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Strengthening Access to Justice – Key Amendments to the Legal Aid and Advice Act

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The Legal Aid and Advice (Amendment) Bill was passed by the Parliament on 19 November 2018. This article discusses the significant amendments under the Bill which are not related to the Legal Aid means test. Information on the means-test related amendments will be addressed in a subsequent article.

Introduction

The Legal Aid Bureau (**LAB**)¹ provides legal services to persons of limited means who cannot afford their own lawyers. In order to qualify for aid, applicants must satisfy a means test and a merits test, to ensure that public funds are properly allocated to the most vulnerable persons, who have reasonable grounds for legal proceedings they wish to pursue. The provision of legal aid is governed by the Legal Aid and Advice Act (Cap.160) (**LAAA**)². The LAAA has undergone various amendments over the years, most recently on 19 November 2018, when the Legal Aid and Advice (Amendment) Bill 2018 (**LAAB 2018**) was passed by Parliament. The LAAB 2018 is intended to simplify the means criteria for legal aid, provide for flexibility to grant aid to applicants who do not satisfy the means criteria, and improve the general administration of legal aid. These changes are targeted for implementation in 2019. We elaborate on the amendments not related to the means test below.

Director of Legal Aid’s Power to Grant Aid in Certain Straightforward Matters

Currently, the merits of an application for legal aid are determined by the Legal Aid Board, comprising the Director of Legal Aid (**DLA**) and two Assigned Solicitors from LAB’s panel of Assigned Solicitors.³ The Board meets fortnightly to make the determination (**Board meetings**).

The LAAB 2018⁴ grants DLA the power to grant aid in certain straightforward matters without having to refer them to the Legal Aid Board. Such matters include uncontested matters relating to probate and letters of administration applications, straightforward divorce proceedings (such as divorce based on four years’ separation) and adoption

matters where the Defendants consent to the proceedings. This would mean that applicants in such proceedings will know the outcome of their application for legal aid more quickly. An applicant can save up to two weeks of waiting time with this new system.

Appointment of Specialist Legal Executives⁵

LAB has a team of 20 Legal Executives (**LEs**) who are paralegals assisting LAB's Legal Officers (**LOs**) with LAB's cases. They do a significant amount of work at LAB which complement the work of the LOs. Amongst other things, LEs act as a liaison between the LOs and the applicants. They draft standard court documents and assist divorce applicants to negotiate and come up with amicable settlements with the other party. They are also trained in handling emotionally distressed applicants and making social service referrals for those who need them. Needless to say, many of them are capable of doing more.⁶

The LAAB 2018 enables the DLA to appoint selected LEs, who have suitable experience and qualifications, as Specialist Legal Executives (**SLEs**). The SLEs will assist the DLA and the other legal officers in LAB to provide legal advice and to represent our applicants in courts in straightforward cases, such as uncontested divorce cases (where the matrimonial assets are \$1 million or less).

Before they are certified as SLEs, the candidates will undergo rigorous training and assessment to ensure that they are well-equipped with, amongst others, the relevant legal knowledge and skills in drafting, client management, court advocacy and etiquette, negotiation and mediation.

The scheme will equip SLEs to handle a portion of the LAB's heavy volume of straightforward cases, in particular uncontested divorce cases. This will enable the LAB's LOs to focus on more complex legal work and help to increase the LAB's efficiency, thereby expediting straightforward cases in LAB.

Fixed Terms for Assigned Solicitors (AS)⁷

LAB maintains a panel of Assigned Solicitors⁸ who are lawyers in private practice representing legally aided clients in cases assigned to them. Assigned Solicitors attend Board meetings together with the DLA to decide whether aid should be granted to cases, based on their merits. At present, once an Assigned Solicitor (**AS**) is appointed to LAB's panel, he or she is appointed permanently, and may remain on the panel even when he or she is no longer available to do LAB's work.

In order to ensure that all the AS on the LAB Panel are available to take on work for LAB, we have introduced a fixed three-year term for AS under the LAAB 2018.

For the administrative convenience of AS who have been actively doing LAB's work and intend to continue to do so, unless the AS expressly opts out, LAB will automatically renew the term of appointment at the end of the three years, if the AS has done at least two cases, or has done at least one case and sat on one board meeting, **or** has sat in two board meetings during his or her fixed term of appointment.

Other amendments

The annex to this article sets out the other amendments to the LAAA that seek to make improvements to the administration of legal aid.

Conclusion

The amendments will ensure that LAB continues to fulfil its mission of providing access to justice for persons of limited means in the many years to come.

LAB aims to provide quality legal aid, advice and assistance to persons of limited means. We offer legal representation in a wide range of civil matters including divorce, monetary claim, custody of children, estate matters and claim for compensation in injury or medical negligence cases. Additionally, LAB is supported by a panel of volunteer lawyers, known as Assigned Solicitors. These lawyers handle cases that require special expertise, such as cases involving Syariah Law.

For further information, please refer to our website: <https://www.mlaw.gov.sg/content/lab/en.html>.

Annex

Other amendments to LAAA that seek to improve the overall administration of legal aid are as follows:

- a. Amendments seeking to simplify the language of certain existing provisions in the LAAA ⁹ ;
- b. Amendments seeking to remove obsolete provisions in the LAAA ¹⁰ ;
- c. Amendments seeking to simplify administrative processes in the LAAA ¹¹ ;
- d. Amendments allowing aid to be granted to an applicant for any proceedings mentioned in Part II of the First Schedule of the LAAA if the DLA is satisfied that those proceedings are, or are likely to be, related to any civil proceedings mentioned in the new section 5(1) of the LAAA. ¹² ;
- e. Amendments which allow the applicant to obtain additional court documents free of charge. ¹³

Please refer to the Explanatory Statement to the LAAB 2018 for more details on these amendments.

Endnotes

1. * We wish to thank Ms Leow Lay May and Mr Zhu Daoyuan (Community Legal Services Division, Ministry of Law) for their comments on an earlier draft of this article. All errors remain entirely our own. For more information on the Legal Aid Bureau, see our website at www.mlaw.gov.sg/lab; and “*Help with a Heart – Stories from the Legal Aid Bureau*”, an E-Publication produced for LAB’s 60th Anniversary in 2018, see <https://www.mlaw.gov.sg/flipbook/index.html#p=1>
2. The Legal Aid and Advice Ordinance was passed at a meeting of the Legislative Assembly on 6 June 1956. The Legal Aid and Advice (Amendment) Bill was passed on 11 June 1958, and the Legal aid and Advice (Amendment) Ordinance, 1958, came into operation on 1 July 1958. For more information on the legislative history of the LAAA, see Chapter 2, The Origins of Legal Aid in Singapore of “Access to Justice – 50 Years of Legal Aid”, Colin Cheong and Lim Hui Min, published by LAB (2008).
3. See section 8 of the LAAA.
4. See clause 7(a) of the LAAA Bill 2018.

5.	See clause 3 of the LAAA Bill 2018.
6.	For more information on the work of the LEs, see the article “ <i>Hidden Figures – The Legal Executives of the Legal Aid Bureau</i> ” in the Law Gazette’s July 2018 issue.
7.	See clause 4 of the LAAA Bill 2018.
8.	As part of LAB’s 60th Anniversary in 2018, LAB’s Assigned Solicitors were featured in the Law Gazette’s March 2018 issue, “ <i>Fighting for the Underdog – The Assigned Solicitors of the Legal Aid Bureau</i> ”, see https://lawgazette.com.sg/news/updates/fighting-for-the-underdog-the-assigned-solicitors-of-the-legal-aid-bureau/
9.	See for example, clause 13 which re-enacts section 16(1) of the LAAA as the new section 16(1) and (1A) to improve its readability. Other clauses which seek to improve readability of the existing provisions in the LAAA are clauses 9, 12, 13, 14, 17 and 18 of the LAAB 2018.
10.	See clause 3 of the LAAA Bill 2018 which deletes section 3(4) of the LAAA. Section 3(4) (which deems the DLA and every Deputy Director of Legal Aid to be public servants within the meaning of the Penal Code (Cap. 224) is obsolete since each of these individuals is already a public servant within the meaning of section 21(1)(h) of the Penal Code.
11.	See clause 6 of the LAAB 2018. The clause (amongst other things) amends section 6 of the LAAA to allow the DLA to administratively specify the form of an application for legal aid, and the documents and information required for that application. The clause also simplifies the process for a person to continue receiving legal aid after attaining 21 years of age, by allowing the person to give to the DLA a written consent to continue the proceedings concerned (instead of submitting a fresh application for legal aid, as is the present case).
12.	See clause 5 of the LAAB 2018. Currently, our applicants can only be given legal aid for civil proceedings which are specifically provided for in section 5(1) of the LAAA. However, with the amendments, LAB can grant aid to applicants for claims for which legal aid is generally not given as long as the proceedings are, or are likely to be, related to the civil proceedings set out in section 5(1) of the LAAA. For example, aid can now be given to an applicant for defamation proceedings if the proceedings are related to a monetary claim. Therefore, aid will no longer be refused just because an applicant has a “mixed” claim.
13.	See clause 10 of the LAAB 2018. Our applicants are currently only able to obtain the judges’ notes of evidence free of charge. The LAAB 2018 allows LAB to prescribe additional court documents to be provided free of charge to the applicants, such as the Grounds of Decision and certified transcripts for their cases.

Tags: L1



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