

LEGAL AID SERVICES COUNCIL ORDINANCE

(Cap. 489)

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LEGAL AID SERVICES COUNCIL ORDINANCE

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To establish the Legal Aid Services Council and for related matters.

[30 August 1996] *L.N. 380 of 1996*

1. Short title

- (1) This Ordinance may be cited as the Legal Aid Services Council Ordinance.
- (2) *(Omitted as spent)*

2. Interpretation

(Adaptation amendments retroactively made - see 26 of 1999 s. 3)
In this Ordinance—

“appointed member” (委任成員) means a member of the Council who is appointed by the Chief Executive and is not a member by virtue of his holding an office specified in section 5(1)(d);
(Amended 26 of 1999 s. 3)

“Council” (法援局) means the Legal Aids Services Council;

“Department” (法援署) means the Legal Aid Department;

“member” (成員) means a member of the Council and includes the Chairman of the Council;

“secretary” (秘書) means the secretary to the Council appointed under section 11.

3. Establishment of the Council

(Adaptation amendments retroactively made - see 26 of 1999 s. 3)

- (1) There is established a body corporate to be known as the Legal Aid Services Council to supervise the provision of legal aid services in Hong Kong provided by the Department and to advise the Chief Executive on legal aid policy. *(Amended 26 of 1999 s. 3)*

- (2) The Council has perpetual succession and is capable of suing and being sued in its corporate name.

4. Functions of the Council and relationship with the Department

(Adaptation amendments retroactively made - see 26 of 1999 s. 3)

- (1) The Council is responsible for overseeing the administration of the legal aid services provided by the Department and the Department is accountable to the Council for the provision of such services.
- (2) The Council may—
 - (a) subject to subsections (3) and (5), formulate policies governing the provision of services by the Department and give advice on the policy direction of the Department;
 - (b) review the work of the Department from time to time and make such arrangements as are expedient and proper to ensure the efficient and economical discharge of the functions and provision of legal aid services by the Department;
 - (c) keep under review the services provided by the Department and the plans for development of the Department; and
 - (d) consider and advise on the estimates of expenditure of the Department.
- (3) The Council shall not have the power to direct the Department on staff matters and the handling of individual cases by the Department.
- (4) The Department shall, subject to subsections (3) and (5), provide such information as is reasonably requested by the Council for the purpose of this Ordinance.

- (5) The Council is the Chief Executive's advisory body on the policy of the Government concerning publicly funded legal aid services provided by the Department and shall advise on—
- (a) the eligibility criteria, scope of services, mode of service delivery, future plans for improvements, funding requirements and future development of legal aid policy;
 - (b) the feasibility and desirability of the establishment of an independent legal aid authority; and
 - (c) any other aspect of legal aid which the Chief Executive may from time to time refer to the Council. (*Amended 26 of 1999 s. 3*)
- (6) The Council shall not be regarded as an agent or servant of the Government.

4A. Power of the Council

The Council may do all such things as are necessary to enable it to exercise its functions under this Ordinance, and in particular may enter into, carry out, assign or accept the assignment of, vary or rescind any contract, agreement or other obligation.

(Added 10 of 2005 s. 32)

5. Membership of the Council

(Adaptation amendments retroactively made - see 26 of 1999 s. 3)

- (1) The Council consists of the following members—
- (a) a Chairman who is not a public officer and who is not a barrister or solicitor or, in the opinion of the Chief Executive, who is not connected in any other way directly with the practice of law;
 - (b) 2 barristers and 2 solicitors, each holding a practising certificate issued under the Legal Practitioners Ordinance (Cap. 159);

- (c) 4 persons who, in the opinion of the Chief Executive, are not connected in any way with the practice of law; and
 - (d) the Director of Legal Aid.
- (2) The Chief Executive shall appoint the Chairman and the other members of the Council, who are not members by virtue of their holding an office specified in subsection (1)(d), for a term not exceeding 2 years but an appointed member may be reappointed.
- (3) Before appointing a member under subsection (1)(b), the Chief Executive shall consult—
 - (a) the Bar Council of the Hong Kong Bar Association on the appointment of a barrister; and
 - (b) the Council of The Law Society of Hong Kong on the appointment of a solicitor.
- (4) When consulted under subsection (3)—
 - (a) the Bar Council of the Hong Kong Bar Association may recommend any barrister; and
 - (b) the Council of The Law Society of Hong Kong may recommend any solicitor,to the Chief Executive for appointment, but the Chief Executive may appoint a person other than the person so recommended.
- (5) An appointed member may resign by notice in writing to the Chief Executive.
- (6) If an appointed member is absent from Hong Kong or is unable to act, the Chief Executive may appoint another person to act as a temporary member.

(Amended 26 of 1999 s. 3)

5A. Staff of the Council

The Council may appoint such persons as it requires to exercise and perform its functions, powers and duties under this Ordinance.

(Added 10 of 2005 s. 33)

6. Common seal

- (1) The Council has a common seal.
- (2) The affixing of the seal shall be authenticated in such manner as the Council may decide.

7. Protection to members

- (1) A member who acts in good faith and in the course of the operation of the Council is not personally liable for an act or omission of the Council.
- (2) The protection given to the members of the Council for an act or omission does not affect the liability of the Council for the act or omission.

8. Disclosure of interests by members

- (1) A member who is in any way directly or indirectly interested in a matter being considered by the Council shall disclose the nature of his interest at a meeting of the Council.
- (2) Where a member makes a disclosure in respect of a matter, the other members of the Council may decide whether the member is able to take part in the deliberation of and voting on the matter.

9. Meetings

- (1) The Chairman may from time to time specify the time and place of meetings of the Council.

- (2) The Chairman and at least 6 other members may exercise and perform the functions, powers and duties of the Council.
- (3) At a meeting of the Council, a resolution is effective if agreed by a majority vote of those present and in an equality of votes, the Chairman also has a casting vote.

10. Written resolutions

- (1) The Council may resolve a matter without a meeting—
 - (a) by the secretary with the approval of the Chairman circulating a draft of the resolution on the matter with a voting paper; and
 - (b) by members voting by signing the voting paper and returning it to the secretary.
- (2) The resolution is effective if 7 of the members are in favour and no member notifies the secretary, on the voting paper, that he requires the resolution to be discussed at a meeting.

11. Secretary

(Adaptation amendments retroactively made - see 26 of 1999 s. 3)

The Chief Executive shall appoint a secretary to the Council who is not a member of the Council.

(Amended 26 of 1999 s. 3)

12. Reports

- (1) The Council shall submit an annual report to the Chief Executive within 9 months of the end of each financial year, or such longer period as the Chief Executive may allow.
(Replaced 10 of 2005 s. 34)
- (2) The Council shall cause a copy of the annual report to be laid before the Legislative Council not later than on the third sitting day after submitting it to the Chief Executive.

(Amended 26 of 1999 s. 3)

13. Accounts

(Adaptation amendments retroactively made - see 26 of 1999 s. 3)

- (1) The Director of Audit shall audit the accounts of the Council.
- (2) The Council shall submit audited accounts for each financial year within 6 months of the end of the financial year to the Chief Executive. *(Amended 26 of 1999 s. 3)*

14. *(Omitted as spent)*