

Chapter:	91	LEGAL AID ORDINANCE	Gazette Number	Version Date
----------	----	---------------------	----------------	--------------

		Long title		30/06/1997
--	--	------------	--	------------

To make provision for the granting of legal aid in civil actions to persons of limited means and for purposes incidental thereto or connected therewith.

[12 January 1967] *L.N. 1 of 1967*

(Originally 36 of 1966)

Part:	I	PRELIMINARY		30/06/1997
-------	---	-------------	--	------------

Section:	1	Short title		30/06/1997
----------	---	-------------	--	------------

This Ordinance may be cited as the Legal Aid Ordinance.

Section:	2	Interpretation	L.N. 230 of 2000	03/07/2000
----------	---	----------------	------------------	------------

- (1) In this Ordinance, unless the context otherwise requires-
- "aided person" (受助人) means a person to whom has been granted a legal aid certificate which is still in force; (Amended 54 of 1984 s. 2)
- "assignment" and "assigned" (指派) include assignment of solicitor or counsel by the Director, selection of solicitor or counsel by an aided person and briefing of counsel by a solicitor;
- "contribution" (分擔費用) means the contribution payable under this Ordinance by an aided person or formerly aided person to the costs and expenses of legal aid; (Added 54 of 1984 s. 2)
- "counsel" (大律師) means a person who is enrolled as a barrister on the roll of barristers maintained in accordance with the provisions of the Legal Practitioners Ordinance (Cap 159), and who, at the material time, is not suspended from practice; (Amended 14 of 1982 s. 2; 79 of 1995 s. 50)
- "court" (法院) means any court, tribunal or person in respect of proceedings before which legal aid may be granted but does not include the Court of Final Appeal; (Amended 14 of 1982 s. 2; 79 of 1995 s. 50)
- "Director" (署長) means the Director of Legal Aid appointed under the provisions of section 3 and any Deputy Director of Legal Aid, Assistant Director of Legal Aid and Legal Aid Officer so appointed; (Amended 24 of 1983 s. 2; 54 of 1984 s. 2)
- "domestic proceedings" (家事法律程序) means proceedings under the Matrimonial Proceedings and Property Ordinance (Cap 192), the Matrimonial Causes Ordinance (Cap 179), the Guardianship of Minors Ordinance (Cap 13), the Separation and Maintenance Orders Ordinance (Cap 16) or the Parent and Child Ordinance (Cap 429); (Replaced 26 of 2000 s. 2)
- "financial resources" (財務資源) means financial resources as determined in the prescribed manner; (Added 27 of 1991 s. 2)
- "Fund" (計劃基金) means the Supplementary Legal Aid Fund established under section 29; (Added 54 of 1984 s. 2)
- "guardian" (監護人), in relation to an infant, includes, without prejudice to the generality of the expression, such person as the Director considers might properly be appointed by the court to be the next friend or guardian ad litem of the infant;
- "income" (收入), "disposable income" (可動用收入) and "disposable capital" (可動用資產) mean income, disposable income or disposable capital as determined in the prescribed manner; (Added 54 of 1984 s. 2)
- "infant" (幼年人) means an unmarried person who has not attained the age of 18 years; (Added 27 of 1991 s. 2)
- "judge" (法官) means a judge of the High Court or the District Court, as the case may be; (Amended 25 of 1998 s. 2)
- "legal aid" (法律援助) means legal aid granted under the provisions of this Ordinance;
- "legal aid certificate" (法律援助證書) means a legal aid certificate granted under section 10;

"Legal Aid Officer" (法律援助主任) means an officer appointed to a post of and serving as, or lawfully performing the functions of any of the officers designated in Schedule 1; (Added 24 of 1983 s. 2)

"order for costs" (繳付訟費命令) includes any judgment, order, decree, award or direction by a court or the Court of Final Appeal for the payment of the costs of one party in the proceedings by another party, whether given or made in those proceedings or not; (Amended 14 of 1982 s. 2; 79 of 1995 s. 50)

"panel" (名冊) means the appropriate panel maintained in accordance with section 4;

"person" (人、人士) does not include a body of persons corporate or unincorporate so as to authorize legal aid to be granted to such a body;

"prescribed" (訂明) means prescribed by regulations made under section 28; (Added 54 of 1984 s. 2)

"proceedings" (法律程序) includes-

(a) legal proceedings;

(b) negotiations prior to the issue of legal proceedings, including mediation, and for the payment of compensation by the Motor Insurers' Bureau for which no legal proceedings are issued;

(c) an application to the Mental Health Review Tribunal; (Added 43 of 1995 s. 2)

"Registrar" (司法常務官) means the Registrar of the High Court and, for the purposes of any proceedings before the Court of Final Appeal, includes the Registrar of the Court of Final Appeal; (Added 14 of 1982 s. 2. Amended 79 of 1995 s. 50; 25 of 1998 s. 2)

"solicitor" (律師) means a person enrolled on the roll of solicitors maintained in accordance with the provisions of the Legal Practitioners Ordinance (Cap 159), and who, at the material time, is not suspended from practice; (Amended 14 of 1982 s. 2; 54 of 1984 s. 2; 79 of 1995 s. 50)

"Supplementary Legal Aid Scheme" (法律援助輔助計劃) means the provisions under this Ordinance for the grant of legal aid where section 5A applies; (Added 54 of 1984 s. 2)

"transcript" (謄本) includes the transcript of the official shorthand note and any official typescript of the judge's manuscript note. (Added 54 of 1984 s. 2. Amended 79 of 1995 s. 50)

(Amended 79 of 1995 s. 50)

(2) Any references in this Ordinance to proceedings, an application, an order or a decision relating to or in connection with an appeal to, or an application for leave to appeal to, the Court of Final Appeal shall include proceedings, applications, orders and decisions relating to or in connection with any opposition to such an appeal or application for leave to appeal. (Added 14 of 1982 s. 2. Amended 79 of 1995 s. 50)

(3) The Chief Executive may, by order, amend Schedule 1. (Added 24 of 1983 s. 2. Amended 26 of 1999 s. 3)

Section:	3	Appointments	L.N. 87 of 2003	28/03/2003
----------	---	--------------	-----------------	------------

(1) The Chief Executive may appoint a person to be the Director of Legal Aid and may also appoint such number of Deputy Directors of Legal Aid, Assistant Directors of Legal Aid and Legal Aid Officers as he may think fit. (Amended 24 of 1983 s.3; 26 of 1999 s. 3)

(2) No person shall be appointed to be, or shall act temporarily as, the Director of Legal Aid or a Deputy Director of Legal Aid or an Assistant Director of Legal Aid or a Legal Aid Officer unless he is qualified to practise as a legal practitioner in Hong Kong, the United Kingdom or in a jurisdiction listed in Schedule 2 to the Legal Officers Ordinance (Cap 87). (Amended 24 of 1983 s. 3; 27 of 1991 s. 3; 42 of 2000 s. 28)

(3) Every person holding an appointment under subsection (1) shall, when performing any duty or exercising any power under this Ordinance or under rules made pursuant to section 9A of the Criminal Procedure Ordinance (Cap 221), have all the rights, powers, privileges, and duties of a barrister and solicitor duly admitted under the Legal Practitioners Ordinance (Cap 159), including a right of audience before any court or the Court of Final Appeal: (Amended 79 of 1995 s. 50)

Provided that no such person shall undertake or conduct as counsel the case for a defendant at the trial of such defendant in any criminal cause or matter or conduct any appeal on behalf of any such defendant in any criminal cause or matter. (Replaced 58 of 1972 s.2. Amended 48 of 1983 s.2)

(4) Notification in the Gazette to the effect that a person has been appointed to any of the offices referred to in subsection (1), or has ceased to hold any such office, shall be sufficient proof of the facts stated in the notice. (Added 58 of 1972 s.2)

Section:	4	Panels of counsel and solicitors		30/06/1997
----------	---	----------------------------------	--	------------

(1) The Director shall prepare and maintain separate panels of counsel and solicitors enrolled on the rolls of barristers or solicitors maintained in accordance with the provisions of the Legal Practitioners Ordinance (Cap 159) who are willing to investigate, report and give an opinion upon applications for the grant of legal aid and to act for aided persons. (Amended 14 of 1982 s.3)

(2) The Director shall enter in the panel any limitation as to the number per annum or as to the type of proceedings in which a counsel or solicitor is prepared to act for aided persons and shall give effect to such limitation. (Replaced 54 of 1984 s.3)

(3) Any counsel and solicitor shall be entitled to have his name included on the panel unless the Director is satisfied that there is good reason for excluding him by reason of his conduct when acting or assigned to act for persons receiving legal aid or of his professional conduct generally.

(4) The Director shall not include the name of a counsel or solicitor on the panel unless he is satisfied that such counsel or solicitor has a current practising certificate and shall remove from the panels the name of any counsel or solicitor who does not have a current practising certificate.

(5) Subject to the provisions of section 25(2), any counsel or solicitor may at any time request the Director to remove his name from the panel and the Director shall comply with such request.

(Amended 54 of 1984 s.3)

Part:	II	SCOPE OF LEGAL AID	L.N. 116 of 2009	29/05/2009
-------	----	--------------------	------------------	------------

Section:	5	Persons eligible for legal aid	L.N. 83 of 2011	18/05/2011
----------	---	--------------------------------	-----------------	------------

(1) Legal aid to which this section applies shall, subject to and in accordance with this Ordinance, be available for any person whose financial resources do not exceed \$260000, for the civil proceedings mentioned in Part I of Schedule 2, except proceedings mentioned in Part II of that Schedule. (Replaced 54 of 1984 s. 4. Amended L.N. 5 of 1986; 27 of 1991 s. 4; 43 of 1995 s. 3; 8 of 1997 s. 2; L.N. 45 of 2004; L.N. 97 of 2006; L.N. 77 of 2007; L.N. 236 of 2007; L.N. 116 of 2009; L.N. 51 of 2011)

(2) Nothing in this Ordinance shall authorize the grant of legal aid to a person to whom a chose in action is assigned for any purpose connected with that chose in action by a body of persons corporate or unincorporate. (Added 40 of 1989 s. 2)

Section:	5AA	Director may waive upper limit of means test		30/06/1997
----------	-----	--	--	------------

The Director may waive the limit of financial resources imposed under section 5(1) where the Director is satisfied that, having regard to the matters set out in section 10(3), a person would be granted a legal aid certificate in proceedings in which a breach of the Hong Kong Bill of Rights Ordinance (Cap 383) or an inconsistency with the International Covenant on Civil and Political Rights as applied to Hong Kong is an issue.

(Added 43 of 1995 s. 4)

Section:	5A	Supplementary legal aid	L.N. 83 of 2011	18/05/2011
----------	----	-------------------------	-----------------	------------

Legal aid to which this section applies (being legal aid under the Supplementary Legal Aid Scheme) shall, subject to and in accordance with this Ordinance, be available for any person-

(a) to whom legal aid is not available under section 5 because his financial resources are in excess of the amount therein prescribed; and (Amended 27 of 1991 s. 5)

(b) whose financial resources exceed \$260000 but do not exceed \$1300000, (Replaced 27 of 1991 s. 5. Amended 43 of 1995 s. 5; 8 of 1997 s. 3; L.N. 45 of 2004; L.N. 97 of 2006; L.N. 77 of 2007; L.N. 236 of 2007; L.N. 116 of 2009; L.N. 51 of 2011)

for the civil proceedings mentioned in Part I of Schedule 3, except proceedings mentioned in Part II of that Schedule.

(Added 54 of 1984 s. 4)

Section:	6	Scope of legal aid		30/06/1997
----------	---	--------------------	--	------------

Legal aid shall consist of representation, on the terms provided for by this Ordinance, by the Director or by a solicitor and, so far as necessary, by counsel including all such assistance as is usually given by solicitor or counsel in the steps preliminary or incidental to any proceedings or in arriving at or giving effect to a compromise to bring to an end any proceedings.

(Amended 27 of 1991 s. 6)

Section:	7	Power of the Legislative Council to make amendments	L.N. 230 of 2000	03/07/2000
----------	---	---	------------------	------------

The Legislative Council may, by resolution,-

- (a) amend the amounts of-
 - (i) financial resources specified in section 5; and
 - (ii) financial resources specified in section 5A; and (Amended 13 of 1995 s. 2; 26 of 2000 s. 3)
- (b) amend Schedules 2 and 3.

(Replaced 54 of 1984 s. 5)

Part:	III	APPLICATIONS FOR LEGAL AID AND GRANT OF CERTIFICATE	79 of 1995 s. 50	01/07/1997
-------	-----	---	------------------	------------

Section:	8	Application for legal aid	79 of 1995 s. 50	01/07/1997
----------	---	---------------------------	------------------	------------

(1) Any person who, whether in his own right or in a representative or fiduciary capacity, wishes to be granted legal aid shall apply therefor to the Director. (Amended 54 of 1984 s.6)

(2) Every application for legal aid shall be in such form and accompanied by such statutory declaration, verifying the facts stated in the application, as may be prescribed.

(3) If the person who wishes to be granted legal aid is an infant, the application under this section shall be made on behalf of the infant by his father, mother or guardian. (Amended 27 of 1991 s. 7)

(4) References in subsection (1) to a person who wishes to be granted legal aid in a representative capacity shall extend to a person who wishes to be granted legal aid for making application to a court or the Court of Final Appeal for an order enabling civil proceedings (being civil proceedings in respect of which legal aid may be granted under this Ordinance) to be conducted on behalf of a person who is mentally disordered. (Replaced 54 of 1984 s. 6. Amended 79 of 1995 s. 50)

Section:	9	Power of Director to make inquiries	79 of 1995 s. 50	01/07/1997
----------	---	-------------------------------------	------------------	------------

Where an application for legal aid is made under the provisions of section 8, the Director may-

- (a) make such inquiries as he thinks fit as to the means of the applicant and as to the merits of the case and, for the purpose of the latter, he shall be entitled to be supplied free of charge-
 - (i) with a copy of the minute or relevant extract from the register referred to in section 35A of the Magistrates Ordinance (Cap 227) in any relevant proceedings and in accordance with the provisions of that section;
 - (ia) with a copy of the pleadings and any other document in any relevant proceedings; (Added 27 of 1991 s. 8)
 - (ii) with a transcript of the evidence in any proceedings to which the application relates and, in the event of there being any other relevant proceedings (being proceedings to which subparagraph (i) does not relate), with a transcript of the relevant evidence in such other proceedings and also, if such other proceedings are criminal proceedings, of the judge's summing up in such other proceedings; (Replaced 54 of 1984 s.7)
- (b) require the applicant to furnish such information and such documents as the Director may require for the purpose of considering the application;
- (c) require the applicant to attend personally before the Director;
- (d) refer the application, or any matter arising out of the application, to counsel or solicitor, whose name is

on the appropriate panel, to investigate the facts and make a report thereon or to give any opinion thereon or on any question of law arising out of the application; (Amended 14 of 1982 s.4; 79 of 1995 s. 50)

- (da) (Repealed 79 of 1995 s. 50)
- (e) take or cause to be taken such steps as may be necessary to conserve the interests of the applicant or of any person on whose behalf the applicant is acting pending determination of his application; (Amended 54 of 1984 s.7)
- (f) defray expenses incidental to any of the foregoing matters out of any funds in his control which are available for the purpose.

Section:	10	Grant of legal aid certificates		30/06/1997
----------	----	---------------------------------	--	------------

(1) Subject to subsections (2) and (3), the Director may grant to a person a certificate that that person is entitled under the provisions of this Ordinance to legal aid in connection with any proceedings if the Director is satisfied that-

- (a) legal aid is sought in connection with proceedings for which legal aid may be granted under section 5 or, as the case may be, section 5A;
- (b) in the case of legal aid to which section 5 applies, subject to section 5AA, the financial resources of that person do not exceed the amount specified in that section in respect of financial resources; and (Replaced 27 of 1991 s. 9. Amended 43 of 1995 s. 6)
- (c) in the case of legal aid to which section 5A applies the financial resources of that person do not exceed the amount specified in that section in respect of financial resources.
- (d) (Repealed 27 of 1991 s. 9)

(2) The Director may refuse to grant a legal aid certificate, although satisfied of the matters specified in subsection (1) if, in his opinion, the applicant has disposed of any capital or income for the purpose of satisfying the conditions specified in those paragraphs or has failed to maximise his earning potential so as to expend or reduce his financial resources for that purpose. (Added 52 of 1970 s. 2. Amended 54 of 1984 s. 8; 27 of 1991 s. 9)

(3) A person shall not be granted a legal aid certificate in connection with any proceedings unless he shows that he has reasonable grounds for taking, defending, opposing or continuing such proceedings or being a party thereto, and may also be refused legal aid where it appears to the Director that-

- (a) only a trivial advantage would be gained by the applicant from such proceedings;
- (b) on account of the simple nature of the proceedings a solicitor would not ordinarily be employed; (Amended 27 of 1991 s. 9)
- (c) it is unreasonable that the applicant should be granted legal aid in the particular circumstances of the case; (Added 54 of 1984 s. 8. Amended 27 of 1991 s. 9)
- (d) since making the application the applicant has departed Hong Kong and remained outside Hong Kong for any continuous period of 6 months; (Added 27 of 1991 s. 9. Amended 43 of 1995 s. 6)
- (e) the applicant has failed to comply with a requirement of the Director made under section 9(b) or (c); (Added 27 of 1991 s. 9)
- (f) the applicant has allowed an offer or legal aid to lapse or has indicated that he wishes to withdraw his application; or (Added 43 of 1995 s. 6)
- (g) there are other persons concerned jointly with, or having the same interest as, the applicant in seeking a substantially similar outcome of the proceedings unless the applicant would be prejudiced by not being able to take his own or joint proceedings. (Added 43 of 1995 s. 6)

Section:	11	Revocation and discharge of certificates		30/06/1997
----------	----	--	--	------------

The Director may, in such circumstances and manner as may be prescribed, revoke or discharge any legal aid certificate.

Section:	12	Application for aid by more than one party	79 of 1995 s. 50	01/07/1997
----------	----	--	------------------	------------

(1) If, in relation to any proceedings to which a person who has made an application for legal aid or an aided person is a party, any other party makes application for legal aid, the provisions of this Ordinance shall apply to both such parties:

Provided that the Director shall not himself act for either such party but shall assign counsel or solicitor-

- (a) in proceedings before the Court of Final Appeal, selected by the Director; or (Amended 79 of 1995 s. 50)
- (b) in other proceedings, selected by the aided person, if he so desires, or otherwise by the Director from the panel,

to act for each aided person unless the Director is already acting in any proceedings to which an aided person is a party when such other party makes application for legal aid, in which case the Director may, if in his opinion no conflict of interest or prejudice to any aided person arises, continue so to act. (Amended 14 of 1982 s.6; 54 of 1984 s.9)

(2) Where the Director continues to act for an aided person in accordance with the proviso to subsection (1) he shall assign from the panel a solicitor and, additionally or alternatively, counsel to act for the other aided person. (Added 54 of 1984 s.9)

Section:	13	Endorsement of legal aid certificate	L.N. 230 of 2000	03/07/2000
----------	----	--------------------------------------	------------------	------------

(1) Where a legal aid certificate is granted, the Director may act for the aided person in any proceedings, or part of any proceedings, and the Director may assign counsel or solicitor, to be selected by the aided person, if he so desires, or otherwise selected by the Director, and the Director shall endorse on the legal aid certificate the name of any counsel or solicitor assigned. (Replaced 14 of 1982 s. 7. Amended 54 of 1984 s. 10; 79 of 1995 s. 50)

(2) The Director may, if he is of the opinion that any proceedings are, or may become, of exceptional difficulty or importance, state in the certificate that the aided person should be represented by 2 counsel, one of whom may be leading counsel, in such proceedings.

(3) Counsel or a solicitor selected under subsection (1), whether by the aided person or by the Director, shall be selected from the panel and no leading counsel may be selected by an aided person, except where subsection (2) applies, unless the Director consents thereto. (Added 54 of 1984 s. 10. Amended 26 of 2000 s. 4)

Section:	14	Filing of legal aid certificate	79 of 1995	01/07/1997
----------	----	---------------------------------	------------	------------

- (1) The Director shall file the legal aid certificate in the registry of the court-
 - (a) in which proceedings for which legal aid has been granted have been commenced, as soon as practicable after the issue of the certificate; and
 - (b) in any other case, upon the commencement of such proceedings in that court,
 and no court fee shall be charged upon the filing of such certificate. (Replaced 54 of 1984 s. 11)

(2) Where counsel or solicitor is assigned to act after a legal aid certificate is filed in court, or in any case where a new assignment is made in lieu of counsel or solicitor assigned previously, the Director shall not be required to endorse on the certificate the name of the counsel or solicitor so assigned, or newly assigned, as the case may be, but may, instead, give notice of such assignment or new assignment in writing to the proper officer of the court in which proceedings are pending. (Amended 54 of 1984 s. 11)

(3)-(4) (Repealed 54 of 1984 s. 11)

(5) In this section, "court" (法院) includes the Court of Final Appeal. (Added 79 of 1995 s. 50)

Section:	15	Stay of proceedings upon making of application for legal aid	79 of 1995	01/07/1997
----------	----	--	------------	------------

(1) (Repealed 79 of 1995 s. 50)

(2) Where an action has been commenced or where an appeal has been lodged in respect of any proceedings and any party, or any person who wishes to be joined as a party, makes an application for legal aid, the Director shall, as soon as practicable after the application is made, notify the other party or each of the other parties, and file in the court in which the action is commenced or in the court in which the appeal is lodged, as the case may be, a memorandum of such notification.

(3) Where any party to an action, or any person who wishes to be joined as a party, makes an application for legal aid to prosecute an appeal or proceedings in the nature of an appeal, the Director shall, as soon as practicable after the application is made, notify the other party or each of the other parties, and file in the court or tribunal against whose judgment or order it is intended to appeal, a memorandum of such notification. (Amended 43 of 1995 s. 7)

(4) Where any memorandum is so filed, then, unless otherwise ordered by the court in which the memorandum is filed, all proceedings in the action or in the appeal or in both the action and the appeal shall, by virtue of this

section, be stayed for such period, being not less than 14 days, as may be prescribed, and during such period (unless otherwise ordered by any such court) time fixed by or under any law or otherwise for the doing of any act or the taking of any step in the proceedings shall not run.

- (5) The filing of the memorandum shall not operate to prevent the making of-
 - (a) an interlocutory order for an injunction or for the appointment of a receiver or manager or receiver and manager; or
 - (b) an order to prevent the lapse of a caveat against dealings with land; or
 - (c) any other order which, in the opinion of the court in which the memorandum is filed, is necessary to prevent an irremediable injustice.
- (6) Unless otherwise ordered by the court in which the memorandum is filed, the filing of the memorandum shall not operate to prevent the institution or continuance of proceedings to obtain, enforce or otherwise carry into effect any such order as is mentioned in subsection (5) or a decree to the like effect.
- (7) The time during which proceedings are stayed by virtue of this section may be reduced or extended by order of the court in which the memorandum is filed.
- (8) No fee shall be charged in respect of the filing of the memorandum referred to in this section.
- (9) For the purposes of this section, "action" (訴訟) includes any cause or matter.

(Replaced 40 of 1989 s. 3)

Section:	16	Appeals by aided persons	79 of 1995 s. 50	01/07/1997
----------	----	--------------------------	------------------	------------

- (1) (Repealed 79 of 1995 s. 50)
- (2) An aided person who prosecutes any appeal or proceedings in the nature of an appeal (otherwise than an interlocutory appeal), without having filed a legal aid certificate in the court appealed to shall be deemed for the purposes of this Ordinance not to be an aided person.

(Replaced 40 of 1989 s. 4)

Section:	16A	Appeals to Court of Final Appeal	79 of 1995 s. 50	01/07/1997
----------	-----	----------------------------------	------------------	------------

A person shall not take, defend, oppose, continue or be a party to an appeal to, or an application for leave to appeal to, the Court of Final Appeal as an aided person unless he has been granted a legal aid certificate for that purpose under section 10 or 26A.

(Added 14 of 1982 s.11. Amended 79 of 1995 s. 50)

Part:	IV	COSTS AND CONTRIBUTIONS	79 of 1995 s. 50	01/07/1997
-------	----	-------------------------	------------------	------------

Section:	16B	Benefits afforded to aided persons	79 of 1995 s. 50	01/07/1997
----------	-----	------------------------------------	------------------	------------

Subject to the provisions of this Ordinance, where a person receives legal aid in connection with any proceedings-

- (a) the expenses incurred in connection with the proceedings, so far as they would ordinarily be paid in the first instance by or on behalf of the solicitor assigned to act for him, shall be so paid, except in the case of those paid directly by the Director, and the expenses paid by the solicitor shall be refunded to him by the Director;
- (b) his counsel and solicitor shall be paid by the Director in accordance with section 20;
- (c) he shall not be liable in respect of proceedings to which the certificate relates for court fees or for fees payable for the service of process or for any fees due to the bailiff in connection with the execution of process, but for the purposes of any order or agreement of costs made in his favour with respect to the proceedings such costs shall be deemed to have been paid by him and sections 19, 19A(1) and 19B(1)(b) shall apply accordingly; (Amended 79 of 1995 s. 50)
- (d) the Director shall, on his behalf, be entitled to be supplied free of charge with a transcript of the evidence in any proceedings to which the certificate relates and, in the event of there being any other relevant proceedings, with a transcript of the relevant evidence in such other proceedings and also, if such other proceedings are criminal proceedings, of the judge's summing up in such other proceedings;

(Amended 27 of 1991 s. 10; 79 of 1995 s. 50)

- (e) he may be required to make a contribution to the Director;
- (f) his liability for costs shall be determined in accordance with section 16C.

(Added 54 of 1984 s. 14)

Section:	16C	Liability for costs	79 of 1995 s. 50	01/07/1997
----------	-----	---------------------	------------------	------------

(1) Subject to section 18A, the liability of an aided person and of the Director for costs shall be determined in the following manner- (Amended 40 of 1989 s. 5)

- (a) an aided person shall not be liable for costs incurred by the Director on his behalf-
 - (i) in the case of costs incurred under the Supplementary Legal Aid Scheme, except in accordance with section 32; and
 - (ii) in any other case, in excess of such aided person's contribution;
- (b) where a court or the Court of Final Appeal makes an order for costs against an aided person, or an agreement is entered into for the payment of costs by an aided person, in favour of a person not receiving legal aid- (Amended 79 of 1995 s. 50)
 - (i) in any case in which the party not receiving legal aid is a defendant or respondent in the proceedings (other than a defendant or respondent to a counterclaim or cross-petition), or in the case of an appeal (including an appeal to, or an application for leave to appeal to, the Court of Final Appeal) is a respondent therein (other than a respondent to a cross-appeal) such costs shall be paid by the Director; (Amended 79 of 1995 s. 50)
 - (ia) in any case in which the party not receiving legal aid is a defendant to a counterclaim or respondent to a cross-petition, or in the case of an appeal (including an appeal to, or an application for leave to appeal to, the Court of Final Appeal) is a respondent to a cross-petition, the costs occasioned by the counterclaim, cross-petition or cross-appeal filed by or on behalf of the aided person shall be paid by the Director; (Amended 79 of 1995 s. 50)
 - (ib) in any case in which the party not receiving legal aid is an appellant in an appeal (including an appeal to, or an application for leave to appeal to, the Court of Final Appeal) and in the court whose judgment or order is appealed against the plaintiff was an aided person, such costs shall be paid by the Director; and (Amended 79 of 1995 s. 50)
 - (ii) in any other case, neither the Director nor the aided person shall be liable for such costs unless a contribution is payable by the aided person under section 18(1)(b); in which case the Director on behalf of the aided person shall pay such costs to the extent that the contribution is in excess of the costs incurred by the Director on behalf of the aided person; and
- (c) where a court or the Court of Final Appeal makes an order for costs against an aided person, or an agreement is entered into for the payment of costs against an aided person, in favour of a person who is also receiving legal aid, neither such person shall be liable for such costs in excess of his contribution and the contribution of the party who is liable for the payment of costs under such order or agreement shall be charged first with the costs of both parties and thereafter the contribution of the other party shall be charged to the extent of his own costs in so far as such costs are not recovered from the contribution of the party liable to pay costs. (79 of 1995 s. 50)

(2) Subsection (1), in so far as it relates to the costs of an aided person, relates only to costs arising in respect of proceedings to which, and during the period to which, a legal aid certificate relates, and nothing in that subsection shall otherwise affect the liability for costs of an aided person.

- (3) Where subsection (1) limits the liability for costs of an aided person such limitation shall extend-
 - (a) where the aided person has been granted legal aid in a representative or fiduciary capacity, to any other person on whose behalf the aided person is acting and for the benefit of any fund held for such other person; and
 - (b) where the aided person has been granted legal aid as the guardian of an infant, to the infant.
- (4) (Repealed 79 of 1995 s. 50)

(Added 54 of 1984 s. 14)

Section:	17	Court may order payment of costs by aided person in certain event	79 of 1995	01/07/1997
----------	----	---	------------	------------

(1) Where it appears to a court or judge that a legal aid certificate has been obtained by fraud or misrepresentation, the court or judge may order the aided person to pay the costs of the Director and of the counsel and solicitor who acted for him or the costs of the other party, or the costs of the Director and such counsel and solicitor and such party.

(2) In subsection (1) a reference to an "aided person" (受助人) shall include, in any case where the legal aid certificate has been revoked or discharged before the making of the order, the person who immediately before such revocation or discharge was the aided person. (Amended 27 of 1967 s. 3)

(3) Where it appears to a court or judge that an aided person has acted improperly in bringing or defending any legal proceedings or in the conduct of them, the court or judge may order the aided person to pay the costs of the Director and of the counsel or solicitor who acted for him or the costs of the other party, or the costs of the Director and such counsel and solicitor and such party.

(4) Where an order is made under subsection (1) or (3), the costs shall be taxed as if the party ordered to pay them were not an aided person.

(5) The costs so ordered to be paid shall, unless otherwise directed by the order, include fees and charges of the nature referred to in section 16B(c) and (d). (Amended 54 of 1984 s. 15)

(6) In this section, "court" (法院) includes the Court of Final Appeal. (Added 79 of 1995 s. 50)

Section:	18	Contributions by aided person		30/06/1997
----------	----	-------------------------------	--	------------

(1) An aided person shall pay to the Director a contribution-

(a) where legal aid has been granted to him under the Supplementary Legal Aid Scheme, in accordance with section 32; and

(b) in any other case, if so required by the Director, towards the sums that may be or become payable on his account by the Director. (Replaced 54 of 1984 s.16)

(2) Any contribution payable by an aided person to the Director under this Ordinance shall be a debt due to the Director and shall be paid in such manner as may be prescribed.

(3) If the total contribution paid by an aided person is more than the net liability of the Director on his account within the meaning of section 18A(2), the excess shall be repaid to him: (Amended 54 of 1984 s.16)

Provided that nothing in this subsection shall apply to a contribution payable under section 32. (Added 54 of 1984 s.16)

(Replaced 60 of 1981 s.2)

Section:	18A	Charge on property recovered	L.N. 230 of 2000	03/07/2000
----------	-----	------------------------------	------------------	------------

(1) Subject to this section-

(a) the amount of a contribution to the extent that it is unpaid; and

(b) except where legal aid has been granted under the Supplementary Legal Aid Scheme, if the total contribution is less than the net liability of the Director on the aided person's account, a sum equal to the deficiency,

shall be a first charge for the benefit of the Director on any property, whether situated in Hong Kong or otherwise, which is recovered or preserved for the aided person in the proceedings or in any other proceedings in respect of which the person was aided and which, in the opinion of the Director, were substantially related to or connected with the proceedings in which property was recovered or preserved. (Replaced 27 of 1991 s. 11)

(2) The references in section 18 and in subsection (1) to the net liability of the Director on any person's account in relation to any proceedings refer to the aggregate amount of the following-

(a) sums paid or payable by the Director on his account in respect of the proceedings to any solicitor or counsel (or, where the Director acts for a person, sums which would have been so payable if the Director had not so acted) and not recouped by the Director from sums recovered under an order or agreement for costs made in favour of that person with respect to the proceedings;

(b) any amount paid or payable by the Director under section 16C on behalf of that person; and (Amended 54 of 1984 s.17)

(c) the amount of any expenses defrayed by the Director under section 9(f) in respect of the grant of legal aid to that person.

(3) The reference in subsection (1) to property recovered or preserved for an aided person in any proceedings shall include-

- (a) his rights under any compromise arrived at to avoid or bring to an end the proceedings and any sums recovered under an order or agreement for costs made in his favour with respect to the proceedings; and
- (b) where the legal aid certificate granted to him in respect of the proceedings is revoked or discharged, any property subsequently recovered or preserved by or for him in the proceedings or by virtue of any compromise arrived at to avoid or bring to an end the proceedings; and (Amended 54 of 1984 s. 17)
- (c) any property recovered for the benefit of any person on whose behalf the aided person is acting or for the benefit of any estate or fund out of which that aided person is entitled to be indemnified. (Added 54 of 1984 s. 17)

(3A) Where the property recovered or preserved is land or an interest in land, a charge under subsection (1) shall vest in the Director who may register the charge under the Land Registration Ordinance (Cap 128) and may enforce the charge in any manner which would be available to a chargee in respect of a charge given inter partes. (Replaced 26 of 2000 s. 5)

(3B) Where in any proceedings, there is recovered or preserved for the aided person property which by order of the court or the Court of Final Appeal or, under the terms of any agreement reached, is to be used as a home for the aided person or his dependants the following shall apply- (Amended 79 of 1995 s. 50)

- (a) If the Director is satisfied that the property will provide adequate security for any sum as the Director would have retained in respect of the property he may defer enforcing the charge. (Replaced 26 of 2000 s. 5)
- (b) Subject to paragraph (c), as from the date on which the charge is first registered, simple interest on the sum referred to in paragraph (a) payable by the aided person shall accrue for the benefit of the Director at the rate of 10% per annum or at a prescribed rate. (Replaced 26 of 2000 s. 5)
- (c) Notwithstanding paragraph (b)-
 - (i) where the Director is satisfied-
 - (A) that it would cause serious hardship to the aided person for him to pay all or any of the interest accrued under that paragraph; or
 - (B) that it is in all the circumstances just and equitable to do so, the Director may waive, either in whole or in part, the payment by the aided person of all or any of the interest so accrued;
 - (ii) interest payable by the aided person under that paragraph shall continue to accrue until the sum referred to in paragraph (a) is paid and the Director shall not seek to recover interest until such payment is made; and
 - (iii) nothing in this subsection shall prevent an aided person from making interim payments of interest or capital in respect of any sum referred to in paragraph (a) whether such payments are made at regular intervals or not and any such payment of capital shall reduce the sum accordingly. (Replaced 26 of 2000 s. 5)

(4) The charge created by subsection (1) on any damages or costs shall not prevent a court or the Court of Final Appeal allowing them to be set off against other damages or costs in any case where a solicitor's lien for costs would not prevent it. (Amended 79 of 1995 s. 50)

(5) The charge on property under subsection (1) does not apply to-

- (a) any interim payment under an order or an agreement having the same effect as an order;
- (b) maintenance pending suit or a periodical payment under an order made in domestic proceedings, or under an agreement having the same effect as an order, for the maintenance of a child, spouse or former spouse unless the payments are for the maintenance of a spouse or former spouse and are at a rate exceeding \$4800 (or its equivalent) each month; (Amended 8 of 1997 s. 4)
- (c) where the payment of maintenance for a spouse or former spouse is payable at a rate exceeding \$4800 (or its equivalent) each month, the first \$4800 (or its equivalent) of each payment; (Amended 8 of 1997 s. 4)
- (d) the payment of arrears of maintenance except to the extent that paragraph (b) would otherwise apply; and
- (e) an amount recovered by way of employee's compensation to the extent that the charge would apply the

deficiency attributable to a common law claim by the aided person arising out of the same circumstances. (Replaced 43 of 1995 s. 8)

(Added 60 of 1981 s. 2)

Section:	18B	Security for costs		30/06/1997
----------	-----	--------------------	--	------------

In any case in which an aided person is obliged to furnish security for costs, the Director may provide such security out of funds in his control which are available for that purpose: (Amended 54 of 1984 s.18)

Provided that where legal aid has been granted to an aided person under the Supplementary Legal Aid Scheme any such security shall be provided out of the Fund. (Added 54 of 1984 s.18)

(Added 14 of 1982 s.12)

Section:	19	Award of costs	79 of 1995 s. 50	01/07/1997
----------	----	----------------	------------------	------------

(1) A court or the Court of Final Appeal may make an order for costs in favour of or against an aided person in the same manner and to the same extent as it may make an order for costs in favour of or against any other person but such an order may only be enforced against the aided person and the Director to the extent permitted by section 16C. (Amended 54 of 1984 s.19; 79 of 1995 s. 50)

(1A) (a) Where a court or the Court of Final Appeal makes an order for costs in favour of an aided person, there also shall be payable by the person against whom the order for costs is made the court fees and other fees and charges which, but for section 16B(c) and (d), would have been payable by the aided person. (Amended 14 of 1982 s.13; 54 of 1984 s.19; 79 of 1995 s. 50)

(b) Any court fees and other fees and charges which become payable to an aided person under paragraph (a) shall be paid to the Director, who alone shall be capable of giving a good discharge therefor. (Added 9 of 1968 s. 2)

(2) (Repealed 54 of 1984 s. 19)

(3) (Repealed 79 of 1995 s. 50)

(Amended 27 of 1967 s. 4)

Section:	19A	All moneys due to aided person to be paid to Director	79 of 1995 s. 50; 25 of 1998 s. 2	01/07/1997
----------	-----	---	--------------------------------------	------------

Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

(1) All moneys which may become payable to an aided person-

(a) by virtue of an order, including an order of the Court of Final Appeal, made in connection with the proceedings to which his legal aid certificate relates; (Amended 79 of 1995 s. 50)

(b) by virtue of any agreement made in connection with the proceedings to which his legal aid certificate relates, whether such agreement be made before or after the proceedings are actually begun;

(c) being moneys paid into court or the Court of Final Appeal by him or on his behalf in connection with the proceedings to which his legal aid certificate relates and ordered to be repaid to him; or (Amended 79 of 1995 s. 50)

(d) being moneys standing in court or in the Court of Final Appeal to the credit of any proceedings to which his legal aid certificate relates, (Amended 79 of 1995 s. 50)

shall be paid or repaid, as the case may be, to the Director unless the Director by notice in writing to the person responsible for payment and to the aided person directs otherwise. (Amended 14 of 1982 s. 14; 54 of 1984 s. 20)

(2) Subsection (1) shall not apply where any court or the Court of Final Appeal, authority or person, in exercise of a power under any law, gives any direction or exercises any discretion as to the payment of any sum to an aided person, and in such case the court or the Court of Final Appeal, authority or person shall provide that the sum payable to the aided person shall be subject to a first charge to be retained by the court or the Court of Final Appeal, authority or person for the benefit of the Director as a first charge for any sum due to be paid or repaid to him under this Ordinance. (Amended 27 of 1991 s. 12; 79 of 1995 s. 50)

(3) The provisions of this section shall apply in relation to all sums which may become payable to an aided person, notwithstanding any provision in-

- (a) the Employees' Compensation Ordinance (Cap 282); or
- (b) the High Court Ordinance (Cap 4); or (Amended 25 of 1998 s. 2)
- (c) any other law,

which-

- (i) restricts the payment of any sum to any person; or
- (ii) prohibits the payment of any sum to any person.

(4) Only the Director shall be capable of giving a good discharge for moneys which may become payable to the Director under this section.

(5) In this section reference to an "aided person" (受助人) includes an aided person whose legal aid certificate has been revoked or discharged. (Added 27 of 1991 s. 12)

(Added 27 of 1967 s. 5)

Section:	19B	Disposal by Director of moneys paid to him	79 of 1995; 25 of 1998	01/07/1997
----------	-----	--	------------------------	------------

Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

(1) Upon receipt of all moneys paid to him pursuant to section 19 or 19A, the Director shall- (Amended 40 of 1989 s. 7)

- (a) retain-
 - (i) any sum paid by virtue of an order or agreement for costs made in the aided person's favour;
 - (ii) a sum equal to the amount, if any, by which any property recovered or preserved is charged for the benefit of the Director by virtue of section 18A(1); and (Amended 60 of 1981 s. 3)
 - (iii) any costs recovered in proceedings taken by the Director in his own name under regulations made under this Ordinance:

Provided that where the Director is satisfied that it would cause serious hardship to any person to retain any such sum under this paragraph and that it is in all the circumstances just and equitable to reduce the sum to be so retained, the amount to be so retained shall be reduced by such amount not exceeding \$57400 as the Director may determine; (Added 60 of 1981 s. 3. Amended 40 of 1989 s. 7; 8 of 1997 s. 5)

- (b) pay to the Registrar of the High Court or the Registrar of the Court of Final Appeal any court fees and other fees and charges paid to him pursuant to section 19(1A); and (Amended 79 of 1995 s. 50; 25 of 1998 s. 2)
- (c) pay the balance to the aided person or, if the court so directs, to the court or to some other person. (Added 9 of 1968 s. 3)

(2) Notwithstanding subsection (1), where the Director is satisfied that-

- (a) compliance with subsection (1)(a) would cause serious hardship to any person; and
- (b) a payment will be received by him under section 19 or 19A,

the Director may, upon receipt of any such payment, pay such proportion thereof as he thinks fit to the aided person without complying with subsection (1)(a). (Added 40 of 1989 s. 7)

(3) In this section, "court" (法院) includes the Court of Final Appeal. (Added 79 of 1995 s. 50)

Section:	19C	Interest on moneys paid to Director		30/06/1997
----------	-----	-------------------------------------	--	------------

(1) Any interest or dividend received by the Government under this Ordinance on all moneys paid to the Director by or on behalf of an aided person shall be paid into the general revenue.

(2) It is declared that any interest or dividend received by the Government under this Ordinance, prior to its amendment by the Legal Aid (Amendment) Ordinance 1991 (27 of 1991), on all moneys which have been paid to the Director by or on behalf of an aided person shall be deemed to be and to have always been part of the general revenue.

(Added 27 of 1991 s. 13)

Section:	20	Costs of counsel and solicitors		30/06/1997
----------	----	---------------------------------	--	------------

There shall be paid by the Director to counsel and solicitor acting for an aided person such fees and costs for so acting as may be prescribed.

Section:	20A	Taxation of costs	79 of 1995 s. 50; 25 of 1998 s. 2	01/07/1997
----------	-----	-------------------	--------------------------------------	------------

Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

(1) On the taxation of costs in proceedings to which an aided person is a party, costs shall be taxed for the purposes of this Ordinance according to the ordinary rules applicable on a taxation as between solicitor and client where the costs are to be paid out of a common fund in which the client and others are interested.

(2) The Director shall be entitled to attend and be heard on any such taxation, to raise objections or to apply for a review of the taxation in accordance with the rules of court made under the Hong Kong Court of Final Appeal Ordinance (Cap 484), the High Court Ordinance (Cap 4) or the District Court Ordinance (Cap 336). (Amended 79 of 1995 s. 50; 25 of 1998 s. 2)

(Added 27 of 1991 s. 14)

Section:	21	Adaptation of rights to indemnity		30/06/1997
----------	----	-----------------------------------	--	------------

(1) This section shall have effect for the purpose of adapting in relation to this Ordinance any right (however and whenever created or arising) which a person may have to be indemnified against expenses incurred by him.

(2) In determining for the purposes of any such right the reasonableness of any expenses, the possibility of avoiding them or part of them by taking advantage of this Ordinance shall be disregarded.

(3) Where a person having any such right to be indemnified against expenses incurred in connection with any proceedings receives legal aid in connection with those proceedings, then (without prejudice to the effect of the indemnity in relation to his contributions, if any, to the Director) the right shall operate also for the benefit of the Director as if the expenses incurred by the Director on behalf of the said person in connection with the proceedings had been incurred by such person.

(4) Where-

- (a) a person's right to be indemnified against expenses incurred in connection with any proceedings arises by virtue of an agreement and is subject to any express condition conferring on those liable thereunder any right with respect to the bringing or conduct of the proceeding; and
- (b) those liable have been given a reasonable opportunity of exercising the right so conferred and have not availed themselves of that opportunity,

the right to be indemnified shall be treated for the purposes of subsection (3) as not being subject to that condition.

(5) Nothing in subsections (3) and (4) shall be taken as depriving any person or body of persons of the protection of any law or, save as provided in subsection (4), as conferring any larger right to recover money for the benefit of the Director in respect of any expenses than the person receiving legal aid would have had if the expenses had been incurred by him.

(6) Where under subsection (3) a person's right to be indemnified against expenses incurred in connection with any proceedings operates for the benefit of the Director, any sum recovered for the benefit of the Director shall be deducted from the total of all sums payable by the Director in respect of such proceedings and the balance remaining shall be the maximum recoverable from such person.

Section:	22	Prohibition against taking fees from aided person	L.N. 230 of 2000	03/07/2000
----------	----	---	------------------	------------

(1) Subject to the provisions of section 18, no person who, pursuant to any reference under this Ordinance, makes any investigation or report or gives any opinion or certificate or who acts for an aided person, shall take or agree to take or seek from an aided person any fee, profit or reward (pecuniary or otherwise) in respect thereof. (Amended 54 of 1984 s.21)

(2) A person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine at level 5 and to imprisonment for 6 months. (Added 54 of 1984 s.21. Amended 26 of 2000 s. 6)

Section:	22A	Power of the Legislative Council to make amendments		30/06/1997
----------	-----	---	--	------------

The Legislative Council may, by resolution, amend-

- (a) the rate of maintenance payments specified in section 18A(5); and
- (b) the amount specified in the proviso to section 19B(1)(a).

(Added 8 of 1997 s. 6)

Part:	V	MISCELLANEOUS	L.N. 230 of 2000	03/07/2000
-------	---	---------------	------------------	------------

Section:	23	Proceedings for misrepresentations, etc.	L.N. 230 of 2000	03/07/2000
----------	----	--	------------------	------------

- (1) Any person seeking or receiving legal aid who-
 - (a) wilfully fails to comply with any regulations as to the information to be supplied by him; or
 - (b) in furnishing any information required by such regulations knowingly makes any false statement or false representation,

shall be guilty of an offence and liable on summary conviction to a fine at level 3 and to imprisonment for 6 months. (Amended 26 of 2000 s. 7)

(2) Any proceedings for an offence under subsection (1) may, notwithstanding any law prescribing the time within which such proceedings may be brought, be brought within 2 years after the commission of the offence or within 1 year next after the first discovery thereof by the prosecutor, whichever is the shorter.

(Amended 54 of 1984 s. 22)

Section:	24	Privileges attaching to certain relationships	L.N. 312 of 1998	11/09/1998
----------	----	---	------------------	------------

(1) The like privileges and rights as those which arise from the relationship of client, counsel and solicitor acting in their professional employment shall arise from the following relationships, that is to say-

- (a) the relationship between an applicant for legal aid and the Director and counsel and solicitor to whom the application is referred;
- (b) the relationship between an aided person and the Director and counsel and solicitor assigned to act for him in any proceedings to which a legal aid certificate relates.

(2) (Repealed 27 of 1991 s. 15)

(3) Save as provided by this Ordinance, the rights conferred by this Ordinance on an aided person shall not affect the rights or liabilities of other parties to the proceedings or the principles on which the discretion of any court or tribunal is normally exercised.

(4) A person shall not disclose information given for the purposes of this Ordinance concerning a person seeking or receiving advice, assistance or representation otherwise than-

- (a) to enable the proper performance by a person of a function under this Ordinance;
- (b) to advice on, institute and pursue criminal proceedings for an offence arising out of the operation of this Ordinance or to report the proceedings; or
- (c) with the consent of the person concerned and, if he did not give the information, the consent of the person who did. (Added 43 of 1995 s. 9)

(5) Subsection (4) does not apply to information in the form of a summary or collection of information set out in a manner that does not enable information concerning a particular person to be ascertained from it. (Added 43 of 1995 s. 9)

(6) Information given to counsel or a solicitor acting in that capacity by or on behalf of a person seeking or receiving advice, assistance or representation under this Ordinance is not information given for the purposes of this Ordinance. (Added 43 of 1995 s. 9)

(7) In this section, "court" (法院) includes the Court of Final Appeal. (Added 79 of 1995 s. 50. Amended L.N. 312 of 1998)

Section:	25	Legal aid not to discontinue without leave		30/06/1997
----------	----	--	--	------------

(1) An aided person shall not without the leave of the Director discharge any counsel or solicitor assigned to act under this Ordinance for him.

(2) Subject to the provisions of subsection (3), counsel or solicitor assigned to act for an aided person shall not discontinue his aid without the leave of the Director.

(3) Nothing in this section shall prejudice the right of counsel or solicitor to refuse, or to give up, a case on reasonable grounds.

Section:	26	Appeal from decision of Director	79 of 1995 s. 50; 25 of 1998 s. 2	01/07/1997
----------	----	----------------------------------	--------------------------------------	------------

Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

(1A) This section shall not apply to an order or decision of the Director made in relation to an application for legal aid to appeal to, or to apply for leave to appeal to, the Court of Final Appeal. (Added 14 of 1982 s. 15. Amended 79 of 1995 s. 50)

(1) An applicant for legal aid or an aided person who is aggrieved by any order or decision of the Director made under any provision of this Ordinance may appeal therefrom to the Registrar of the High Court in chambers. (Amended 40 of 1989 s. 8; 25 of 1998 s. 2)

(2) An appeal under this section shall be initiated by notice in writing to attend before the Registrar of the High Court without a fresh summons, within 14 days of the order or decision complained of, or such further time as may be allowed by the Registrar. (Amended 13 of 1995 s. 2; 43 of 1995 s. 10; 25 of 1998 s. 2)

(3) Unless otherwise ordered by the Registrar, there shall be at least one clear day between service of the notice of the appeal and the day of hearing.

(3A) A person who appeals under this section has the right to representation by counsel or a solicitor at his own expense on the hearing of the appeal. (Added 43 of 1995 s. 10)

(4) A decision of the Registrar on an appeal under this section shall be final, save that the Registrar may refer any appeal, and shall refer an appeal against any decision of the Director under section 4(3), for decision of a judge of the High Court in chambers, in which event the decision of the judge shall be final. (Amended 25 of 1998 s. 2)

(4A) A hearing under this section may be conducted in either or both of the official languages. (Added 51 of 1995 s. 10)

(5) The Registrar shall give written notice of the decision on an appeal under this section to the Director and to the person who made the appeal and shall adequately state in the notice the reasons for the decision. (Added 27 of 1991 s. 16)

Section:	26A	Appeal from decision of Director in Court of Final Appeal matters	79 of 1995 s. 50; 25 of 1998 s. 2	01/07/1997
----------	-----	---	--------------------------------------	------------

Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

(1) An applicant for legal aid or an aided person who is aggrieved by any order or decision of the Director made in relation to an application for legal aid to appeal to, or to apply for leave to appeal to, the Court of Final Appeal may bring the order or decision on review before a committee composed of- (Amended 40 of 1989 s. 9; 79 of 1995 s. 50)

- (a) the Registrar of the High Court, who shall be chairman;
- (b) a barrister qualified to practise in Hong Kong who is eligible to be appointed as a judge of the High Court and who is appointed by the Chairman of the Hong Kong Bar Association; and
- (c) a solicitor qualified to practise in Hong Kong who has practised as a solicitor for not less than 10 years in a common law jurisdiction and who is appointed by the President of The Law Society of Hong Kong. (Amended 25 of 1998 s. 2)

(2) The chairman may appoint a public officer to be secretary of the committee.

(2A) (Repealed 25 of 1998 s. 2)

(3) A review shall be initiated by notice in writing delivered to the Director and the chairman within 28 days of the order or decision complained of or within such longer period as the chairman may allow and the notice shall be accompanied by a certificate by counsel practising in Hong Kong stating that the person aggrieved has a reasonable prospect of success in the appeal and the grounds for that opinion.

(4) The committee may-

- (a) make such inquiries as it thinks fit as to the means and condition of the applicant and as to the merits of his case;
- (b) require the applicant to furnish such information and such documents as the committee thinks fit;
- (c) require the applicant to appear personally before the committee; and
- (d) receive evidence and, for that purpose, administer an oath.

(5) The applicant and the Director shall be entitled to appear personally before the committee or by counsel or solicitor and may submit representations in writing. (Amended 54 of 1984 s.23)

(6) The committee may, if it is satisfied that the person aggrieved has a reasonable prospect of success on appeal, and that it is reasonable in the particular circumstances of the case that he should be granted legal aid, reverse or vary the order or decision of the Director refusing or limiting legal aid in respect of the appeal and may direct the Director to grant a legal aid certificate to him under section 10; and if not so satisfied it shall affirm the order or decision of the Director. (Replaced 54 of 1984 s.23)

(7) A decision of the committee under subsection (6) shall be final.

(8) The chairman may, if he thinks fit, order that-

- (a) such fee of counsel for the certificate mentioned in subsection (3); and
- (b) such fees and expenses of counsel or solicitor appearing before the committee under subsection (5),

as determined by the chairman as being proper in the circumstances, shall be paid by the Director out of funds under his control which are available for that purpose.

(9) The expenses of the committee, including such reasonable fees of the barrister and solicitor members as may be determined by the chairman, shall be paid by the Director from moneys provided by the Legislative Council.

(10) The chairman shall give written notice of the decision on an appeal under this section to the Director and to the person who made the appeal and shall adequately state in the notice the reasons for the decision. (Added 27 of 1991 s. 17)

(Added 14 of 1982 s. 16)

Section:	27	Expenses of legal aid		30/06/1997
----------	----	-----------------------	--	------------

The expenses of legal aid shall be met by the Director from moneys provided by the Legislative Council: (Amended 54 of 1984 s.24)

Provided that nothing in this section shall apply to expenses incurred under the Supplementary Legal Aid Scheme except in so far as such expenses cannot be paid out of the Fund. (Added 54 of 1984 s.24)

Section:	28	Regulations	L.N. 230 of 2000	03/07/2000
----------	----	-------------	------------------	------------

(1) The Chief Executive in Council may make regulations prescribing any matter which by this Ordinance is to be or may be prescribed and generally for the better carrying out of this Ordinance. (Amended 26 of 1999 s. 3)

(2) Without prejudice to the generality of subsection (1), regulations may-

- (a) regulate all matters relating to fees, charges and costs in relation to proceedings to which an aided person is a party;
- (b) remit or provide for the remission of any fees or charges in any such proceedings;
- (c) make provision as to the information to be given by a person seeking or receiving legal aid;
- (d) make provision as to the proceedings which are or are not to be treated as distinct proceedings for the purposes of legal aid and as to the apportionment of sums recoverable or recovered by virtue of any order for costs made generally with respect to proceedings treated as distinct proceedings;
- (e) make provision as to the cases in which a person may be refused legal aid by reason of his conduct when seeking or receiving legal aid (whether in the same or in a different matter);
- (f) make provision for the recovery of sums due in respect of legal aid and for making effective the charge created by this Ordinance on property recovered or preserved for an aided person, including provision-
 - (i) for the enforcement of any order or agreement for costs made in favour of a person who has received legal aid; and

- (ii) for making counsel or solicitor's right to payment wholly or partly dependent on his performance of any duties imposed on him by regulations made for the purposes of this paragraph;
- (g) make any provision necessary to meet the special circumstances where-
 - (i) a person seeks legal aid in a matter of special urgency;
 - (ii) a person begins to receive legal aid after having consulted counsel or solicitor in the ordinary way with respect to the same matter, or ceases to receive legal aid before the matter in question is finally settled; and
 - (iii) there is any relevant change of circumstances while a person is receiving legal aid;
- (h) make provision as to the manner in which the rate of a person's financial resources, disposable income and the amount of his disposable capital are to be computed for the purposes of this Ordinance including, without derogation from the generality of the foregoing, provision- (Amended 27 of 1991 s. 18)
 - (i) prescribing deductions in respect of the maintenance of dependants, interest on loans, rates, rent and other matters for which the person in question must or reasonably may provide and such further allowances as may be prescribed to take into account the nature of his resources;
 - (ii) determining whether any resources are to be treated as income or capital and for taking into account fluctuations of income;
 - (iii) treating the resources of a person's wife or husband as that person's resources except in so far as the regulations provide otherwise, and making provision, in relation to minors and other special cases, for taking into account the resources of other persons; (Replaced 54 of 1984 s. 25)
 - (iv) as to how the resources of a person receiving assistance under the Comprehensive Social Security Assistance Scheme administered by the Director of Social Welfare are to be treated for the purposes of determining the resources of that person; (Added 26 of 2000 s. 8)
- (i) in the case of a person seeking or receiving legal aid under the Supplementary Legal Aid Scheme, make provision as to the manner in which that person's financial resources are to be determined including, without derogation from the generality of the foregoing, provision of the nature specified in paragraph (h)(i), (ii) and (iii); (Replaced 54 of 1984 s. 25. Amended 27 of 1991 s. 18; 13 of 1995 s. 2)
- (j) determine the contribution towards costs and expenses to be made by an aided person;
- (k) ensure that the resources of a person seeking or receiving legal aid shall not be treated as including the subject matter of the dispute;
- (l) in the case of a request for legal aid by the family of a deceased person in respect of an inquest into deaths under the Coroners Ordinance (Cap 504), determine the category of person to whom legal aid may be given under section 5; (Replaced 26 of 2000 s. 8)
- (m) (Repealed 54 of 1984 s. 25)
- (n) prescribe the extent and limit of the liability for costs of an aided person against whom an order for costs is made;
- (o) prescribe the scale of fees which shall be paid to a solicitor or counsel submitting a report or opinion under section 9 or a certificate under section 16;
- (p) prescribe the scale of fees and costs which shall be paid to a solicitor or counsel acting for an aided person;
- (pa) prescribe the rate of interest for the purposes of section 18A(3B)(b); (Added 27 of 1991 s. 18)
- (q) provide for the cases in which and the extent to which an aided person may be required to give security for costs and the manner in which it may be given;
- (r) provide, either generally or specially, for the fees and costs of any officer holding office under section 3 in respect of any civil matter (whether contentious or non-contentious) in which he has occasion to act; (Added 58 of 1972 s. 3)
- (s) modify any provision of this Ordinance so far as it appears to be necessary to meet the circumstances where a person seeking or receiving legal aid-
 - (i) is not resident in Hong Kong;
 - (ii) is concerned in a representative, fiduciary or other capacity;
 - (iii) is concerned jointly with or has the same interest as other persons whether receiving legal aid or not; or
 - (iv) has available to him rights and facilities making it unnecessary for him to take advantage of this Ordinance or has a reasonable expectation of receiving financial or other help from a body of which he is a member;

- (t) (Repealed 54 of 1984 s. 25)
- (u) provide that any application, certificate, notice or order to be made, issued, used or given under this Ordinance may be made, issued, used or given in a manner and form determined by the Director; (Replaced 27 of 1991 s. 18)
- (v) provide for the administration of the Supplementary Legal Aid Scheme, including fees chargeable for applicants for legal aid under the Scheme, and of the affairs of the Fund; (Added 54 of 1984 s. 25)
- (w) provide for the manner of calculating the contribution under section 32 and, without derogation from the generality of the foregoing, the manner in which it is to be calculated in the event of a settlement or where the legal aid certificate is discharged or revoked. (Added 54 of 1984 s. 25)

(3) The regulations may apply generally to all legal matters, whether relating to proceedings in court or otherwise, or may apply to any specified class of matters or proceedings or to all matters or proceedings other than matters or proceedings of a specified class and may make different provision for matters falling within the Supplementary Legal Aid Scheme and for matters which do not. (Amended 54 of 1984 s. 25)

Part:	VI	PROVISIONS RELATING TO THE SUPPLEMENTARY LEGAL AID SCHEME		30/06/1997
-------	----	---	--	------------

(Part VI added 54 of 1984 s.26)

Section:	29	Establishment of Supplementary Legal Aid Fund		30/06/1997
----------	----	---	--	------------

(1) There shall be established a fund, to be administered by the Director, to be termed the Supplementary Legal Aid Fund.

- (2) The Fund shall consist of-
 - (a) the proceeds of any loan made to the Director for the purposes of the Fund under section 30;
 - (b) contributions payable under section 32;
 - (c) the proceeds of and interest on any investments of the moneys of the Fund;
 - (d) moneys paid or repaid to the Director under section 19 or 19A or retained under section 19B where the aided person is aided under the Supplementary Legal Aid Scheme; and
 - (e) such other moneys as may be prescribed.
- (3) The Fund shall be charged with-
 - (a) the expenses of the Supplementary Legal Aid Scheme including payments to counsel and a solicitor and any costs payable by the Director under section 16C where the aided person receives legal aid under the Scheme;
 - (b) any security provided under section 18B and to be provided out of the Fund;
 - (c) the payment of interest and the repayment of moneys borrowed under section 30 as well as all charges and expenses payable in connection with such a borrowing;
 - (d) the payment of fees charged to the Fund under subsection (5); and
 - (e) such expenses as may be prescribed.

(4) The moneys of the Fund may be invested by the Director in such manner as the Financial Secretary may approve.

(5) The Financial Secretary may direct that an annual administration fee to be determined by him and payable in respect of the services afforded by public servants under the Scheme shall be charged to the Fund and paid into general revenue.

Section:	30	Borrowing powers of the Director		30/06/1997
----------	----	----------------------------------	--	------------

(1) The Director may borrow temporarily, by way of overdraft or otherwise, such sums as may be required for meeting or being expenses properly chargeable to the Fund.

(2) The Director may with the prior approval of the Financial Secretary borrow (otherwise than by way of temporary loan) such moneys as may be required for the proper operation of the Fund.

(3) A person lending money to the Director shall not be concerned to inquire whether the borrowing of the money is legal or regular or whether the money raised has been properly applied and shall not be prejudiced by any illegality or irregularity or by misapplication or non-application of the money.

Section:	31	Accounts		30/06/1997
----------	----	----------	--	------------

- (1) The Director shall keep proper accounts and proper records in relation thereto of the affairs of the Fund.
- (2) The Director of Audit shall have power to audit the accounts of the Fund.

Section:	32	Contributions for benefit of the Fund	L.N. 230 of 2000	03/07/2000
----------	----	---------------------------------------	------------------	------------

- (1) Where legal aid is granted to any person under the Supplementary Legal Aid Scheme-
 - (a) the Director shall require the person who is offered the grant of legal aid to pay an interim contribution to the Director for the benefit of the Fund; and
 - (b) if that person is successful, either in whole or in part, in the proceedings brought by him with the assistance of such legal aid, the Director shall require him to pay to the Director a final contribution for the benefit of the Fund,

in an amount calculated in a manner, and according to such circumstances as may be prescribed. (Replaced 26 of 2000 s. 9)

(1A) Any interim contribution paid under subsection (1)(a) and any application fee paid under regulation 3(3) of the Legal Aid Regulations (Cap 91 sub. leg. A) shall not be liable to be refunded to the aided person where that person is not successful in the proceedings brought by him with the assistance of such legal aid:

Provided that where the sums paid or payable on his account out of the Fund and the costs incurred on his behalf before the legal aid certificate is discharged are less than the amount of interim contribution paid under subsection (1)(a), the Director shall refund the balance of the amount remaining to the aided person. (Added 26 of 2000 s. 9)

(1B) There shall be deducted from the final contribution payable under subsection (1)(b) any interim contribution paid under subsection (1)(a) and any sums recovered under or by virtue of an order or agreement for costs made in the aided person's favour and such other sums, if any, as may be prescribed. (Added 26 of 2000 s. 9)

(2) No contribution payable under this section shall exceed the value of the property recovered or preserved for the aided person in the proceedings.

(3) The Director may by notice in writing to the aided person waive, either in whole or in part, his rights to a contribution under this section where he is satisfied that it would cause serious hardship to any person to rely on such rights and it is in all the circumstances just and equitable to do so.

(4) Nothing in subsection (1), (1A), (1B) or (2) shall prevent the recovery from a formerly aided person, in such manner and amount as may be prescribed, of the costs and expenses of legal aid under the Supplementary Legal Aid Scheme incurred prior to the revocation or discharge of his legal aid certificate upon such revocation or discharge whether or not such person continues the proceedings and whether or not the proceedings are successful. (Amended 26 of 2000 s. 9)

(5) For the purposes of this section proceedings shall be deemed to be successful where property is recovered or preserved for the aided person either under a court order or under a compromise arrived at to avoid or bring to an end the proceedings.

(6) References in this section to the property recovered or preserved for the aided person in the proceedings shall be construed in accordance with section 18A(3).

Section:	32A	Effect of transfer between schemes		30/06/1997
----------	-----	------------------------------------	--	------------

(1) The Director may vary the contribution payable by a person under the Supplementary Legal Aid Scheme where the financial resources of the person have changed so as to entitle him to seek assistance under another legal aid scheme.

(2) The Director shall apportion the contribution payable having regard to the time for which the person was aided under the Supplementary Legal Aid Scheme and the period taken to resolve the claim.

(Added 43 of 1995 s. 12)

Section:	33	Appeals and powers of the Director		30/06/1997
----------	----	------------------------------------	--	------------

- (1) Where a person who has been granted legal aid under the Supplementary Legal Aid Scheme-
 - (a) fails, whether in whole or in part, in proceedings brought by him with the assistance of such legal aid, the Director may appeal against any judgment or order of the court in which the proceedings were

brought;

(b) succeeds, whether in whole or in part, in such proceedings and fails to defend any appeal brought by any other person, the Director may himself oppose such appeal.

(2) Where the Director exercises his powers under subsection (1) he shall have all the rights and privileges which the aided person would have had had he brought or opposed the appeal, including the right to settle the proceedings by means of a compromise arrived at with another party to the proceedings.

(3) Where the Director appeals or opposes an appeal under this section all expenses payable in connection with such appeal, including any amount payable under an order as to costs, shall be paid by the Director out of the Fund; but if the Director succeeds on the appeal in whole or in part section 32 shall apply as if the aided person had himself appealed or defended the appeal.

Schedule:	1	LEGAL AID OFFICERS-DESIGNATIONS		30/06/1997
-----------	---	---------------------------------	--	------------

[section 2(1)]

1. Assistant Principal Legal Aid Counsel.
2. Senior Legal Aid Counsel.
3. Legal Aid Counsel.

(Added 24 of 1983 s. 5)

Schedule:	2	PROCEEDINGS FOR WHICH LEGAL AID MAY BE GIVEN UNDER SECTION 5	L.N. 230 of 2000	03/07/2000
-----------	---	--	------------------	------------

[section 5]

(Amended 24 of 1983 s. 6)

PART I

Description of proceedings

1. Civil proceedings in any of the following courts-
 - (a) Court of Final Appeal; (Replaced 79 of 1995 s. 50)
 - (b) Court of Appeal; (Replaced 79 of 1995 s. 50)
 - (c) Court of First Instance; (Replaced 79 of 1995 s. 50. Amended 25 of 1998 s. 2)
 - (d) District Court. (Added 79 of 1995 s. 50)
2. Civil proceedings before any person to whom a case is referred in whole or in part by any of the said courts.
3. Inquests into deaths under the Coroners Ordinance (Cap 504) where, following a request for legal aid in that behalf by the family of the deceased person concerned, the Director is of the opinion that the interests of public justice require that legal aid be given. (Replaced 26 of 2000 s. 10)
4. Proceedings in the Lands Tribunal under Part II of the Landlord and Tenant (Consolidation) Ordinance (Cap 7). (Added L.N. 296 of 1982)
5. Negotiations prior to the issue of legal proceedings, including mediation, and for the payment of compensation by the Motor Insurers' Bureau for which no legal proceedings are issued. (Added 43 of 1995 s. 13)
6. An application to the Mental Health Review Tribunal. (Added 43 of 1995 s. 13)

PART II

Excepted proceedings

1. Proceedings wholly or partly in respect of-
 - (a) defamation, other than the defence of a counterclaim alleging defamation; (Replaced 27 of 1991 s. 19)
 - (b)-(c) (Repealed 40 of 1986 s. 6);
2. Relator actions.
3. Proceedings for the recovery of a penalty where the proceedings may be taken by any person and the whole or part of the penalty is payable to the person taking the proceedings.
4. Election petitions arising from Legislative Council and District Council elections, except where the petitioner claims that a breach of the Hong Kong Bill of Rights Ordinance (Cap 383) or an inconsistency with the International Covenant on Civil and Political Rights as applied to Hong Kong is an issue and the Director is satisfied that, having regard to the matters set out in section 10(3), the petitioner would be granted a legal aid certificate. (Replaced 43 of 1995 s. 13. Amended 8 of 1999 s. 89; 78 of 1999 s. 7)
5. In the Court of First Instance or District Court, in the case of a defendant, proceedings where the only question to be brought before the court is as to the time and mode of payment by him of debt (including liquidated damages) and costs. (Amended 43 of 1995 s. 13; 25 of 1998 s. 2)
6. (Repealed 43 of 1995 s. 13)
7. (Repealed 27 of 1991 s. 19)
8. Proceedings incidental to any proceedings mentioned in this Part of this Schedule.
9. In the Small Claims Tribunal, proceedings under the Small Claims Tribunal Ordinance (Cap 338). (Added 79 of 1975 s. 40)
10. In the Labour Tribunal, proceedings under the Labour Tribunal Ordinance (Cap 25). (Added 43 of 1995 s. 13)
11. Proceedings-
 - (a) involving money claims in derivatives of securities, currency futures or other futures contracts;
 - (b) for the recovery of a loan made in the ordinary course of a business conducted by the person seeking legal aid;
 - (c) involving disputes between limited companies or their shareholders regarding the respective rights of the company and the shareholders;
 - (d) arising out of disputes over partnerships;
 - (e) for the taxation of costs, unless the person was previously aided in the action for which an order for costs was made.

For the purposes of this paragraph-

"derivatives of securities" (證券衍生工具) means options to buy or sell interests in, certificates of interest of participation in, warrants to subscribe to or rights (other than shares) in, the capital of, or an instrument issued by, a company, government authority or other body. (Added 43 of 1995 s. 13)

Schedule:	3	PROCEEDINGS FOR WHICH LEGAL AID MAY BE GIVEN UNDER SECTION 5A	25 of 1998 s. 2	01/07/1997
-----------	---	---	-----------------	------------

Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

[section 5A]

PART I

Description of proceedings

1. In the Court of First Instance or Court of Appeal, civil proceedings brought by the aided person for damages in a claim arising from personal injuries to, or the death of, any person and proceedings incidental to such proceedings including the defence of any counterclaim.

(Amended 40 of 1989 s. 10; 25 of 1998 s. 2)

2. In the District Court, civil proceedings brought by the aided person for damages in a claim arising from personal injuries to, or the death of, any person where the claim exceeds \$60000 or where, in the opinion of the Director, the claim is likely to exceed \$60000 and proceedings incidental to such proceedings including the defence to any counterclaim. (Added 40 of 1989 s. 10)

3. In the District Court, proceedings brought by the aided person under the Employees' Compensation Ordinance (Cap 282). (Added 27 of 1991 s. 20)

4. In the Court of First Instance, Court of Appeal or District Court, civil proceedings brought by the aided person for damages for medical, dental or legal professional negligence where, in the opinion of the Director, the claim is likely to exceed \$60000 including the defence of any counterclaim. (Added 43 of 1995 s. 14. Amended 25 of 1998 s. 2)

PART II

Excepted proceedings

1. (Repealed 43 of 1995 s. 14)

2. Claims in the Court of First Instance or District Court for damages for assault and battery. (Added 27 of 1991 s. 20. Amended 43 of 1995 s. 14; 25 of 1998 s. 2)

(Schedule 3 added 54 of 1984 s. 27)