

**For discussion
On 22 November 2010**

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

Progress of Review of the Supplementary Legal Aid Scheme

PURPOSE

This paper informs Members of the progress of review of the Supplementary Legal Aid Scheme (SLAS).

LATEST DEVELOPMENT

2. As announced in the Chief Executive's 2010-11 Policy Address, in order to complement the SLAS review to be completed by the Legal Aid Services Council (LASC), and to benefit more people from the middle class, the Government has earmarked \$100 million for injection into the SLAS Fund when necessary to expand the scheme to cover more types of cases, such as claims for damages for professional negligence in a wider range of professions, and claims to recover outstanding wages and other employee benefits.

3. As set out in the paper to this Panel for the post-Policy Address briefing on 22 October 2010 (LC Paper No. CB(2)36/10-11(02) refers), the Administration will carefully examine the LASC's recommendations on the SLAS review, and will report to this Panel the Government's specific proposals on the proposed expansion of SLAS in the first half of 2011.

CONSIDERATIONS

4. SLAS was established in 1984 as a self-financing scheme aiming to provide legal aid for the middle class.

5. When SLAS was first introduced, it only covered claims arising from personal injuries or death. The scope was extended subsequently in 1992 to include employees' compensation claims and in 1995 to include medical, dental and legal professional negligence claims. The rates of contribution from damages recovered by successful legal aid persons were reduced in 2000 to 6% (for cases settled before delivery of brief to counsel) and 12% (for other cases). The rates were further reduced in 2005 to 6% and 10%.

6. To maintain its financial viability, SLAS covers mainly cases where the defendants are insured or where there is assured payment of damages. Monetary claims other than employees' compensation (EC) and personal injuries' (PI) claims do not have a high success rate generally. With reference to the experience gained from the operation of the Ordinary Legal Aid Scheme (OLAS), EC and PI claims usually have an average success rate of around 90%, and these types of cases take up more than 90% of all SLAS cases. The success rate for non-PI cases is much lower at around 60%. In addition, damages awarded for EC/PI cases in general are higher than non-PI cases. For example, the damages awarded for EC/PI cases closed in 2008 ranged from about \$1,300 for an EC claim to \$15 million in a traffic accident claim with an average award of \$433,000 per case, while the damages awarded for non-PI cases closed in the same year ranged from about \$3,600 for a contract of employment claim to \$3.2 million and an average award of \$85,000 per case.

7. SLAS covers mainly cases where the defendants are insured or where there is assured payment of damages. So far, SLAS can be financially sustainable mainly because of the high chance of recovery and success of these types of cases. In considering the proposed scope for further expansion of SLAS, the Administration needs to adhere to the principles which help sustain the financial viability of the SLAS Fund, viz –

- (a) The types of cases to be covered by SLAS should have a high chance of recovery and a high success rate;
- (b) Good cost to damage ratio of such cases; and
- (c) Such cases are socially-deserving.

8. In considering the additional types of cases to be included under SLAS, we need to beware that the self-financing design of SLAS dictate that a high success rate is necessary for the financial viability of the SLAS Fund, and that a substantial number of “won” cases may be needed to cover the costs of both parties in one “lost” case.

9. To maintain the financial viability of the SLAS Fund, the legally aided persons need to pay a contribution. The current contribution to SLAS is as follows:

- (a) the application fee of \$1,000 is a non-refundable fee charged to all applicants, regardless of whether legal aid was granted;
- (b) the interim contribution from the legally aided person is currently a flat rate of 25% of the financial eligibility limits for OLAS; and
- (c) the contribution from the damages recovered by the legally aided person is set at 6%, rising to 10% when the counsel has been briefed for trial.

10. We will consider carefully the need for making necessary adjustments to the contribution rates in respect of the extended categories of cases, should the SLAS Fund need to cover additional types of cases.

11. The Legal Aid Department (LAD) has examined the Bar Association’s proposed categories of cases to be included in the expanded scope of SLAS, based on cases dealt with under the OLAS. The relevant statistical analysis is at **Annex 1**. LAD has also attempted a preliminary analysis of some relevant factors to consider in assessing whether certain categories of cases are appropriate for inclusion under SLAS (at **Annex 2**). The Administration has not yet formed an opinion based on these analyses.

12. The LASC is an independent body set up by statute under the Legal Aid Services Council Ordinance (Cap. 489) with the responsibility to provide advice to the Chief Executive on legal aid policy. The LASC

has embarked on a review of the scope of SLAS. It is only proper for the Administration to consider LASC's advice carefully before formulating its views on SLAS expansion. In the course of finalizing the SLAS Review Report, the LASC will take into account various suggestions from different stakeholders (including the two legal professions) on the categories of cases proposed for consideration of inclusion under the extended scope of SLAS. The Administration will study the report of the LASC on SLAS expansion as well as views of relevant stakeholders on the LASC report before we formulate the Administration's position on the matter.

13. We will report to this Panel on the Government's specific proposals for SLAS expansion in the first half of 2011, after carefully considering the LASC report and views of stakeholders. We intend to proceed in accordance with the following working time-table:

December 2010	LASC to complete the SLAS review report.
December 2010 – April 2011	The Administration to examine the LASC report, listen to views from relevant stakeholders, and formulate a position.
May 2011	The Administration to report to the AJLS Panel its specific proposals on the proposed expansion of SLAS.
June 2011	The Administration to submit legislative amendment proposals to LegCo for agreement and subsequent implementation.

**Home Affairs Bureau
Legal Aid Department
November 2010**

Year of Account Finalized	2008						2009					
Outcome Nature of Case ("Miscellaneous" case type)	Favour	Not in Favour	Discharged/ Revoked prior to proceedings	Discharged at AP's Request during proceedings	Discharged/ Revoked during proceedings	Total	Favour	Not in Favour	Discharged/ Revoked prior to proceedings	Discharged at AP's Request during proceedings	Discharged/ Revoked during proceedings	Total
Claims against financial inst. and Ins. Co. concerning financial products / financial services	1	1				2						0
Claims against Insurance Company		1	1			2	4					4
Flat buyer's Claims against Property Developer	1					1						0
Claims against Trust Management Company						0						0
Claims arising from SOG						0	1			1	1	3
Publicly Listed Co.						0						0
Claims by shareholders against publicly listed company						0						0
Claims against Estate Agent						0	1					1
Total :	2	2	1	0	0	5	6	0	0	1	1	8
Total Damages Awarded	500,000.00						1,342,029.45					
Total Damages received by AP	0.00						1,073,729.45					
Total Damages Awarded NOT received by AP	500,000.00						268,300.00					
Total Costs	196,330.67	1,304,224.81	149,684.00				819,780.00			144,410.00	8,364.00	
Total Amount of Costs Wirten off	155,705.00						95,410.50					

Preliminary analysis on the proposed expansion of SLAS

Suggestions of the Bar Association on expansion of SLAS made on 20 July 2010	LAD's preliminary analysis
<p>1. Mis-selling of financial products and claims against independent financial consultants – There are many complaints against mis-selling of financial products including that of the Lehman Brothers. As these financial institutions carry professional indemnity insurance, the expected recovery of cost is good. Also, there are unmet needs for claims from the community, in particular the elderly and retired groups of people. As such, it is suggested that such cases should be included under the extended scope of SLAS.</p>	<p>As far as we know, the average claim for mis-selling of financial products is about \$160,000 per case. Assuming that the case is successful and that the maximum rate of contribution, i.e. 10% is paid to the SLAS Fund, the amount received from a successful case is \$16,000. However, if the case is lost, the costs payable by the Fund to the legal advisors on both sides will be many times that of the contribution received.</p> <p>Considering the low cost to damage ratio, and that the number of claims will be high, extension of SLAS to cover these types of cases will have a substantial impact on the viability of the SLAS Fund.</p> <p>Aggrieved investors in financial products offered by banks and institutions under the jurisdiction of the Hong Kong Monetary Authority (HKMA) may lodge their complaints to the HKMA or the Consumer Council. Under an agreed arrangement in the context</p>

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	<p>of the Lehman Brothers incident, for more effective handling of a large number of complaints, cases received by the Consumer Council are sent to the HKMA for investigation in parallel to that conducted by the relevant institutions. With the consent of the complainants, the HKMA can refer those complaint cases closed with no further action after the completion of the enforcement process to the Consumer Council for its consideration of providing any further advice or assistance. Meritorious and representative cases involving significant consumer interests may also be considered for assistance under the Consumer Legal Action Fund.</p>
<p>2. Mis-selling of insurance products</p>	<p>We understand that there is already a well-established system for handling complaints which involve claims up to \$800,000 per case under the Insurance Claims Complaints Bureau (ICCB). In 2009, the ICCB handled 575 cases, of which 518 were new cases and 57 cases were brought forward from 2008. The main types of cases handled by the ICCB relate to personal insurance products, hospitalization/medical,</p>

<p>Suggestions of the Bar Association on expansion of SLAS made on 20 July 2010</p>	<p>LAD's preliminary analysis</p>
	<p>life/critical illness and travel insurance policies. One-sixth of such cases were mutually settled between the insurers and the complainants through the assistance of the ICCB. Others were presented to the Complaints Panel under the ICCB for deliberation.</p> <p>At present, these types of cases are covered under the Ordinary Legal Aid Scheme (OLAS). In 2008, two out of 12 closed cases were granted legal aid. In 2009, four out of 27 closed cases were granted legal aid.</p>
<p>3. Damages and accidents in buildings: multi-storey ownership</p>	<p>If such claims involve personal injuries, they are already covered under OLAS and SLAS.</p>
<p>4. Estate agents: mis-selling of property – As the estate agents usually carry professional indemnity insurance (with the exception of small agents), though not mandatory, such types of cases are worth consideration for inclusion under the extended scope of SLAS.</p>	<p>At present, these types of cases are covered under the Ordinary Legal Aid Scheme (OLAS). In 2009, one out of 7 closed cases was granted legal aid. No compensation was recovered despite the fact that the case was successful.</p>
<p>5. Claims arising from the sale of</p>	<p>These cases normally involve a</p>

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<p>new flats or offices for sale – As new flats are usually covered by contractors' all risk policy which covers beyond the duration of the certificate of completion to the defects liability period, there is usually a high success rate for these types of claims against the property developers. As such, it is suggested that these cases be included under the extended scope of SLAS.</p>	<p>buyer attempting to rescind a sale agreement for breach of the agreement on the part of the developer. According to past similar cases where legal aid was granted under the OLAS, the success rate for cases involving claims by a flat buyer against a property development company is very low and the median costs for litigation are high.</p>
<p>6. Claims against professional people (Professional negligence claims)</p>	<p>Under the current scope of SLAS, claims against professional negligence of lawyers, dentists and doctors are covered.</p> <p>In considering to extend the scope of SLAS to cover claims against negligence of other types of professionals, factors to consider include whether such professions are well and properly insured.</p>
<p>7. Small marine boat accidents</p>	<p>If such claims involve personal injuries, they are already covered under OLAS and SLAS.</p>
<p>8. Disputes relating to trusts</p>	<p>At present, we do not have much information on hand regarding this</p>

<p>Suggestions of the Bar Association on expansion of SLAS made on 20 July 2010</p>	<p>LAD's preliminary analysis</p>
	<p>type of cases. We welcome more detailed suggestions from relevant stakeholders in this aspect.</p>
<p>9. Companies disputes – minority shareholders rights</p>	<p>In general, these types of disputes do not involve money claims. We welcome more detailed suggestions from relevant stakeholders in this aspect.</p>
<p>10. Sales of goods and provision of services</p>	<p>In general, such claims involve small amounts of money, and the litigation costs involved usually far exceed the values of the damages.</p>
<p>11. Assistance to employees for recovery of wages and appeals relating to Labor Tribunal awards</p>	<p>At present, OLAS covers employee compensation cases. Applicants who pass the means and merits tests can obtain legal aid.</p> <p>If employers make an appeal against the judgment of the Labor Tribunal which are in favor of the employees, the employees can consider to apply for legal aid to defend the appeal.</p> <p>This type of cases has, from cases analyzed, a good success rate.</p>

**Legal Aid Department
November 2010**