

# 检讨法律援助辅助计划

## Review of Supplementary Legal Aid Scheme

在2017年4月，经考虑法律援助政策的目标、法律援助辅助计划（「辅助计划」）的指导原则，以及各相关政策局和部门的意见后，政府就本局对扩大「辅助计划」范围的建议，向立法会司法及法律事务委员会汇报了立场。根据本局的建议，政府决定扩大「辅助计划」至涵盖下列超过60,000元的金钱申索：

- (i) 涉及持有证券及期货事务监察委员会第1类（证券交易）、第2类（期货合约交易）或第8类（提供证券保证金融资）受规管活动牌照金融中介人的专业疏忽的金钱申索；及
- (ii) 就销售证券衍生工具、货币期货或其他期货合约时涉及诈骗、欺骗或失实陈述的法律程序。

政府认为由于法律规定第(i)项所提及的金融中介人须持有专业保险，有关申索应有较高成功讨回赔偿的机会；至于第(ii)项所述的申索，基于自2012年扩大普通法律援助计划（「普通计划」）至涵盖这类申索的经验，这类申索不大可能对「辅助计划」的财政稳健状况造成重大影响。

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，立法会已通过实施这些建议的相关附属法例，而建议修订会于2020年4月1日生效。

另一方面，政府邀请本局进行另一轮扩大「辅助计划」范围的检讨，特别研究纳入个别业主向多层大厦业主立案法团提出的申索的可能性。

「辅助计划」是以自负盈亏方式营运的法援计划，为财务资源超出「普通计划」的财务资格限额，但低于「辅助计划」的财务资格限额的人士提供法律援助。

资助「辅助计划」的法律援助辅助计划基金（「辅助计划基金」）的经费，最初是来自奖券基金拨出的100万元种子基金，及后政府于1995年和2012年分别注资2,700万元和1亿元，以支持「辅助计划」扩大涵盖范围。「辅助计划基金」的其他经费来源包括「辅助计划」申请人须缴付的申请费、「辅助计划」受助人须缴付的中期分担费，以及从胜诉案件讨回的赔偿中扣除的最后分担费。

为维持财政稳健，「辅助计划」自推行以来，一直以胜诉机会较高，以及赔偿额与讼费比例较佳的案件作为援助对象。「辅助计

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

划」主要涵盖那些已投保的被告人或可讨回赔偿机会较高的案件（例如与工作有关的意外而提出人身伤亡的申索）。以往在考虑「辅助计划」可涵盖的新案件类别时，本局一直紧记这些原则，因此，本局避免把不涉及金钱申索或成功率较低和讨回赔偿机会较小的案件纳入「辅助计划」。

基于上述背景，本局尝试搜集资料和数据作分析，希望了解业主立案法团是否可被视为具能力支付赔偿的被告，以及向业主立案法团提出的申索是否属胜诉机会较高和赔偿额与讼费比例较佳的案件。

可惜，目前从政府方面得到的资讯相当有限，没有任何与业主立案法团有关的申索数据或统计资料，包括有关申索的个案数目、申索类别、成功申索的个案数目，已索取的赔偿／讼费金额等。由于缺乏可靠的数据分析，本局认为要为是否应将向业主立案法团提出的申索纳入「辅助计划」的范围作定论，是相当困难。因此，本局现正寻求途径，在来年继续尝试从其他资料来源获取所需要的资讯。

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.