	HK\$'000
Year 2015	454,445	123,786	3,667
Year 2016	546,222	130,197	6,560*

The above figures do not include the personal emoluments and personnel related expenses of LAD staff which is in the region of HK\$282 million [i.e. US\$36.2 million] and the LAD departmental expenses of about HK\$17 million [i.e. US\$2.2 million] for 2016. The total legal aid budget for LAD for the financial year from 1 April 2016 to 31 March 2017 is HK\$1,008 million [i.e. US\$129.2 million] which does not include the expenditure on SLAS.

*Note: the exchange rate being HK\$7.80 = US\$1.00*

*\*Estimated administration fee of HK\$3,900,000 for 2015-16 has been taken into account. The actual amount of administration fee payable for 2015-16 shall be finalised and paid by March 2017.*

## 11. Legal aid funding

11.1 Legal aid services in Hong Kong are primarily financed by public funds. Funding for civil and criminal legal aid under the OLAS comes from appropriations in the Government budget. Legal aid funding in Hong Kong is non-cash limited. In other words, there is no pre-determined funding cap and supplementary funding can be sought in the event expenses exceed the original estimate. Subject to the monitoring and approval of LAD on the ground of reasonableness, there is no limit on the expenditure for any particular legally aided case which may involve solicitors, barristers, mediators and both local and overseas experts.

11.2 As regards the SLAS, which is a self-financing scheme, funding comes from application fees, contributions paid by successful applicants, percentage deduction from damages recovered for the aided persons, costs awarded and interest income, etc.

## 12. Lawyers and legal aid work

12.1 Currently, most of the lawyers in LAD are deployed in the Application

and Processing Division. Legally aided representation is therefore mostly provided by lawyers in private practice who are on the legal aid panel. There are more than 8 900 practising solicitors and 1 300 barristers in Hong Kong, and about 32% of them are on the legal aid panel. Legal aid panel solicitors and barristers are assigned legal aid cases having regard to their level of experience and expertise, and the type and complexity of the particular case.

12.2 Cases which are assigned out to panel lawyers are monitored by the professional officers of LAD to ensure that the aided persons' interests are best served and public funds are employed in a cost effective manner.

### **13. More information**

More information on the LASC and the LAD of Hong Kong are available at:

[www.lasc.hk](http://www.lasc.hk)

[www.lad.gov.hk](http://www.lad.gov.hk)