

Provision of Legal Aid for Asylum-Seekers,
Refugees, and Others Forcibly Displaced in Asia

Memorandum: Hong Kong



 **PILnet**

MAYER | BROWN

TABLE OF CONTENTS

State Funded Legal Aid

Eligibility, Nature and Scope	01
Structure and Procedures	12
Barriers to State Funded Legal Aid	21

Non-State Funded Legal Aid

Eligibility, Nature and Scope	25
Structure and Procedures	37
Barriers to Non-State Funded Legal Aid	41

Sources	43
----------------	-----------

STATE-FUNDED LEGAL AID

Eligibility, Nature and Scope

The main state-funded legal aid services available in Hong Kong are:

- The Legal Aid Schemes
- The Duty Lawyer Service
- The Pilot Scheme Office for Provision of Publicly-funded Legal Assistance for Non-refoulement Claimants (“Pilot Scheme”)
- The Legal Advice Scheme for Unrepresented Litigants on Civil Procedures (“Procedural Advice Scheme”)
- The Resource Centre for Unrepresented Litigants

Eligibility of Asylum-Seekers, Refugees and Stateless Persons

Asylum-seekers, refugees and stateless persons (collectively, the “Target Group”) are eligible for legal aid services if they satisfy the respective eligibility criteria set out under Eligibility Criteria below.

Scope of State-Funded Legal Aid

1. The Legal Aid Schemes

Asylum-Related Matters	<p>According to the official website of the Legal Aid Department, the Ordinary Legal Aid Scheme covers immigration matters but does not offer further detail as to the exact scope covered. According to a no-names basis phone conversation with the Legal Aid Department:¹</p> <p>(a) There is no defined scope for immigration matters. In practice, any matters related to immigration that can be litigated can potentially be covered under the Ordinary Legal Aid Scheme.</p> <p>(b) Although he could not offer any official statistics, he said the Legal Aid Department does receive a fair number of cases involving asylum-seekers under the Ordinary Legal Aid Scheme seeking judicial review, usually because an asylum-seeker’s application was rejected by the Immigration Department or their visas were not extended.</p>
------------------------	--

¹ With Mr. Philip Leung (Application & Processing Division)

<p>Non-Asylum Related Matters</p>	<p>There are 3 main legal aid schemes offered by the Legal Aid Department, namely the Ordinary Legal Aid Scheme, Supplementary Legal Aid Scheme and the Criminal Legal Aid Scheme.</p> <p>a) Ordinary Legal Aid Scheme²</p> <p>This Ordinary Legal Aid Scheme covers civil proceedings in the District Court, the Court of First Instance, the Court of Appeal, the Court of Final Appeal, certain coroner’s inquests, and applications to the Mental Health Review Tribunal. The major types of cases covered by this scheme are:</p> <ul style="list-style-type: none"> ● family and matrimonial disputes; ● personal injury claims; ● employment disputes; ● contractual disputes; and, ● professional negligence claims. <p>Since November 2012, this scheme has been expanded to cover monetary claims in derivatives of securities, currency futures or other futures contracts when fraud, misrepresentation or deception is involved in respect of the sale.</p> <p>b) Supplementary Legal Aid Scheme³</p> <p>Under this scheme, legal aid is available for claims involving the following types of cases where the claim is likely to exceed HK\$75,000:</p> <ul style="list-style-type: none"> ● personal injuries or death; ● medical, dental or legal professional negligence claims; ● professional negligence claims against categories of professionals;⁴ ● negligence claims against insurers or their intermediaries in respect of the taking out of the personal insurance products; and
-----------------------------------	--

² <https://www.lad.gov.hk/eng/las/faq.html>

³ <https://www.lad.gov.hk/eng/las/faq.html>

⁴ i.e., certified public accountants (practising), registered architects, registered professional engineers, registered professional surveyors, registered professional planners, authorized land surveyors, registered landscape architects and estate agents

	<ul style="list-style-type: none"> ● monetary claims against vendors in the sale of completed or uncompleted first-hand residential properties. <p>This scheme also covers claims brought by employees under the Employees' Compensation Ordinance and representation for employees in appeals against awards made by the Labour Tribunal, irrespective of the amount in dispute.</p> <p>Since April 2020, this scheme has been expanded to cover the following new types of cases where the claim is likely to exceed HK\$75,000:</p> <ul style="list-style-type: none"> ● Professional negligence claims against financial intermediaries;⁵ and ● Monetary claims in respect of derivatives of securities, currency futures or other futures contracts on the basis that the person was induced to deal in those derivatives, futures or contracts by fraud, deception or misrepresentation. <p>c) Criminal Legal Aid Scheme⁶</p> <p>This scheme provides services of a solicitor and, if necessary, a barrister to represent an accused person, in committal proceedings in the Magistrates' Court, cases tried in the District Court and the Court of First Instance, and all criminal appeals.</p> <p>Legal aid is not available in the Magistrates' Court for cases other than committal proceedings. If a person is charged with an offence in the Magistrates' Court, he/she should approach the liaison officer of the Duty Lawyer Service at the appropriate Magistrates' Court.</p>
--	--

⁵ licensed or registered for Type 1 (dealing in securities), Type 2 (dealing in futures contracts) or Type 8 (securities margin financing) regulated activities within the meaning of the Securities and Futures Ordinance (Cap.571)

⁶ <https://www.lad.gov.hk/eng/las/criminal/scope.html>

2. The Duty Lawyer Schemes⁷

Asylum-Related Matters	<p>The Duty Lawyer Service administers the Legal Assistance Scheme for Non-refoulement Claimants (“NRC Scheme”), which provides legal aid services to non-refoulement claimants, as summarised below:</p> <p><u>Background</u></p> <p>The NRC Scheme provides legal representation and advice to claimants who have lodged non-refoulement claims under the Unified Screening Mechanism⁸ in respect of the following risks:</p> <ul style="list-style-type: none">(c) Torture risk,⁹(d) Risk to a person’s right to life and risk of torture or cruel, inhuman or degrading treatment or punishment,¹⁰ and/or(e) Risk of persecution with reference to the non-refoulement principle.¹¹ <p>In 2016, the NRC Scheme extended its service to cover non-refoulement claims made on the ground of “right to life”.¹²</p> <p><u>Scope of legal assistance under the NRC Scheme</u></p> <ul style="list-style-type: none">(a) Assisting claimants under the NRC Scheme in articulating and advancing the relevant grounds and particulars of their non-refoulement claim by giving advice and assistance in completion of the relevant claim form(s);(b) Ensuring timely and complete submissions made by the claimant within the specified time limit;(c) Accompanying claimant to attend interview(s), if considered necessary by the duty lawyer;
------------------------	---

⁷ http://www.dutylawyer.org.hk/en/annual_19/torture.asp

⁸ The Unified Screening Mechanism (USM) commenced its operation in 2014 for determining claims for non-refoulement protection against expulsion, return or extradition from Hong Kong to another country on all applicable grounds as set out in the “Notice to Persons Making a Non-refoulement Claim” (“Notice”). For persons subject or liable to removal or deportation (or whose surrender is requested in surrender proceedings) from Hong Kong who claim for non-refoulement protection on any applicable grounds as set out in the Notice, they may lodge non-refoulement claims with the Immigration Department. Under the USM, the Immigration Department will assess their non-refoulement claims on all applicable grounds in one go (source: https://www.immd.gov.hk/eng/useful_information/non-refoulement-making-claim.html).

⁹ under Part VIIC of the Immigration Ordinance, Cap.115, Laws of Hong Kong

¹⁰ under Articles 2 and 3 of Section 8 of the Hong Kong Bill of Rights Ordinance, Cap.383, Laws of Hong Kong

¹¹ under Article 33 of the 1951 Convention relating to the Status of Refugees

¹² Art. 2 Hong Kong Bill of Rights Ordinance

	<p>(d) Assessing merits of appeals and/or petitions;</p> <p>(e) For appeals and/or petitions considered meritorious by the duty lawyer, preparing submissions for the claimant and representing the claimant at oral hearing, if any;</p> <p>(f) For cases considered meritorious by the duty lawyer, assisting the claimant in making a request to reopen a non-refoulement claim or to make a subsequent claim by providing sufficient evidence in writing to satisfy an immigration officer in accordance with the applicable procedures set out by the Director of Immigration; and</p> <p>(g) Preparing submissions for the claimant in an objection notice on revocation of an immigration officer's previous decision to accept a non-refoulement claim or Torture Claims Appeal Board's previous decision to reverse a decision rejecting a non-refoulement claim.</p>
<p>Non-Asylum Related Matters</p>	<p>Apart from the asylum-related legal aid, the Duty Lawyer Service mainly offers 3 schemes, namely the Duty Lawyer Scheme, the Free Legal Advice Scheme and the Tel-Law Scheme.</p> <p>a) Duty Lawyer Scheme¹³</p> <p>This scheme provides legal representation by qualified lawyers in private practice to eligible defendants appearing in all Magistrates' Courts, Juvenile Courts and to any person who is at risk of criminal prosecution as a result of giving incriminating evidence in a Coroner's inquest. It also covers the contempt proceedings in the Labour Tribunal,¹⁴ Small Claims Tribunal¹⁵ and the Competition Tribunal.¹⁶</p> <p>Fugitives facing extradition proceedings are entitled to have Duty Lawyer representation in the proceedings.¹⁷</p> <p>b) Free Legal Advice Scheme¹⁸ ("FLAS")</p> <p>This scheme provides preliminary one-off legal advice to members of the public as to their legal position in genuine cases. The objective of the Scheme is to enable members of the public facing</p>

¹³ <http://www.dutylawyer.org.hk/en/duty/duty.asp>

¹⁴ s.42 of the Labour Tribunal Ordinance Cap.25

¹⁵ s.35A of the Small Claims Tribunal Ordinance Cap.338

¹⁶ s.144(2) of the Competition Ordinance Cap. 619

¹⁷ <http://www.dutylawyer.org.hk/en/duty/2g.asp>

¹⁸ <http://www.dutylawyer.org.hk/en/free/free.asp>

genuine legal problems to have preliminary advice as to their legal position. Legal issues are explained to the client in the most basic way in order to help him/her understand the nature of his/her problem, his/her rights and obligations under the law and the channels available for resolution. Volunteer lawyers are not expected to embark on any full analysis of the merits of the case or to provide a full solution. This scheme will not offer any follow up service nor representation to the applicants.

A person wishing to seek free legal advice from the scheme has to attend one of the Scheme's referral agencies to make an appointment to meet the volunteer lawyer at a Legal Advice Centre of his/her choice. At the time of making the appointment, an appointment card containing details of the date and time of the appointment and address of the Legal Advice Centre will be given to him/her.

At the time of making the appointment, staff of the District Office will take down the detailed background of the applicant's case. The case paper will then be sent to the Administration Office of the Duty Lawyer Service where the case will be vetted and processed. Suitable cases will be sent to volunteer lawyers for preparation to give advice on the day of appointment. All the details of the cases are treated with strict confidence. No appointment will be arranged for applicants who refuse to disclose details of their cases at the time of making appointment.

Interpreters will be available as necessary to assist those who cannot speak fluent English or Cantonese.

c) Tel-Law Scheme¹⁹

The Tel-Law Scheme provides recorded legal information on a wide range of legal topics through telephone. A taped recording provides a brief introduction on the particular legal topic. Any person who intends to initiate legal action should first consult his/her own lawyer or consult the volunteer lawyer of the FLAS.

There are 80 topics available, divided into 8 groups:

¹⁹ http://www.dutylawyer.org.hk/en/tellaw/tel_law.asp

	<p>(1) Family law;²⁰ (2) Land law, landlord and tenant;²¹ (3) Criminal law;²² (4) Employment law;²³ (5) Commercial, banking and sales of goods;²⁴ (6) Administration and constitutional law;²⁵ (7) Environmental law and tort;²⁶ and (8) General legal information.²⁷</p>
--	--

3. The Pilot Scheme

Asylum-Related Matters	<p>The Pilot Scheme runs in parallel to the NRC Scheme for the purpose of providing legal aid services to the Target Group more effectively. Thus, the types of services provided under the Pilot Scheme are the same as those provided under the NRC Scheme.</p> <p>For details, please refer to the paper²⁸ submitted by the Security Bureau to the Legislative Council Subcommittee to follow up issues relating to the Unified Screening Mechanism for non-refoulement claims.</p>
Non-Asylum Related Matters	Not covered by this Scheme.

4. The Procedural Advice Scheme

Asylum-Related Matters	Not covered by this Scheme.
Non-Asylum Related Matters	This scheme provides free legal advice on civil procedural matters for unrepresented litigants who commence or are parties to legal proceedings in the Lands Tribunal, District Court, Family Court, Court of First Instance, Court of Appeal of the High Court and

²⁰ http://www.dutylawyer.org.hk/en/73.asp?category=tellaw/tel_law

²¹ http://www.dutylawyer.org.hk/en/tellaw/law_m.asp?category=family

²² http://www.dutylawyer.org.hk/en/tellaw/law_m.asp?category=criminal

²³ http://www.dutylawyer.org.hk/en/tellaw/law_m.asp?category=employment

²⁴ http://www.dutylawyer.org.hk/en/tellaw/law_m.asp?category=commercial

²⁵ http://www.dutylawyer.org.hk/en/tellaw/law_m.asp?category=admin_con

²⁶ http://www.dutylawyer.org.hk/en/tellaw/law_m.asp?category=env_law

²⁷ http://www.dutylawyer.org.hk/en/tellaw/law_m.asp?category=general

²⁸ https://www.legco.gov.hk/yr16-17/english/hc/sub_com/hs54/papers/hs5420190115cb2-581-1-e.pdf

	<p>Court of Final Appeal; but not including civil proceedings in other tribunals. This scheme operates on a “first-come-first served” basis. This scheme does not provide advice on the merits of a case or legal representation. Further, the scheme will not provide services in the following cases and/or matters:</p> <ol style="list-style-type: none"> (1) legal aid applications and legal aid appeals; (2) applications for letters of administration and the grant of probate; (3) petition/discharge of self-bankruptcy order; (4) cases involving Mainland China or foreign law; (5) advice for limited companies, societies, associations; (6) drafting legal documents; (7) applicants repeatedly seeking advice concerning the same issues or subject matters without additional information; (8) matters with no legal procedural issues involved; (9) matters that have been solved or superseded by event; (10) complicated legal issues which require detailed research and studying of documents; and (11) applicants who, in the opinion of the Scheme, have the means to pay for legal advice.²⁹
--	--

5. The Resource Centre for Unrepresented Litigants

Asylum-Related Matters	No specific program for the provision of services for asylum-related matters.
Non-Asylum Related Matters	The Centre provides assistance to unrepresented litigants who are parties to or about to commence civil proceedings in the High Court or the District Court except those relating to matrimonial, lands, competition, employees’ compensation and probate matters. The assistance provided at the Centre is confined to procedural matters only. The staff will not give legal advice or make any comments on the merits of the case. The Centre provides oaths and declaration services to unrepresented litigants who need to file affirmations/ affidavits in preparing their cases. Guidance on how to file court forms and submission of court bundles is also given. ³⁰

²⁹ https://www.admwing.gov.hk/eng/public_service/paso.html

³⁰ <https://rcul.judiciary.hk/rc/eng/servicePro.jsp>

Eligibility Criteria

1. The Legal Aid Schemes

In general, any person, whether or not a Hong Kong resident who passes both the means test and the merits test, is eligible for legal aid under the Legal Aid Schemes.

a) Ordinary Legal Aid Scheme³¹

- To successfully apply for legal aid under this scheme, an applicant must pass the merits test and the means test.
- Means test: The applicant will be eligible if his/her financial resources do not exceed the financial eligibility limit. According to the official website of the Ordinary Legal Aid Scheme (Last Revision Date: 28 April 2022), the current limit is HK\$420,400. The Director of Legal Aid may waive the financial eligibility limit in meritorious cases in which a breach of the Hong Kong Bill of Rights Ordinance or an inconsistency with the International Covenant on Civil and Political Rights is an issue.
- Merits test: The applicant needs to show that he/she has reasonable grounds for taking or defending proceedings.

b) Supplementary Legal Aid Scheme³²

- To successfully apply for legal aid under this scheme, the applicant has to pass the means test and the merits test.
- Means Test: The applicant will be eligible if his/her financial resources exceed HK\$420,400 but are not more than HK\$2,102,000.
- Merits Test: The applicant needs to show that he/she has reasonable grounds for taking proceedings.

c) Criminal Legal Aid Scheme³³

- An applicant who passes both means test and merit test is eligible for criminal legal aid.
- Means test: The applicant will be eligible if his/her financial resources do not exceed the financial eligibility limit, i.e., HK\$420,400. If the applicant's financial resources exceed the financial eligibility limit, the Director of Legal Aid may waive the limit if the Director is satisfied that it is in the interests of justice to do so and subject to payment by the applicant of a contribution on higher rates calculated in accordance with his/her financial resources.

³¹ <https://www.lad.gov.hk/eng/las/civil/olas.html>

³² <https://www.lad.gov.hk/eng/las/civil/slas.html>

³³ <https://www.lad.gov.hk/eng/las/criminal/ec.html>

- Merits test: For trials in the District Court and the Court of First Instance, legal aid will be granted if it is desirable in the interests of justice to do so. For appeal cases, legal aid will be granted if there are reasonable grounds for appeal and it is in the interests of justice to do so.

2. *The Duty Lawyer Schemes*

a) Duty Lawyer Scheme³⁴

Duty Lawyer representation is offered to defendants charged with Standard List of Offences³⁵ on their first day of court appearance without any means testing. However, if they wish to have legal representation for subsequent appearances, they must visit the Court Liaison Office to confirm they satisfy the means test. They will be required to complete a statutory declaration of means. The financial eligibility limit is set at a gross annual income of HK\$216,500. Applicants may be required to produce documents showing their financial status such as bank books, salary slips, rent receipts, mortgage repayment schedule, salaries tax assessment, etc.

The Administrator of the Duty Lawyer Service has the discretion to waive the means test of a defendant if the Administrator is of the view that it is in the interest of justice to do so. A defendant who fails the means test can apply to the Administrator to waive the means test. Such application is to be made at the Court Liaison Office. The decision of the Administrator is final.

Note that no means test is required for juvenile defendants.³⁶

b) Free Legal Advice Scheme³⁷

This scheme does not have a means test. However, there are guidelines in which free legal advice will be refused in certain situations, and situations likely to be relevant here are:

- Cases involving foreign law;
- Applicants who have been granted Legal Aid from the Department of Legal Aid;
- Applicants who have already engaged private lawyers to deal with their cases;
- Applicants repeatedly seeking advice concerning the same case and/or the same issues;
- Others: for example, applicants who are being represented by the Duty Lawyer Scheme in a Magistrates' Court; applicants who are not able to produce the

³⁴ <http://www.dutylawyer.org.hk/en/duty/2h.asp>

³⁵ http://www.dutylawyer.org.hk/en/doc/Standard_List_of_Offences.pdf (see page 2 for immigration-related offences)

³⁶ <http://www.dutylawyer.org.hk/en/duty/juvenile.asp>

³⁷ <http://www.dutylawyer.org.hk/en/free/free.asp>

relevant documents for the volunteer lawyer's perusal; and cases involving complicated legal issues requiring detailed studying of documents.

c) Tel-Law Scheme

This scheme is available to all members of the public.

d) NRC Scheme

All claimants applying for legal assistance have to make a statutory declaration that they are without means to pay the cost of legal representation before they are eligible for assistance.

In the 2020 decision of *Fabio Arlyn Timogan*,³⁸ the Court of Appeal affirmed that non-refoulement claims by children are separate claims from claims advanced by their parents, and that separate consideration should be given to each claimant's personal circumstances even if the claims were based on the same set of primary facts.

3. The Pilot Scheme

As reported by practitioners in the field, the Immigration Department has in practice assumed that the non-refoulement claimants pass the eligibility test, and will refer them to either the NRC Scheme or the Pilot Scheme after the briefing session.

4. The Procedural Advice Scheme

Eligible applicants are those unrepresented litigants:

- who have not been granted legal aid by the Legal Aid Department and have not engaged lawyers;
- whose monthly income is HK\$50,000 or less or gross income in the last 12 months is HK\$600,000 or less;³⁹ and
- are not seeking advice from limited companies, societies or associations.⁴⁰

5. The Resource Centre for Unrepresented Litigants

Not applicable.

³⁸ *Fabio Arlyn Timogan and Others v Evan Ruth and Another* CACV 32/3030 [2020] HKCA 971.

³⁹ NB: The income of the applicant's spouse, where applicable, will be counted towards the limit, unless the spouse is the opposite party of the proceedings or the applicant and the spouse are living separate and apart.

⁴⁰ https://www.admwing.gov.hk/eng/public_service/paso.html. See also, [Pamphlet English.pdf \(admwing.gov.hk\)](#)

Structure and Procedures

Process for Obtaining Legal Aid

*1. The Legal Aid Schemes*⁴¹

Before applying for legal aid services provided by any of the Legal Aid Schemes, the applicant has to provide sufficient information about her/his means and the case to which his/her application relates. The applicant can do this either in person or through the Legal Aid Electronic Services Portal (“LAESP”).

In Person

The applicant can attend one of the offices of the Legal Aid Department⁴² to collect a designated form and a case questionnaire for completion and return by post or in person.

Through the LAESP

If the applicant is 18 years of age or older and it is a non-urgent case, the applicant can submit pre-application information online as a first step towards making an application for legal aid through the LAESP via the Legal Aid Department’s website at www.lad.gov.hk

By accessing the LAESP, the applicant can download the “Legal Aid Pre-application Information Form” after answering some key questions. The completed form can be forwarded online to the Legal Aid Department. The Legal Aid Department will acknowledge receipt of the information through LAESP and assign the applicant a transaction reference number. Once the Legal Aid Department has checked that the information supplied is in order, the applicant will be given an appointment to make a formal application.

There is no application fee payable unless the application is under the Supplementary Legal Aid Scheme.

On the day of the appointment for the application of legal aid, the applicant will be means tested. The applicant may also be asked to give a detailed statement concerning his/her case to determine the merits of his/her application.

While processing the application for legal aid, the Legal Aid Department may need to obtain information from third parties. When all the relevant information is collected,

⁴¹ <https://www.lad.gov.hk/eng/las/civil/ap.html>

⁴² Located at 25/F Queensway Government Offices, 66 Queensway, Hong Kong or G/F, Mongkok Government Offices, 30 Luen Wan Street, Kowloon.

the lawyer at the Legal Aid Department handling the application will determine whether legal aid should be granted.

However, if the case is urgent, the applicant must attend one of the Legal Aid Department's offices and inform their staff that the case is urgent. The Legal Aid Department will accord priority for an early application to be made.

Obligations under the Legal Aid Schemes:

Those who are found eligible under the Legal Aid schemes have the following obligations:

- (a) The eligible person will be provided with an Offer of Legal Aid Form, outlining the terms of the offer. If the terms are acceptable, the eligible person will be required to return the form along with a contribution payment, if required, to the Legal Aid Department within 14 days. The Legal Aid Department will then issue a Legal Aid certificate to confirm that the person is a legally-aided person.

- (b) According to the "Important Notice for Legally-Aided Persons (Application & Processing Division)" published by the Legal Aid Department, responsibilities of an aided person are as follows:
 - (i) immediately notify the Legal Aid Department and the lawyer assigned to handle the legally-aided person's case in writing of any changes to his/her residential address, correspondence address, telephone number, marital status or financial circumstances;
 - (ii) notify staff of the Legal Aid Department in writing of any change in marital status (if not applying for a divorce) or financial circumstances. Changes in his/her or his/her spouse's financial circumstances or his/her marital status may affect eligibility for legal aid or the amount of any contribution the legally-aided person may be required to pay. It is a criminal offence for an aided person to wilfully withhold such information;
 - (iii) if the legally-aided person has to pay a contribution, he/she should pay the amount on time. In case of difficulties because of changes in financial circumstances, he/she should promptly notify the Legal Aid Department;
 - (iv) the legally-aided person should fully cooperate with his/her lawyer and provide the lawyer with all the necessary information needed to prepare your case; and
 - (v) payment of contributions or other fees to be made in the manner prescribed by the Legal Aid Department.⁴³

⁴³ [https://www.lad.gov.hk/documents/ppr/publication/Important Notice for Legally-Aided Persons div en.pdf](https://www.lad.gov.hk/documents/ppr/publication/Important%20Notice%20for%20Legally-Aided%20Persons%20div%20en.pdf)

- (c) For cases where the applicants are within the means limit (i.e., his/her financial resources are below \$420,400.00), the legally-aided person will be required to pay a contribution. The contribution rates payable by legally-aided persons range from 2-25% for persons with financial resources above \$52,550.00. According to the official webpage on civil cases under the Ordinary Legal Aid Scheme (Last Revision Date: 21 September 2021) of the Legal Aid Department, the contribution rates and amounts payable are as follows⁴⁴:

Financial Resources	Contribution Rates	Contribution Payable
\$0 - \$52,550.00	-	\$0
\$52,550.01 - \$105,100.00	2%	\$1,051 - \$2,102
\$105,100.01 - \$157,650.00	2.5%	\$2,628 - \$3,941
\$157,650.01 - \$210,200.00	5%	\$7,883 - \$10,510
\$210,200.01 - \$262,750.00	10%	\$21,020 - \$26,275
\$262,750.01 - \$315,300.00	15%	\$39,413 - \$47,295
\$315,300.01 - \$367,850.00	20%	\$63,060 - \$73,570
\$367,850.01 - \$420,400.00	25%	\$91,963 - \$105,100

- (d) Further, in the experience of practitioners contacted in the preparation of this memo, other obligations include showing up at every scheduled meeting or briefing session; reporting progress of the case to the Legal Aid Department and providing copies of relevant supporting documents pertaining to their case; and obtaining the Legal Aid Department's approval before accepting settlement with the opposite party, engaging experts or counsel, or incurring other expenses.

2. The Duty Lawyer Service

a) Duty Lawyer Scheme

Magistrates' Courts:⁴⁵ The Service has its Court Liaison Office in each and every Magistrates' Court in Hong Kong. A defendant wishing to apply for the service of the Scheme should approach the Court Liaison Office of the Magistrates' Court where

⁴⁴<https://www.lad.gov.hk/eng/las/lac/olascc.html#:~:text=Civil%20Cases%20under%20the%20Ordinary%20Legal%20Aid%20Scheme,-If%20your%20financial&text=The%20amount%20of%20contribution%20ranges,on%20your%20assessed%20financial%20resources.>

⁴⁵ <http://www.dutylawyer.org.hk/en/duty/duty.asp>

he/she will appear. Defendants held in custody are automatically contacted by the staff of the Court Liaison Office offering the service on the day of their first court appearance. Interpreters will be available as necessary to assist those who cannot speak fluent English or Cantonese.

Extradition Proceedings:⁴⁶ Upon receipt of information of the proceedings from the court, the staff of the Duty Lawyer Service will contact the subject person at the cell of the court in the morning of his first court appearance offering him its service. Applicants are subject to means test.

Obligations under the Duty Lawyer Scheme:

The official website of the Duty Lawyer Scheme does not specify the ongoing obligations of a successful applicant.

In the experience of practitioners contacted in the preparation of this memo, if a successful applicant is or becomes unresponsive at any stage of the services, the Duty Lawyer Service will cut off the services, and successful applicants have to update the Duty Lawyer Service on any material change in circumstances.

b) Free Legal Advice Scheme⁴⁷

A person wishing to seek free legal advice from the Scheme must attend any of the Scheme's referral agencies to make an appointment to meet the volunteer lawyer at a Legal Advice Centre of his/her choice. At the time of making the appointment, an appointment card containing details of the date and time of the appointment and address of the Legal Advice Centre will be given to him/her.⁴⁸

At the time of making the appointment, staff of the District Office will take down the detailed background of the case of the applicant. The case paper will then be sent to the Administration Office of the Duty Lawyer Service where the case will be vetted and processed. Suitable cases will be sent to volunteer lawyers for preparation to give advice on the day of appointment. All the details of the cases are treated with strict confidence. No appointment will be arranged for applicants who refuse to disclose details of their cases at the time of making appointment. Interpreters will be available as necessary to assist those who cannot speak fluent English or Cantonese.

Obligations under the Free Legal Advice Scheme:

⁴⁶ <http://www.dutylawyer.org.hk/en/duty/2g.asp>

⁴⁷ <http://www.dutylawyer.org.hk/en/free/free.asp>

⁴⁸ There are 25 referral agencies (with 154 branches) under this scheme, including all the Home Affairs Enquiry Centres and Caritas centres.

The official website of the Free Legal Advice Scheme does not specify obligations on users of the Free Legal Advice Scheme.

c) Tel-Law Scheme⁴⁹

The Tel-Law Scheme is a fully computerized system and operates 24 hours a day. Any member of the public may dial either of the telephone numbers⁵⁰ and follow the instructions to select the required tape.

Obligations under the Tel-Law Scheme:

The official website of the Tel-Law Scheme does not specify obligations on users of the Tel-Law Scheme.

d) NRC Scheme⁵¹

Claimants under the NRC Scheme applying for legal assistance must make a statutory declaration that they are without means to pay the cost for legal representation before they are eligible for assistance. This service is also completely free of charge.

Since September 2016, the Immigration Department has started referring claimants back to the Duty Lawyer Service in relation to claims on Article 2 of the Hong Kong Bill of Rights.⁵² The Immigration Department, which handles the non-refoulement claims through a Unified Screening Mechanism, will commence the screening procedures and refer the claim to the Scheme for follow-up at the same time.⁵³

Obligations under the NRC Scheme:

The official website of the NRC Scheme does not specify obligations on users of the NRC Scheme.

3. The Pilot Scheme

Non-refoulement claimants are referred to the Pilot Scheme Office by the Immigration Department.⁵⁴

Obligations under the Pilot Scheme:

⁴⁹ http://www.dutylawyer.org.hk/en/tellaw/tel_law.asp

⁵⁰ Telephone numbers: 2521 3333 and 2522 8018

⁵¹ <http://www.dutylawyer.org.hk/en/torture/torture.asp>

⁵² http://www.dutylawyer.org.hk/en/annual_19/torture.asp

⁵³ https://www.legco.gov.hk/yr16-17/english/hc/sub_com/hs54/papers/hs5420190115cb2-581-1-e.pdf

⁵⁴ https://www.cmab.gov.hk/doc/issues/equal_agpre/92_e.pdf

The Pilot Scheme is completely free of charge subject to claimant's fulfilling the means test administered by the Pilot Scheme Office. When claimants are provided with publicly funded legal assistance, they are required to make a declaration to the effect that they are without means to pay the cost for legal representation. Claimants who are found to have knowingly provided false information may be subject to criminal proceedings.⁵⁵

4. The Procedural Advice Scheme

Applications must be made in person at the Office of the Procedural Advice Scheme. Applicants must provide identification documents. Applicants who are parties or wish to join as parties to the civil proceedings must provide relevant and recent court documents. To assess eligibility of the applicants, applicants are required to complete an application form or re-application form each time they seek legal advice.

Provided that the legal advice sought by the applicants is within the scope of the Procedural Advice Scheme, eligible applicants will wait for their turn to attend the Advice Sessions. Most Advice Sessions are conducted within the same day.⁵⁶

Obligations under the Procedural Advice Scheme:

The Scheme will verify applicants' eligibility from time to time. Applicants will need to produce income proof and/or other information as and when required by the scheme and services can be withdrawn or refused if the applicant fails to produce the income proof and/or other information.⁵⁷

5. The Resource Centre for Unrepresented Litigants

The Resource Centre⁵⁸ offers a convenient source of information about civil procedures in the High Court and District Court. Various pamphlets outlining the court procedures are freely available. The court procedures are also explained in videos, which can be viewed at the Resource Centre.

Obligations of the Resource Centre:

There are no obligations imposed on users of the Resource Centre as it does not provide ongoing assistance to claimants, only one time assistance.

⁵⁵ Pilot Scheme for Provision of Publicly-funded Legal Assistance for Non-Refoulement Claimants, Information Sheet to Claimants (PS10-Information Sheet for Means Test).

⁵⁶ https://www.admwing.gov.hk/eng/public_service/paso.html#tabwrap3

⁵⁷ Terms and Conditions of the Procedural Advice Scheme (Updated January 2020), available at: https://www.admwing.gov.hk/pdf/paso/PASO_tandc_en.pdf

⁵⁸ It is located on level on LG1 of the High Court Building. The opening hours of the Resource Centre are from 8:45am to 6:00pm Monday to Friday, with one-hour lunch break between 1pm and 2pm. It is closed on weekends and public holidays (<https://rcul.judiciary.hk/rc/eng/eVideo.jsp>).

Process for Providing Legal Aid

*1. The Legal Aid Schemes*⁵⁹

For the legal aid services provided by the Legal Aid Department, where a legal aid certificate is granted, the Director of Legal Aid may act for the aided person through lawyers employed in the Legal Aid Department. If the Director does not act for the aided person, the Director or the aided person may select a counsel or solicitor to act for the aided person. The Director maintains separate panels of counsel and solicitors who are willing to investigate, report and give opinion upon applications for legal aid and to act for aided persons, as required under the Legal Aid Ordinance.⁶⁰

When distributing legal aid work to counsel or solicitors on the Legal Aid Panel, the Legal Aid Department considers the legally aided persons' interests as the paramount consideration. Legal aid work is not distributed equally among lawyers regardless of merits. Counsel or solicitors are selected having regard for the level of experience and expertise of the practitioners concerned and the type and complexity of the particular case. In general, counsel or solicitors are selected according to a number of criteria,⁶¹ minimum experience requirements for civil,⁶² criminal,⁶³ Court of Appeal⁶⁴ and Court of Final Appeal⁶⁵ cases. Note that for Senior Counsel, they are exempted from the minimum experience requirements for assignment of civil or criminal legal aid work.⁶⁶

⁵⁹ Applicable to any of the Legal Aid Schemes.

⁶⁰ <https://www.lad.gov.hk/eng/lap/overview.html>

⁶¹ Criteria include: must be on the Legal Aid Panel; be in active practice; have no past unsatisfactory performance record; satisfy the minimum experience requirement specified for the relevant area of work; not exceed the limit on assignments of legal aid work and/or, where appropriate, costs and fees paid or payable by the Department for such work in the past 12 months; and (in the case of solicitors) have the necessary support and facilities afforded by their firms to handle legal aid work.

⁶² For civil cases, counsel or solicitors should have at least 3 years of post-call/post-admission experience and have handled a minimum number of civil cases in the relevant area of work within a specified period: (i) for medical negligence, professional negligence, administrative/constitutional law (including Bill of Rights) cases, have handled at least 5 such cases (including both legally aided and non-legally aided cases) in the past 3 years; and (ii) for other cases, have handled at least 16 cases (including both legally aided and non-legally aided cases) in the relevant area of work in the past 3 years.

⁶³ For criminal cases, counsel or solicitors should: (a) have at least 3 years of post-call/post-admission experience; (b) have handled at least 5 cases (including both legally aided and non-legally aided) in the past 3 years in the relevant area of work; and (c) meet the minimum experience requirements: (i) Cases in the District Court -- at least 3 years relevant criminal litigation experience; (ii) Cases in the Court of First Instance and appeals from the Magistrates' Court -- at least 5 years' relevant criminal litigation experience; (iii) Appeals to Court of Appeal and Court of Final Appeal (considered jointly for the purpose of counting past experience in paragraph (c)(iii) above).

⁶⁴ Counsel: at least 7 years' relevant criminal litigation experience; solicitors: at least 5 years' relevant criminal litigation experience.

⁶⁵ Counsel: at least 10 years' relevant criminal litigation experience; solicitors: at least 7 years' relevant criminal litigation experience.

⁶⁶ <https://www.lad.gov.hk/eng/lap/sl.html>

According to the Legal Aid Department, legal aid work assignments should not generally exceed the limits set out below:

- For Civil Cases:
 - (a) for solicitors - 30 cases within the past 12 months; and
 - (b) for counsel - 15 cases within the past 12 months.
- For Judicial Review-related Cases:
 - (a) for solicitors - 5 cases within the past 12 months; and
 - (b) for counsel - 3 cases within the past 12 months.
- For Criminal Cases:
 - (a) for solicitors - 25 cases or \$750,000 legal aid costs within the past 12 months (whichever occurs first); and
 - (b) for counsel - 25 cases or \$1.5 million legal aid fees within the past 12 months (whichever occurs first).

Assignment to counsel and solicitors who do not meet the above selection criteria may be allowed with the approval of a directorate officer.⁶⁷

2. The Duty Lawyer Schemes

a) Duty Lawyer Scheme

There were 2,101 duty lawyers on the panel of the Duty Lawyer Scheme, with 1,207 duty lawyers providing legal representation in the Magistrates' Courts during the year 2020.⁶⁸

b) Free Legal Advice Scheme

The services under the FLSA are provided by volunteer lawyers rostered by the FLAS. There were 1,262 volunteer lawyers on the panel with 875 lawyers participating and giving advice in the year 2020.⁶⁹

c) Tel-Law Scheme

Not applicable.

d) NRC Scheme

As of 2020, there were 644 active duty lawyers participating in the Scheme, which comprises 446 barristers and 198 solicitors who have more than three years' post

⁶⁷ Legal Aid Department, "Selection of Lawyer", available at: <https://www.lad.gov.hk/eng/lap/sl.html>

⁶⁸ The Annual Report 2020 of the Duty Lawyer Service.

⁶⁹ Extracted from the Annual Report 2020 of the Duty Lawyer Service (http://www.dutylawyer.org.hk/en/annual_20/advice.asp).

qualification experience and have also undergone the relevant training programmes organized by the Hong Kong Academy of Law and the Bar Association.⁷⁰

3. The Pilot Scheme

This scheme maintains a roster of qualified lawyers. The qualifications of the participating lawyers are the same as those under the NRC Scheme.⁷¹

4. The Procedural Advice Scheme

Lawyers who have at least two years' post-qualification experience and hold a current practicing certificate are eligible to enrol as community lawyers of the Procedural Advice Scheme in their personal capacity on a pro bono basis.⁷²

5. The Resource Centre for Unrepresented Litigants

Please refer to the section on the Process for Obtaining Legal Aid - The Resource Centre for Unrepresented Litigants, above.

Funding for State-Funded Legal Aid

Name of legal aid service	Sources of funding
The Legal Aid Schemes	The services provided by the Legal Aid Schemes are funded by the government of the Hong Kong Special Administrative Region ("Government"). ⁷³ For cases where the applicant is within the means limit (i.e. the financial resources do not exceed \$420,400.00), the contribution rates payable by the applicant range from 2-25% if the applicant has financial resources above \$52,550.00. See above for fuller details.
The Duty Lawyer Service	The Duty Lawyer Service is fully subvented by the Government but is independently managed and administered by the Council of the Duty Lawyer Service. ⁷⁴ A defendant who passes both the merits and the means

⁷⁰ Extracted from the Annual Report 2020 of the Duty Lawyer Service (http://www.dutylawyer.org.hk/en/annual_20/advice.asp).

⁷¹ https://www.legco.gov.hk/yr16-17/english/hc/sub_com/hs54/papers/hs5420190115cb2-581-1-e.pdf

⁷² Source: Administration Wing, Chief Secretary for Administration's Office - Legal Advice Scheme for Unrepresented Litigants on Civil Procedures (Procedural Advice Scheme) (https://www.admwing.gov.hk/eng/public_service/paso.html#tabwrap6)

⁷³ A copy of the Legal Aid Department Annual Report 2019, which contains details of the revenue and expenditure of the Legal Aid Department, can be found at: https://www.lad.gov.hk/documents/annual_rpt_2019_en.pdf.

⁷⁴ The independent auditor's report of the Duty Lawyer Service for the year 2020 can be found at: http://www.dutylawyer.org.hk/pdf/ar_20/e-1.pdf.

Name of legal aid service	Sources of funding
	tests must pay a handling charge of \$610 before the Duty Lawyer Scheme takes up the case. This is the only charge a defendant has to pay, no matter how long the case lasts. ⁷⁵
The Pilot Scheme	The Pilot Scheme is operated by the Security Bureau of the Government, and is funded by the Government. The Pilot Scheme is free of charge subject to claimant's fulfilling the means test administered by the Pilot Scheme Office.
The Procedural Advice Scheme	The Procedural Advice Scheme is operated by the Administration Wing of the Chief Secretary for Administration's Office, and is funded by the Government. The Procedural Advice Scheme provides legal advice on civil procedural matters free of charge.
The Resource Centre for Unrepresented Litigants	The Resource Centre for Unrepresented Litigants is run by the Judiciary and funded by the Government. There are no payment or reimbursement obligations required of visitors to the Resource Centre.

Barriers to State Funded Legal Aid⁷⁶

Availability of Interpretation/Translation Services

While interpretation services are generally available under the main state funded legal aid schemes, the practitioners consulted in preparing this memo shared experience on the issues relating to the language barriers. Typical issues in practice include:

- (a) lack of quality interpretation with regard to ethnic minority languages, and especially uncommon ethnic minority languages where a claimant may have to accept interpretation by an interpreter who does not speak the claimant's first language but rather a second or even third language; and
- (b) lack of an official rating or qualification scheme for assessing capability of, and selecting, interpreters, often relying on referrals amongst interpreters where there is limited guarantee on quality.

The lawyer who assists the claimant can help by requesting a change of interpreter if the lawyer observes that the claimant does not understand the interpreter.

⁷⁵ <http://www.dutylawyer.org.hk/en/duty/2j.asp>

⁷⁶ A number of practitioners contributed to this section of the memo, including Ms. Patricia Ho of Patricia Ho & Associates, Ms. Lynette Nam of Justice Centre Hong Kong and Ms. Kirsteen Lau of Pegasus Chambers.

It was also noted that one of the amendments to the Immigration Ordinance⁷⁷ empowers an immigration officer to direct a claimant “to communicate in a language that the officer reasonably considers the claimant is able to understand and communicate in”. It was queried whether an immigration office is able to make the judgement in practice.

It was also reported that interpretation services are available via electronic means, where the interpreters are located overseas.

Name of legal aid service	Availability of Interpretation Service
The Legal Aid Schemes	Interpretation service for ethnic minorities is provided. The individual has to contact staff of the Legal Aid Department at the counter. ⁷⁸ It is noted that the Legal Aid forms are in English and Chinese, only.
The Duty Lawyer Schemes	<p>a) Duty Lawyer Scheme: Interpretation service is provided.⁷⁹</p> <p>b) Free Legal Advice Scheme: Interpretation service is provided.⁸⁰</p> <p>c) Tel-Law Scheme: The tapes are available in Cantonese, Mandarin and English.⁸¹</p> <p>d) NRC Scheme: It is reported that interpreters are available to assist those who cannot speak fluent English or Cantonese.</p>
The Pilot Scheme	The Pilot Scheme office makes arrangements for interpretation and/or translation services of different languages to facilitate lawyers’ provision of legal assistance to non-refoulement claimants. ⁸²
The Procedural Advice Scheme	The official website of the Procedural Advice Scheme does not indicate whether interpretation services will be provided during the course of services. However, the applicant is required to indicate the languages spoken in the application form. Also, the relevant pamphlet ⁸³ is printed in 10 ethnic minority languages. ⁸⁴ Application form is available online. ⁸⁵

⁷⁷ The relevant amendment has come into effect on 1 August 2021. See section 10 of the Immigration (Amendment) Ordinance at <https://www.legco.gov.hk/yr20-21/english/ord/2021ord007-e.pdf>.

⁷⁸ <https://www.lad.gov.hk/eng/ppr/publication/interpreter.html>

⁷⁹ <http://www.dutylawyer.org.hk/en/duty/duty.asp>

⁸⁰ <http://www.dutylawyer.org.hk/en/free/free.asp>

⁸¹ http://www.dutylawyer.org.hk/en/tellaw/tel_law.asp

⁸² https://www.cmab.gov.hk/doc/issues/equal_agpre/92_e.pdf

⁸³ https://www.admwing.gov.hk/eng/public_service/paso.html#tabwrap6

⁸⁴ Bengali, Hindi, Bahasa Indonesia, Nepali, Punjabi, Tagalog, Tamil, Thai, Urdu and Vietnamese

⁸⁵ https://www.admwing.gov.hk/pdf/paso/PASO_Application_Form_en.pdf

The Resource Centre for Unrepresented Litigants	The Resource Centre’s dedicated page on the Judiciary’s website does not indicate whether interpretation services are provided during the course of services.
---	---

Geographical Limitations

There are no geographical limitations for accessing legal aid in Hong Kong.

Other Barriers

The practitioners consulted in the preparation of this memo identified the following additional barriers to accessing legal aid based on their experience in representing the Target Group:

- Lack of trust: Claimants may not trust their lawyers, who are referred by the Immigration Department. As a result, the claimants may not be willing to disclose all the relevant information to their lawyers, which may affect the completeness and quality of their applications.
- Claimants fail to lodge claim: In order to be referred to the Duty Lawyer Service, the claimant has to lodge a claim with the Immigration Department specifying the grounds for qualifying for non-refoulement. If a claimant fails at the initial stage to lodge a claim with the Immigration Department, he/she may not have access to legal aid.
- Insufficient time to file claim: The Immigration Department usually refers a non-refoulement claimant to the Duty Lawyer Service at a late stage in the application process. Due to the time constraints involved in preparing a claim, some individuals may face difficulty in putting together a comprehensive case that adequately supports their claim.
- Low rate of legal representation in appeals and low success rate for appeals and judicial reviews: The rate of legal aid representation at the appeal stage is low. Only about 8-9% of appellants are granted assistance through the Duty Lawyer Scheme in appeals against decisions under the Unified Screening Mechanism (“USM”) with the Torture Claims Appeal Board/Non-refoulement Claims Petition Office. Further, at the appeal stage, it is important to have experienced lawyers to review the merits of the case rather than lawyers with limited asylum/refugee-related experience, who tend to follow the first-instance decision. The success rate of appeal is generally low.

- Unavailability of expert evidence: Expert evidence on matters including country of origin, psychiatric and medical evidence for the claimants may not be available due to various circumstances. In the case of the NRC Scheme, funds may not be available and the Scheme may not grant subsidy for obtaining expert reports. In other cases, the claimants may be reluctant to talk about their experiences or may be unable to express themselves, given their physical or mental state due to injury or other factors.
- Quality of criminal defence lawyers: Where a claimant is charged with a criminal offence, he/she is often advised by the assigned lawyer to plead guilty in order to plead for mitigation in sentencing. However, the lawyer may not know that refugees with criminal records may experience significant problems being resettled in another part of the world. Whilst this is not a barrier to accessing legal aid as such, it is important for claimants to have access to quality criminal defence.
- Additional barriers: Other barriers identified include complex and lengthy procedures; uncertainties of the system; erroneous assessments contributing to delay in issuance of legal aid certificates; and inadequate number of participating lawyers, resulting in reliance on pro bono lawyers and NGOs to fill the gap.

Please also see Additional Note: New Legal Aid Measures below.

Exceptions for the Target Group

The following exceptions are made for the Target Group in view of their needs and circumstances:

- Address: While not a barrier in obtaining legal aid, the lack of an address can give rise to practical problems at the appeal stage of the USM, as the appeal decision is sent only to the claimant's address. Delayed receipt of the appeal decision may affect the timeline of lodging a judicial review, for which the claimant is given 3 months after the appeal decision to commence the relevant proceedings.
- Duty Lawyer Service: It is reported that the Duty Lawyer Service is usually aware of the special needs and circumstances of the Target Group, and it is in fact normal for the Duty Lawyer Service to process applications from applicants without identity documents or an address.

Additional Note: Immigration (Amendment) Bill

The Immigration (Amendment) Bill (“Bill”), gazetted on 4 December 2020, took effect on 1 August 2021.⁸⁶ The Bill aims at improving the screening procedures for non-refoulement claims and introducing enhanced measures in respect of law enforcement, removal and detention. The key amendment proposals include enhancing efficiency in screening by the Immigration Department and preventing delaying tactics, improving the procedures and functions of the Torture Claims Appeal Board, strengthening removal of unsuccessful claimants, enhancing detention and combating unlawful employment, etc.⁸⁷

Additional Note: New Legal Aid Measures

By the end of 2021, the Legal Aid Department implemented several new measures that have the potential to impact legal aid applications for both asylum and non-asylum matters. The new measures include direct assignment of lawyers by the Director of Legal Aid for all criminal cases, imposition of limits on the number of judicial review cases to be assigned to lawyers, and lowering the limits on the number of civil cases to be handled by lawyers.⁸⁸ These changes could potentially create barriers as they may limit the accessibility to legal aid.

NON-STATE FUNDED LEGAL AID

Eligibility, Nature and Scope

Eligibility of Asylum-Seekers, Refugees and Stateless Persons

Free Legal Advice Schemes

The Target Group is able to access non-state funded legal aid for asylum matters through the following schemes:

a) Free Legal Advice Scheme at the University of Hong Kong

Any person wishing to seek free legal advice must first attend an interview at the University of Hong Kong (“HKU”) campus, conducted by HKU law students, who will take down the detailed background of the case and obtain relevant documents. This

⁸⁶ <https://www.info.gov.hk/gia/general/202107/19/P2021071900357.htm>

⁸⁷ The Hong Kong Bar Association has submitted a paper to the Legislative Council with comments on the Bill. See <https://www.hkba.org/sites/default/files/Immigration%20%28Amendment%29%20Bill%202020.pdf>

⁸⁸ Legislative Council, Panel on Administration of Justice and Legal Services, Progress of 2021 Policy Address (LC Paper No. CB(4)46/2022(02)). (January 2022) available at: <https://www.leqco.gov.hk/yr2022/english/panels/ajls/papers/ajls20220209cb4-46-2-e.pdf>

interview is for the purposes of obtaining information relating to the query and the students will not give legal advice (the interview will usually take around 20 to 30 minutes). At an advice session to be scheduled around two or three weeks after the interview session, qualified lawyers will provide legal advice to the clients. The duration of each advice session is around 30 minutes. The service is free of charge and there are no eligibility requirements or any means or merits test.⁸⁹

b) The Law Society of Hong Kong's Pro Bono Services

Any person wishing to obtain free legal consultation services may refer to a website,⁹⁰ which contains a list of law firms and their areas of specialisation. The client may contact the law firms directly by phone to arrange for a free legal consultation session of up to 45 minutes. The service is open to the public in general and there are no eligibility requirements or any means or merits test. Asylum-seekers should search for law firms on the list that provide service under the practice areas of "foreign related legal services" or "immigration".⁹¹

c) Hong Kong Bar Association's Free Legal Services Scheme

The Bar Free Legal Services Scheme ("BFLSS") provides free legal advice or legal representation in court or any tribunal where legal representation is permitted. In practice, BFLSS mostly assists proceedings at the appeals stage. It is staffed by a part-time coordinator. Services can be accessed by letter, email or telephone.⁹²

BFLSS aims to provide free legal advice and representation in court proceedings where:

- (1) state funded legal aid is not available (i.e., the applicant has been formally rejected by the Legal Aid Department of the Hong Kong Special Administrative Region);
- (2) the applicant cannot reasonably afford private sector legal services; and
- (3) the applicant has reasonable grounds for taking or defending the proceedings (i.e., there is some merit to the case). The merits of the case are assessed by the Management Committee of the Hong Kong Bar Association.

⁸⁹ <https://www.law.hku.hk/experiential-learning/clinical-legal-education/>
<https://www.facebook.com/HKU.CLE/>
<https://www.ke.hku.hk/spotlight/free-legal-advice-on-hku-campus>

⁹⁰ <http://www.chooselawyer.org/en/index.asp>

⁹¹ https://www.hklawsoc.org.hk/pub_e/probono/public/pbs_ls.asp

⁹² bflss@hkba.org or +852 2137 9107

Non-Governmental Organizations

a) Justice Centre Hong Kong

In order to ensure that those who need it the most have the best possible chance of a successful outcome, Justice Centre Hong Kong (“JCHK”) undertakes a rigorous screening process and prioritises the most vulnerable individuals. As a result, individuals who seek pro bono assistance from JCHK are subject to a merits-based screening assessment where the individual’s vulnerabilities (e.g., age, victim of trafficking, homelessness and medical issues) will be identified and considered.

JCHK has reported that roughly 10% of individual cases (not referred by DLS) receive JCHK’s comprehensive assistance, described in more detail in the ‘Scope of Non-State Funded Legal Aid’ section below, including access to pro bono lawyers for legal representation and other social welfare and counselling services. For all other cases, JCHK is able to provide only basic information and support and will not assist the client to acquire legal representation from the pro bono lawyers who act for JCHK’s clients on a pro bono basis.

b) Equal Justice 平義社

A charitable initiative that branched-off from PathFinders Limited, Equal Justice Limited (“EQJ”) provides free legal education, information and support for disadvantaged people who cannot afford or otherwise access it, with a mission to close Hong Kong’s justice poverty gap and to reduce hardship.

c) Hong Kong Dignity Institute

Hong Kong Dignity Institute (“HKDI”) is a social enterprise whereby clients pay for services according to a sliding fee scale. Their clients are predominantly individuals from marginalised groups and facing financial limitations. They provide individualised and integrated legal and mental health support to clients by examining needs holistically with a lens on the operating environment.

Law Firms

Law Firms which are listed in the Free Legal Consultation section of the Law Society’s pro bono services webpage⁹³ have volunteered to provide initial free consultations to the public (up to 45 minutes per session) in one or more of 24 areas of practice. In addition, below are two law firms specialising in refugee/asylum cases:⁹⁴

⁹³ <https://lawdirectory.hklawsoc.org.hk/zh-HK/Free-Legal-Consultation>

⁹⁴ https://www.hklawsoc.org.hk/pub_e/probono/public/pbs_ls.asp

Daly & Associates ⁹⁵	Daly & Associates is heavily involved in handling refugee and asylum, human trafficking and family and children’s rights in Hong Kong. The firm also takes on meritorious cases on a pro bono basis and takes on judicial review cases of the Hong Kong Government’s immigration policies.
Patricia Ho & Associates ⁹⁶	Patricia Ho & Associates has handled a number of landmark test cases concerning refugees and asylum-seekers (access to social welfare, release from detention, permission to work) and victims of human trafficking.

In addition, law firms may take up individual asylum related cases on a pro bono basis as part of the firm’s own pro bono initiatives. Such initiatives are on a purely discretionary basis.

Based on feedback received from practitioners, we understand that in practice, pro bono lawyers take up refugee/asylum cases mostly through referrals from NGOs and/or by word of mouth in the detention centres where refugee/asylum-seekers are detained. Many refugees and asylum-seekers arrive in Hong Kong through trafficking and other illegal means of travel. Sometimes, the traffickers are aware of NGOs and pro bono lawyers in Hong Kong and may inform the refugees/asylum-seekers about whom they should contact to seek legal assistance upon their arrival in Hong Kong. In some cases, the refugees/asylum-seekers would have done background research (e.g., on Facebook and Google) and planned their course of action upon their arrival in Hong Kong, including which pro bono lawyer to contact.

Once the refugee/asylum-seeker has made contact with an NGO and/or pro bono lawyer, the NGO and/or pro bono lawyer will often assist the refugee/asylum-seeker in the detention-related case (e.g., applying for bail and recognizance papers from the detention centre) before the non-refoulement claim and the USM process commences.

Practitioners report that the DLS is more willing to grant the refugee/asylum-seeker’s request for the same lawyer’s continued assistance in the USM process if that lawyer had acted for the refugee/asylum-seeker in the detention-related case. Therefore, once a particular pro bono lawyer is engaged in the detention claim stage, he/she is likely to continue to assist the client through the non-refoulement claim (i.e., the USM process including the appeal before the Torture Claims Appeal Board) and in any ensuing judicial review application.

⁹⁵ <http://dalyassociates.net/about>

⁹⁶ <https://www.patriciahoassociates.com/>

Law firms take on pro bono cases on a discretionary basis. In addition, the acceptance of any case is subject to the clearance of anti-money laundering and internal conflict of interests checks.

Although there is no legally required merits test, it has been reported that pro bono lawyers often undertake their own merits assessment of cases in order to ensure that their services are provided to the most deserving cases.

Scope of Non-State Funded Legal Aid

Free Legal Advice Schemes

a) Free Legal Advice Scheme at the University of Hong Kong

Law students cannot appear in court or provide legal advice due to legal profession requirements in Hong Kong. In addition, HKU reserves the right not to run the free legal advice scheme if they do not have any spare capacity or if the case is, in HKU's view, not of sufficient educational value or for other good reasons (e.g., the applicant has received legal aid). Furthermore, there is no follow-up service after the substantive legal advice session (which will take around 30 minutes) given by qualified lawyers.

The Free Legal Advice Scheme at the HKU covers the following non-asylum related matters:

- contract law;
- family law (e.g., custody and divorce matters);
- employment law;
- property (e.g., housing and landlord and tenant issues);
- criminal defence; and
- discrimination.

b) The Law Society of Hong Kong's Pro Bono Services

Under the free legal consultation service, law firms are required to provide only up to 45 minutes of initial consultation. In addition, users of the free legal helpline must be aged 18 years old or above.

There are two avenues of legal aid for non-asylum related matters provided by the Law Society of Hong Kong:

- Free legal consultation service: The free legal consultation service is not restricted to asylum related matters. Many of the 24 practice areas that fall within this service are non-asylum related.

- Free Legal Helpline (8200 8002): The service provided under the free legal helpline operates such that the public may receive up to 45 minutes of free legal advice on Personal Injuries, Matrimonial Law, Criminal Law and Mediation. Callers will need to provide some basic information about themselves and the nature of their cases. Around 3 working days after that, a caller will receive a return call from a panel solicitor who will provide the free legal advice.⁹⁷ This service is primarily utilised for purposes other than asylum matters, and its usefulness in relation to asylum cases varies depending on the specific circumstances of each case. Asylum seekers tend to rely more heavily on other resources mentioned here.

c) Hong Kong Bar Association's Free Legal Services Scheme

Volunteers usually devote a maximum of three days to work on a case (including pre-hearing preparatory work). This is sufficient for most types of advisory work and for representation in courts and tribunals for short cases or hearings. However, it means the BFLSS will not be able to provide a barrister to advise on a continuing basis over a long period of time or to provide assistance in long-running cases in court. Assistance is more likely to be provided for complex cases if a solicitor or other agency (such as JCHK) is involved and can assist with some aspects of the work. Wherever possible, an applicant should make an application to BFLSS with the assistance of a solicitor or other NGO (such as JCHK) who is willing to provide assistance with the case.

BFLSS is not restricted to asylum-related matters. The scope of non-asylum related matters in respect of which free advice may be given will depend on the availability of barristers in the BFLSS who have the relevant expertise in non-asylum related matters.

NGOs

Generally speaking, NGOs are not regulated by the Law Society of Hong Kong and cannot offer legal services to clients as such. NGOs however, act as an important referral agency between clients (e.g. non-refoulement claimants) and other pro bono lawyers and law firms. Even if the NGO has Hong Kong or overseas qualified lawyers, it may only offer referrals or basic advice.

⁹⁷ The helpline operates Mondays to Fridays: 9:00am - 5:30pm (except public holidays). See https://www.hklawsoc.org.hk/pub_e/probono/public/pbs_ls.asp and http://www.hklawsoc.org.hk/pub_e/popup/20130515/20150602.pdf.

a) Justice Centre Hong Kong

JCHK provides assistance to the Target Group⁹⁸ by connecting individual claimants with Duty Lawyers under the DLS and other pro bono lawyers. JCHK offers two tiers of pro bono services: (i) comprehensive legal assistance; and (ii) limited legal assistance. In addition, JCHK works with counsellors to help claimants to explain their background and circumstances coherently. JCHK also provides access to independent expert witnesses who can issue medical and other reports on the country conditions the claimants have fled from. JCHK is able to provide assistance through a network of interpreters covering a wide number of languages.

The limited legal assistance offered by JCHK involves providing claimants with information on legal matters, how to access state-funded legal aid (e.g., DLS) and/or other non-state funded legal aid in order to make their legal asylum claim. JCHK will not be involved in these claimants' cases.

How JCHK and the DLS interact:

JCHK links individual claimants to the DLS (which is funded by the Hong Kong Government) and other pro bono lawyers. Individual cases reach JCHK through referrals by a duty lawyer or referrals from external NGOs (e.g., Christian Action and Branches of Hope). Occasionally, individual claimants approach JCHK if they have knowledge about its pro bono services.

The respective roles of JCHK, the DLS and other NGOs with respect to a non-refoulement claim is a complicated area since the roles of each party may vary case-by-case. Below is a table that summarises the roles of the respective parties at each step of the process.⁹⁹

⁹⁸ JCHK offers their services to the following groups: refugees, victims of torture and human trafficking, women, children, racial and ethnic minorities, LGBTQI+ individuals, and others. Note that this is wider than the Target Group.

⁹⁹ <https://www.justicecentre.org.hk/what-we-do/#services>

Stage of the non-refoulement claim	JCHK's involvement	Duty Lawyer's involvement	Other NGOs' involvement
Entry of the claimant into the Immigration Department's USM for non-refoulement claims.	Not involved at this stage, unless by word of mouth, the individual detained by the Immigration Department ("ImmD") is aware of JCHK's services and requests assistance.	At this initial stage, the claimant is referred to the DLS by the ImmD after the claimant submits a letter to the ImmD stating grounds for protection. ¹⁰⁰	Involved if the individual detained by the ImmD is aware of other NGOs' services and wishes to obtain assistance.
Non-refoulement claim being made by the claimant.	The Duty Lawyer assigned to the claimant's case may make a referral to JCHK to seek assistance in technical matters, e.g., engaging interpreters or country condition experts, preparing psychological reports.	Upon referral to the DLS, a Duty Lawyer will provide the claimant with advice on how to make a claim for protection/asylum under the USM (i.e., advice on how to fill the non-refoulement claim form).	An external NGO or agency may make a case referral to JCHK. For example, a detainee may approach UNHCR's sub-office in Hong Kong. UNHCR may then refer the case to JCHK.
Attending screening interview(s).	Not involved at this stage.	The Duty Lawyer assigned to the case will attend screening interview(s) with the claimant if the Duty Lawyer considers it necessary.	Not involved at this stage.

¹⁰⁰ Practitioners report that there is no formal mechanism by which individuals detained by the ID are informed of their right to make a non-refoulement claim. Unless and until the detainee submits a letter stating grounds for protection (e.g., he/she will be subject to torture or cruel, inhuman, or degrading treatment or punishment if forced to return to his/her home country), the detainee will not be referred to the DLS and is unable to access the USM for non-refoulement claims.

Stage of the non-refoulement claim	JCHK's involvement	Duty Lawyer's involvement	Other NGOs' involvement
If the non-refoulement claim is refused by the ImmD, the claimant may lodge an appeal to the Torture Claims Appeal Board.	If the Duty Lawyer refuses to act for the claimant in the appeal, JCHK may assist by connecting the claimant with a pro bono lawyer to handle the appeal.	The Duty Lawyer has discretion in deciding whether or not to take on the appeal. There are no mandatory tests/criteria but in practice, the DLS will make a decision based on an assessment of the likelihood of success of the appeal. ¹⁰¹	Not involved at this stage except to refer the case to JCHK and other pro bono lawyers.
If the appeal is not successful, the claimant may lodge a judicial review of the Torture Claims Appeal Board's decision	JCHK will provide guidance on the judicial review and legal aid application processes. If legal aid is refused, JCHK may also provide guidance about appealing the refusal. JCHK often engages pro bono barristers to represent the claimant in judicial review and legal aid proceedings.	If the appeal is unsuccessful, the claimant would have exhausted the USM process and the DLS will not provide any further assistance.	Not involved at this stage except to refer the case to JCHK and other pro bono lawyers.

b) Equal Justice

EQJ provides assistance to claimants of domestic violence, child protection, trafficking, immigration and identity claims, and employment rights by connecting them with pro bono lawyers (including law firms and barristers). EQJ is also able to connect claimants of employment rights and labour law cases to pro bono lawyers.

¹⁰¹ Practitioners report that approximately 8% of appeal cases are taken up by the DLS.

c) Other NGOs Providing Legal Aid Services

- Pro Bono Hong Kong: Pro Bono Hong Kong (“PBHK”) has a legal literacy program that covers a wide range of topics commonly encountered by disadvantaged members of Hong Kong society. In addition, with the assistance of pro bono lawyers and volunteer students, PBHK volunteers operate community legal clinics on a monthly basis with other local charities. The topics covered in 2019 to 2020 include the rights of street sleepers, tenancy-related matters and the rights of domestic workers.¹⁰²
- HELP for Domestic Workers: HELP for Domestic Workers (“HDW”) supports domestic workers in relation to the following non-asylum related matters:
 - family and domestic law;
 - human rights law;
 - refugee rights;
 - immigration;
 - disability rights;
 - racial and ethnic justice;
 - women’s rights; and
 - employment law.

HDW also provides the following types of legal-related assistance:

- explaining to domestic workers about their legal rights;
- guiding domestic workers in pursuing claims in the Labour Tribunal and other courts;
- creating and distributing resources that inform of and empower domestic workers to know their legal rights;
- giving advice in cases where a domestic worker is accused of a criminal offence, which, typically, will arise from or is otherwise connected with their immigration status or employment;
- assisting domestic workers to draft witness statements and court documents for use in court proceedings; and
- preparing clients for conciliation meetings and court hearings.¹⁰³

¹⁰² <https://www.probonohk.org/about>
<https://www.probonohk.org/projects>
<https://www.probonohk.org/events>

¹⁰³ <http://www.helpfordomesticworkers.org> and <https://helpfordomesticworkers.org/en/get-help/>

- *RainLily*: RainLily is a crisis centre that provides assistance to victims and survivors of sexual violence. Among other services, RainLily coordinates free legal advice by connecting victims/survivors with pro-bono lawyers for consultation, which can address the following non-asylum related matters.¹⁰⁴
 - sexual harassment;
 - discrimination and victimisation;
 - vicarious liability;
 - civil procedures;
 - complaints to the Equal Opportunities Commission of the Hong Kong Administrative Region;
 - conciliation procedures; and
 - rape, indecent assault and other forms of sexual violence.

- *Hong Kong Dignity Institute (HKDI)*: HKDI provides individualised and integrated legal and mental health support to the most vulnerable in Hong Kong society, including individuals who have been subjected to human trafficking, sexual or labour exploitation, persecution, domestic violence and other forms of abuse and discrimination. Among their services, HKDI provides immediate legal and mental health support from qualified local professionals, as well as strategic guidance and referrals to local and international organisation to address client needs. HKDI's in-house team of lawyers provide assessments and guidance on the following asylum and non-asylum related matters.¹⁰⁵
 - Asylum claims
 - Refugee resettlement
 - Immigration and immigration detention
 - Human trafficking
 - Labour exploitation
 - Moneylender exploitation
 - Domestic and/or child abuse
 - Sexual violence or forced marriage
 - Fraud
 - Parentage/Custody
 - Disability discrimination; and
 - Drug trafficking

¹⁰⁴ <https://rainlily.org.hk/eng/legalclinic>

¹⁰⁵ <https://www.dignityinstitute.com/client-services> and HKDI, Annual Report 2020-2021, available at: <https://static1.squarespace.com/static/5fbd2aa3904c6f6b9a6a241b/t/62281da93ffad25c7ee99926/1646796213058/HKDI+Annual+Report+2020-2021.pdf>

d) Other NGOs Providing Complimentary Services

- Christian Action: Christian Action provides legal assistance to refugees, migrant domestic workers, ethnic minorities and underprivileged families and children. With respect to refugees in particular, Christian Action is able to provide the following assistance:
 - education and training, including language classes, skills training and employability programmes;
 - psychosocial and casework services, including counselling, therapy and empowerment through arts and sports; and
 - basic needs including soup kitchen, emergency housing, essential cash grants and referrals to medical and other services.¹⁰⁶
- Branches of Hope: Branches of Hope (“BOH”) provides support to refugees and victims of human trafficking under two programmes: (i) Refugee Opportunity and Development (“ROAD”),¹⁰⁷ and (ii) Stop Trafficking of People (“STOP”).¹⁰⁸

Under the ROAD programme, BOH provides the following assistance:

- social services, including emergency relief, accommodation search, medical care, legal advice referrals and counselling;
- financial assistance; and
- development assistance, including vocational training and job placement, assistance for resettlement to a third country and voluntary repatriation.

Under the STOP programme, BOH provides the following assistance:

- social assistance, including temporary housing and legal referral to human rights law firms; and
- one-to-one emotional support to victims of trafficking.

Law Firms

Law firms may be able to provide assistance with respect to non-asylum matters on a case-by-case basis.

Practitioners have reported that law firms who assist with non-refoulement claims often provide legal assistance in relation to other related matters as well, such as access to welfare, family law issues and tenancy matters. However, if a particular

¹⁰⁶ <https://www.christian-action.org.hk/en/hong-kong/humanitarian-social-services/refugees>

¹⁰⁷ <https://branchesofhope.org.hk/road>

¹⁰⁸ <https://stophk.org/en/about/what-does-stop-do>

refugee/asylum-seeker requires medical, psychiatric, social welfare, emergency shelter, child care or other social services, access will generally be provided by NGOs.

Structures and Procedures

Process for Obtaining Legal Aid

Organization	Process for Accessing Services
Free Legal Advice Scheme at the University of Hong Kong	<p>Anyone seeking legal assistance will attend two 30-minute sessions – a screening interview conducted by HKU law students to obtain background information and relevant documents, and a second interview where a qualified lawyer provides preliminary legal advice with the law student’s assistance.</p> <p>The screening interview is by appointment only. The latest information on the available timetable for the screening interview may be found at the official Facebook page.¹⁰⁹</p>
The Law Society of Hong Kong’s Pro Bono Services	<p><u>Free legal consultation service</u>: A website¹¹⁰ is provided for the public to refer to a list of firms and their areas of specialisation. The public may contact the individual firms directly by phone to arrange up to 45 minutes of free legal consultation.</p> <p><u>Free legal helpline</u>: Legal advice can be obtained by dialling the toll-free helpline at (+852) 8200 8002. The legal advice will normally be given within three working days of the call through a return call from a pro bono lawyer.</p>

¹⁰⁹ <https://www.facebook.com/HKU.CLE/>

¹¹⁰ <http://www.choosehklawyer.org/en/index.asp>

Organization	Process for Accessing Services
Hong Kong Bar Association's Free Legal Services Scheme	<p>An application form must be submitted. This form may be obtained from the BFLSS Office at the High Court, or by downloading a copy from the BFLSS website.¹¹¹ Each application takes around six weeks to process. As a result, if a case is urgent, for example because of approaching deadlines or hearing dates, this should be highlighted in the application. The BFLSS will generally not be able to provide legal representation based on less than 28 days' notice of any court hearing.</p> <p>If assistance is needed more urgently, the applicant must explain why the application was not made earlier. In any event, there is no guarantee that the BFLSS would be able to accept an urgent request. The applicant will usually be advised to seek an adjournment of the hearing, pending BFLSS's decision.</p>
Justice Centre Hong Kong	<p>Requests for assistance may be submitted by phone, WhatsApp, email or in-person at their offices.¹¹² Alternatively, cases are referred to JCHK by the DLS and external NGOs.</p>
Equal Justice	<p>Requests for assistance may be submitted by phone, WhatsApp, email or in-person by attending their offices.¹¹³</p>
Pro Bono Hong Kong	<p>Requests for assistance may be submitted by email or through their website.¹¹⁴</p>
Christian Action	<p>With multiple locations in Hong Kong, many refugees/asylum-seekers are referred, by word of mouth, to the office at Chungking Mansions to seek assistance from Christian Action.¹¹⁵</p>
Branches of Hope	<p>BOH may be contacted by email, phone or in person at their offices.¹¹⁶</p>

¹¹¹<https://www.hkba.org/sites/default/files/BFLSS%20Application%20Form%206%20July%202021.pdf>

¹¹²<https://www.justicecentre.org.hk/>

¹¹³<https://www.equaljustice.org/get-in-touch>

¹¹⁴<https://www.probonohk.org/>

¹¹⁵ Rm.6, 16/F, Block E, Chungking Mansions, 36-44 Nathan Road, Kowloon, Hong Kong; <https://christian-action.org.hk/en/about-us/locations>

¹¹⁶<https://branchesofhope.org.hk/contact>

Organization	Process for Accessing Services
HELP for Domestic Workers	HDW may be contacted through their website, in person at their offices, or by email or phone. ¹¹⁷
RainLily	The victim/survivor should complete and submit an online form, ¹¹⁸ following which a RainLily staff member will contact the victim/survivor. In addition, RainLily's Sexual Violence Helpline is staffed by counsellors and trained female volunteers to assist victim-survivors of sexual violence and their supporters. ¹¹⁹
Law Firms	Contact details of law firms are available in the Law Society of Hong Kong's directory. ¹²⁰ However, as a matter of practicality, it would probably be more effective and quicker for a refugee/asylum-seeker to approach one of the NGOs rather than a law firm directly, because the NGOs would have better connections to law firms who are able to assist.

For individuals detained by the ImmD and referred to the DLS, the DLS will accept the recognizance papers as sufficient proof of identity to proceed with the non-refoulement claim under the USM process.

For applications to the ImmD for permission to work in Hong Kong, law firms would generally accept the following documents for conflict of interests and anti-money laundering checks: (1) recognizance paper, (2) any papers issued by NGOs providing assistance to the claimant, and (3) employment contract (if any). However, the requirements of each law firm could differ.

Funding Non-State Funded Legal Aid

The various non-state funded legal-aid providers receive funding as follows. Many of the NGOs listed hold charitable status under section 88 of the Inland Revenue Ordinance (Cap. 112), which exempts from tax charitable institutions that meet certain requirements.

¹¹⁷ <https://helpfordomesticworkers.org/en/contact/>

¹¹⁸ <https://rainlily.org.hk/eng/legalclinic>

¹¹⁹ <https://rainlily.org.hk/eng/helpinfo>

¹²⁰ <https://www.hklawsoc.org.hk/en/Serve-the-Public/The-Law-List/Hong-Kong-Law-Firms>

Organization	Funding Source
Free Legal Advice Scheme at the University of Hong Kong	Funded by HKU.
The Law Society of Hong Kong's Pro Bono Services	Funded by the Law Society of Hong Kong.
Hong Kong Bar Association's Free Legal Services Scheme	Funded by the Hong Kong Bar Association.
Justice Centre Hong Kong	JCHK receives financial support from the UN voluntary fund, educational institutions, corporate donations and foundations. JCHK is able to provide pro bono legal services by partnering with pro bono lawyers from law firms, chambers and financial institutions. ¹²¹
Equal Justice	EQJ is supported by their founding donors, and invites and accepts donations from the public. ¹²²
Hong Kong Dignity Institute	HKDI invites and accepts donations from the public. ¹²³
Pro Bono Hong Kong	Pro Bono Hong Kong invites and accepts donations from the public. ¹²⁴
Christian Action	Christian Action invites and accepts donations from the public. ¹²⁵
Branches of Hope	Branches of Hope is a section 88 charitable institution and has the support of various corporate partners including international schools, churches and other food drive partners. ¹²⁶
HELP for Domestic Workers	HDW invites and accepts donations from the public. ¹²⁷
RainLily	RainLily invites and accepts donations from the public. ¹²⁸

¹²¹ <https://www.justicecentre.org.hk/who-we-are/>

https://www.justicecentre.org.hk/framework/uploads/2020/03/AnnualReview_2018-19_JusticeCentre.pdf

¹²² <https://www.equaljustice.org/about-us>

¹²³ <https://www.dignityinstitute.com/giving>

¹²⁴ <https://www.probonohk.org/news>

¹²⁵ <https://www.christian-action.org.hk/en/donate>

¹²⁶ <https://branchesofhope.org.hk/donations>

<https://static1.squarespace.com/static/5add3584af20962b3d9e305e/t/5f355201eaf4591e24a1b8/1607415156739/BOH+Annual+Report+2020.pdf> (at pages 30-31)

¹²⁷ <https://helpfordomesticworkers.org/en/home/>

¹²⁸ <https://rainlily.org.hk/eng/support>

Organization	Funding Source
Law Firms	Law firms fund their own pro bono initiatives.

There is no information to suggest that the above-mentioned non-state funded legal aid providers require applicants to provide reimbursement for the services delivered.

Barriers to Non-State Funded Legal Aid

Availability of Interpretation/Translation Services

If the individual’s primary language is not commonly used in Hong Kong, the lack of interpretation services for the individual’s primary language may constitute a barrier, most significantly at the initial stage of detention at the detention centre. The language barrier could result in the refugee/asylum-seeker not being equipped to prepare and submit a letter to the ImmD stating the grounds of the individual’s application for non-refoulement protection. Practitioners report that unless and until the detainee submits such a letter, the ImmD will not refer the detainee to the DLS.

Once the refugee/asylum-seeker has made contact with the DLS, the DLS is often able to offer suitable interpretation services and the language barrier poses less of a problem. The DLS uses the same roster of interpreters as the judiciary and all Government Departments in Hong Kong.

If the refugee/asylum-seeker speaks a rare language or dialect, the DLS is likely to permit the Duty Lawyer handling the case to select a suitable interpreter from outside the existing roster of interpreters. Apart from such cases, refugee/asylum-seekers will not be able to select their desired interpreter from the abovementioned roster of interpreters.

If the refugee/asylum-seeker fails in the non-refoulement claim under the USM process, the pro bono lawyer and NGO assisting at the judicial review stage will need to engage their own interpreter since the DLS is no longer involved.

Geographic Limitations

There are no geographical limitations impacting on access to non-state-funded legal aid.

Other Barriers

- Lack of identity documents: As part of the USM process, the ID will issue a recognizance paper¹²⁹ to the refugee/asylum-seeker.¹³⁰ The recognizance paper evidences the fact that the individual has been granted temporary permission from the Director of Immigration to remain in Hong Kong pending the outcome of the individual's non-refoulement claim. Once a recognizance paper is issued, it is treated as the individual's identity document throughout the USM process and the time that the individual remains in Hong Kong. The recognizance paper is generally considered to be sufficient, as an identity document, for the claimant to seek non-state funded legal aid from NGOs and pro bono lawyers.
- Lack of address/contact information: The recognizance paper will state the refugee/asylum-seeker's address. Throughout the USM process, the DLS will be in contact with the refugee/asylum-seeker, who should notify the DLS of any changes to the address of the individual. However, if the individual loses contact with the DLS before receiving the decision from the USM process, this could give rise to significant problems should there be a need to file a judicial review application. Under the Rules of the High Court of Hong Kong, there is a 3-month time limit for the applicant to file a judicial review application. The applicant must furnish good reasons to obtain an extension of time for the filing of the judicial review application.
- Lack of social welfare support: It is common for members of the Target Group to require medical or psychiatric help, given the harsh conditions from which many of them have fled. These individuals may have suffered physical injury, post-traumatic stress disorder (PTSD) and even torture. Such individuals may also require social welfare assistance for immediate, basic needs as a priority. Until social welfare support is provided, the affected individuals may not be able to focus their efforts on obtaining non-state funded legal aid to pursue their case or to obtain the required psychiatric and/or other medical expert reports to put their best case forward.
- Lack of economic resources: NGOs have limited resources and are not able to assist all members of the Target Group who approach them for non-state funded legal aid.

¹²⁹ i.e., Form No. 8 in Schedule 1 of the Immigration Regulations (Cap. 115A)

¹³⁰ Section 36 of the Immigration Ordinance (Cap. 115)

SOURCES

This memo was prepared based on available online resources as at September 2022, input provided by PILnet and interviews conducted with the following organizations referred by PILnet:

- UNHCR
- Justice Centre Hong Kong
- Patricia Ho & Associates
- Pantheon Chambers

Online Resources:

- The Legal Aid Department: <https://www.lad.gov.hk/eng/home/home.html>
- Duty Lawyer Service: <http://www.dutylawyer.org.hk/index.asp>
- Legal Advice Scheme for Unrepresented Litigants on Civil Procedures: https://www.admwing.gov.hk/eng/public_service/paso.html
- Resource Centre for Unrepresented Litigants: <https://rcul.judiciary.hk/rc/cover.htm>



This document is part of a collaborative, multi-jurisdictional research project on the availability of legal aid to refugees in Asia for use by refugees, other displaced people, and the lawyers and organizations that work with them. It was compiled by Mayer Brown and provides information on both state and non-state funded legal aid in Hong Kong.

Law firms participating in this research are not liable toward third parties for the accuracy of the general information contained in this guide. The memorandum is not intended to provide, nor should it be relied on, as legal advice. Legal advice should be sought for any specific individual circumstance. If you find any inaccuracies in this document, please inform PILnet at grfpledge@pilnet.org.

If you are an individual seeking further information and contact details about legal aid providers in Hong Kong, please see the page for Hong Kong on the [Rights in Exile](#) platform.

If you are an organization seeking to be matched with free legal assistance for your organization or your refugee clients, please click [here](#) to learn more about [PILnet's Refugee Legal Assistance Matching Mechanism](#).