

檢討法律援助輔助計劃

Review of Supplementary Legal Aid Scheme

在2017年4月，經考慮法律援助政策的目標、法律援助輔助計劃（「輔助計劃」）的指導原則，以及各相關政策局和部門的意見後，政府就本局對擴大「輔助計劃」範圍的建議，向立法會司法及法律事務委員會匯報了立場。根據本局的建議，政府決定擴大「輔助計劃」至涵蓋下列超過60,000元的金錢申索：

- (i) 涉及持有證券及期貨事務監察委員會第1類（證券交易）、第2類（期貨合約交易）或第8類（提供證券保證金融資）受規管活動牌照金融中介人的專業疏忽的金錢申索；及
- (ii) 就銷售證券衍生工具、貨幣期貨或其他期貨合約時涉及詐騙、欺騙或失實陳述的法律程序。

政府認為由於法律規定第(i)項所提及的金融中介人須持有專業保險，有關申索應有較高成功討回賠償的機會；至於第(ii)項所述的申索，基於自2012年擴大普通法律援助計劃（「普通計劃」）至涵蓋這類申索的經驗，這類申索不大可能對「輔助計劃」的財政穩健狀況造成重大影響。

In April 2017, having considered the policy objectives of legal aid, guiding principles of the Supplementary Legal Aid Scheme (SLAS) as well as the views from relevant government bureaux and departments, the Government reported its position on the Council's recommendations on expanding the scope of the Scheme to the Panel on Administration of Justice and Legal Services (AJLS) of Legislative Council (LegCo). As recommended by the Council, the Government decided to include into SLAS monetary claims exceeding \$60,000 for:

- (i) professional negligence against financial intermediaries licensed for Type 1 (dealing in securities), Type 2 (dealing in futures contracts) or Type 8 (securities margin financing) regulated activities by the Securities and Futures Commission; and
- (ii) proceedings in derivatives of securities, currency futures or other futures contracts when fraud, deception or misrepresentation was involved at the time of purchase.

The Government considered that the claims for (i) should have a high chance of recovery of damages as the relevant financial intermediaries are required by law to maintain professional insurance. As regards the claims for (ii), the inclusion would unlikely have a significant impact on the financial viability of SLAS based on the experience gained since 2012 when the scope of the Ordinary Legal Aid Scheme (OLAS) was expanded to cover this category of claims.

在2020年3月，政府通知本局，立法會已通過實施這些建議的相關附屬法例，而建議修訂會於2020年4月1日生效。

另一方面，政府邀請本局進行另一輪擴大「輔助計劃」範圍的檢討，特別研究納入個別業主向多層大廈業主立案法團提出的申索的可能性。

「輔助計劃」是以自負盈虧方式營運的法援計劃，為財務資源超出「普通計劃」的財務資格限額，但低於「輔助計劃」的財務資格限額的人士提供法律援助。

資助「輔助計劃」的法律援助輔助計劃基金（「輔助計劃基金」）的經費，最初是來自獎券基金撥出的100萬元種子基金，及後政府於1995年和2012年分別注資2,700萬元和1億元，以支持「輔助計劃」擴大涵蓋範圍。「輔助計劃基金」的其他經費來源包括「輔助計劃」申請人須繳付的申請費、「輔助計劃」受助人須繳付的中期分擔費，以及從勝訴案件討回的賠償中扣除的最後分擔費。

為維持財政穩健，「輔助計劃」自推行以來，一直以勝訴機會較高，以及賠償額與訟費比例較佳的案件作為援助對象。「輔助計

In March 2020, the Government informed the Council that the LegCo had approved the relevant subsidiary legislation for implementing the proposals and the proposed changes will take effect from 1 April 2020.

On the other hand, the Government invited the Council to conduct another round of review of SLAS, in particular, to look into the possibility of expanding the scope of the Scheme to include claims made by individual owners against the incorporated owners (IOs) of multi-storey buildings.

SLAS is a self-financing legal aid scheme. It provides legal assistance to people whose financial resources exceed the financial eligibility limit (FEL) allowed under OLAS, but are below the FEL specified for SLAS.

The Supplementary Legal Aid Fund (SLAF) which finances SLAS is funded by an initial seed money of \$1 million from the Lotteries Fund. An injection of \$27 million in 1995 and a further injection of \$100 million in 2012 were made by the Government to support the operation of the expanded SLAS. SLAF's income sources also include the application fees payable by SLAS applicants, interim contributions from persons aided by the Scheme and the final contributions from a percentage deduction of the damages recovered in successful cases.

To maintain its financial viability, SLAS has been targeting at cases that carry a high chance of success with good damages to costs ratio since inception. SLAS covers mainly cases

劃」主要涵蓋那些已投購保險的被告人或可討回賠償機會較高的案件（例如與工作有關的意外而提出人身傷亡的申索）。以往在考慮「輔助計劃」可涵蓋的新案件類別時，本局一直緊記這些原則，因此，本局避免把不涉及金錢申索或成功率較低和討回賠償機會較小的案件納入「輔助計劃」。

基於上述背景，本局嘗試搜集資料和數據作分析，希望了解業主立案法團是否可被視為具能力支付賠償的被告，以及向業主立案法團提出的申索是否屬勝訴機會較高和賠償額與訟費比例較佳的案件。

可惜，目前從政府方面得到的資訊相當有限，沒有任何與業主立案法團有關的申索數據或統計資料，包括有關申索的個案數目、申索類別、成功申索的個案數目，已索取的賠償／訟費金額等。由於缺乏可靠的數據分析，本局認為要為是否應將向業主立案法團提出的申索納入「輔助計劃」的範圍作定論，是相當困難。因此，本局現正尋求途徑，在來年繼續嘗試從其他資料來源獲取所需要的資訊。

where the defendants are insured or where the likelihood for payment of damages is high (e.g. claims for personal injuries or death in work-related accidents). The high chance of recovery of damages helps ensure, to a large extent, the financial sustainability of the Scheme. When deliberating on new categories of cases to be covered by SLAS in the previous reviews, these principles were borne in mind. Therefore, the Council has not sought to cover cases which do not involve monetary claims, or have a relatively low success rate or poor prospect of recovery.

Against the above background, the Council has tried to collect information and data for analysing whether IOs are well targeted defendants with ability to pay awarded damages, and whether there is a high chance of success with good damages to costs ratio in claims against IOs.

Unfortunately, so far the data collected from the Government is very limited. No data or statistics on the claims made against IOs could be obtained, including the number of claims against IOs, nature of claims, number of successful cases, amount of damages/costs recovered, etc. In the absence of trustworthy data for analysis, the Council finds it quite difficult to draw a conclusion whether the scope of SLAS should be expanded to include claims against IOs. Thus, the Council is exploring ways to collect the required information from other possible sources in the year to come.