

For Information

**Legislative Council Panel on
Administration of Justice and Legal Services**

Follow-up to meeting on 29 March 2010

**Five-yearly Review of the Criteria for Assessing the Financial Eligibility of
Legal Aid Applicants**

Background

At the Panel meeting on 29 March 2010, the Administration was requested to explain in writing the basis for arriving at the proposed financial eligibility limits for the Ordinary Legal Aid Scheme (OLAS) and Supplementary Legal Aid Scheme (SLAS). This paper briefs Members on the Administration's position on the matter.

Financial Eligibility Limits

2. In the course of reviewing the criteria for assessing the financial eligibility of legal aid applicants, we have taken note of the views of some quarters of the community that many people, though assessed to be above the current financial eligibility limit (FEL) for legal aid, cannot afford the costs of private litigation and that there is more room to raise the limit for the Supplementary Legal Aid Scheme (SLAS) to benefit the "sandwiched class". We also note that there has not been any real increase to the FEL since it was first set using the financial capacity approach in 1992. In view of the above, the Administration has critically reviewed the appropriateness of the current FELs.

3. We note that when the FELs were first introduced, no formula was used to arrive at the figures and that there was no quantitative elaboration behind them. It was generally accepted at that time that under these FELs, those with net financial resources over and above those limits should have little problem litigating privately in all but exceptional cases.

4. In considering the revised FELs, we have taken into account various factors including percentage of cases with litigation costs below the revised FELs, the levels of financial resources of the prospective applicants eligible for legal aid, and the financial implications arising from the adjustments. We have also taken

into account the fact that it would be inappropriate and unrealistic to pitch the FEL at a level equivalent to the costs levels of cases at the highest end, bearing in mind the fundamental principle that legal aid is not meant to be a “universal service” available to all irrespective of means.

5. With the proposed increase, the types of legal aid cases which costs are over and above the FEL would be significantly reduced. More people who are not eligible under the existing FEL will become eligible for legal aid.

6. We note that some stakeholders including the Legal Aid Services Council have suggested to raise the FEL for SLAS to \$1.3 million. However, the proposed FEL of \$1 million for SLAS is already more than double the current FEL. We consider that the proposed increase to the FEL for SLAS is appropriate, as demonstrated in the example given in the Administration’s Paper (LC Paper No. CB(2)1148/09-10(01) that an applicant from a family of four with a monthly income of \$90,000 with assets of approximately \$0.5 million and a self-occupied flat worth \$6 million will also be eligible for SLAS under the new limit , while according to the population by-census carried out in 2006, 83% of Hong Kong household has monthly domestic income of less than \$40,000.

7. We are of the view that the total package stemmed from the review will raise the eligibility for legal aid in Hong Kong. The proposed changes will also increase the Government’s financial commitment to legal aid. While legal aid is a valuable public benefit, it is nevertheless funded by the public purse. We must therefore exercise prudence in determining who should be eligible for legal aid services so as to strike a balance between public affordability and provision of services to those in genuine need of assistance.

8. We hope that the proposed improvement measures will have the support of the Panel. With that, we can commence the legislative process to bring the improvements into effect so that prospective applicants can take early advantage and reap immediate benefit from the recommended increases.

**Home Affairs Bureau
Legal Aid Department**

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