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Legislative Council

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From : Clerk to the Legislative Council

To : All Members of the Legislative Council

Council meeting of 28 March 2012

**Proposed resolution under
the Legal Aid Ordinance**

I forward for Members' consideration a proposed resolution which the Secretary for Home Affairs will move at the Council meeting of 28 March 2012 under the Legal Aid Ordinance. The President has directed that "it be printed in the terms in which it was handed in" on the Agenda of the Council.

2. The speech, in both Chinese and English, which the Secretary will deliver when moving the proposed resolution is also attached.



(Mrs Justina LAM)
for Clerk to the Legislative Council

Encl.

Legal Aid Ordinance

Resolution

(Under section 7(b) of the Legal Aid Ordinance (Cap. 91))

Resolved that—

- (a) the Legal Aid Ordinance (Cap. 91) be amended as set out in the Schedule; and
- (b) this Resolution is to come into operation on a day to be appointed by the Secretary for Home Affairs by notice published in the Gazette.

Schedule

Amendments to Legal Aid Ordinance (Cap. 91)

1. **Schedule 2 amended (proceedings for which legal aid may be given under section 5)**
 - (1) Schedule 2, Part II, paragraph 11—
Repeal
“Proceedings”
Substitute
“Any of the following proceedings”.
 - (2) Schedule 2, English text, Part II, paragraph 11(a), before “involving”—
Add
“proceedings”.
 - (3) Schedule 2, Part II, paragraph 11(a), after “futures contracts”—
Add
“, unless the claims are made by the person seeking legal aid on the basis that the person was induced to deal in the derivatives of securities, currency futures or other futures contracts by fraud, deception or misrepresentation”.
 - (4) Schedule 2, English text, Part II, paragraph 11(b), before “for”—
Add
“proceedings”.
 - (5) Schedule 2, English text, Part II, paragraph 11(c), before “involving”—
Add

“proceedings”.

- (6) Schedule 2, English text, Part II, paragraph 11(d), before “arising”—

Add

“proceedings”.

- (7) Schedule 2, English text, Part II, paragraph 11(e), before “for the taxation”—

Add

“proceedings”.

- (8) Schedule 2, English text, Part II, paragraph 11(e), after “the person”—

Add

“seeking legal aid”.

2. Schedule 3 amended (proceedings for which legal aid may be given under section 5A)

- (1) Schedule 3, Part I, paragraph 1—

Repeal

“by the aided person”

Substitute

“, by the person seeking legal aid (*claimant*).”.

- (2) Schedule 3, Part I, paragraph 1—

Repeal

everything after “any person”

Substitute

“(including proceedings for the defence to a counterclaim against the claimant and other proceedings incidental to the civil proceedings); and in a higher court, proceedings that are related to the claim.”.

- (3) Schedule 3, Part I, paragraph 2—

Repeal

“by the aided person”

Substitute

“, by the person seeking legal aid (*claimant*).”.

- (4) Schedule 3, Part I, paragraph 2—

Repeal

“where the claim exceeds \$60,000 or”.

- (5) Schedule 3, Part I, paragraph 2—

Repeal

everything after “exceed \$60,000”

Substitute

“(including proceedings for the defence to a counterclaim against the claimant and other proceedings incidental to the civil proceedings); and in a higher court, proceedings that are related to the claim.”.

- (6) Schedule 3, English text, Part I, paragraph 3, before “proceedings”—

Add

“civil”.

- (7) Schedule 3, Part I, paragraph 3—

Repeal

“by the aided person”.

- (8) Schedule 3, Part I, paragraph 3—

Repeal

“(Cap. 282).”

Substitute

“(Cap. 282) by the person seeking legal aid, in the capacity as an employee (including proceedings incidental to the civil

proceedings); and in a higher court, proceedings that are related to the civil proceedings.”.

- (9) Schedule 3, Part I, paragraph 4—

Repeal

“by the aided person”

Substitute

“, by the person seeking legal aid.”.

- (10) Schedule 3, Part I, paragraph 4—

Repeal

everything after “exceed \$60,000”

Substitute

“(including proceedings for the defence to a counterclaim against the person and other proceedings incidental to the civil proceedings); and in a higher court, proceedings that are related to the claim.”.

- (11) Schedule 3, Part I, after paragraph 4—

Add

- “5. Civil proceedings in the Court of First Instance, Court of Appeal or District Court that are brought, by the person seeking legal aid, in respect of a claim for damages that falls within the following descriptions (including proceedings for the defence to a counterclaim against the person and other proceedings incidental to the civil proceedings), and proceedings in a higher court that are related to the claim—

- (a) the claim is made by the person in respect of the professional negligence of any of the following persons—
- (i) a certified public accountant (practising) as defined by section 2 of the Professional Accountants Ordinance (Cap. 50);

- (ii) a person registered as a registered architect under the Architects Registration Ordinance (Cap. 408);

- (iii) a registered professional engineer as defined by section 2 of the Engineers Registration Ordinance (Cap. 409);

- (iv) a registered professional surveyor as defined by section 2 of the Surveyors Registration Ordinance (Cap. 417);

- (v) a registered professional planner as defined by section 2 of the Planners Registration Ordinance (Cap. 418);

- (vi) an authorized land surveyor as defined by section 2 of the Land Survey Ordinance (Cap. 473);

- (vii) an estate agent as defined by section 2 of the Estate Agents Ordinance (Cap. 511);

- (viii) a person registered as a registered landscape architect under the Landscape Architects Registration Ordinance (Cap. 516); and

- (b) the claim is, in the opinion of the Director, likely to exceed \$60,000.

6. Civil proceedings in the Court of First Instance, Court of Appeal or District Court that are brought, by the person seeking legal aid, in respect of a claim for damages that falls within the following descriptions (including proceedings for the defence to a counterclaim against the person and other proceedings incidental to the civil proceedings), and proceedings in a higher court that are related to the claim—

- (a) the claim is made by the person in respect of the negligence of an insurer, appointed insurance agent or authorized insurance broker, as defined by section 2 of the Insurance Companies Ordinance

- (Cap. 41), in the performance of their functions for the taking out of the personal insurance that is the subject of the claim; and
- (b) the claim is, in the opinion of the Director, likely to exceed \$60,000.
7. Civil proceedings in the Court of First Instance, Court of Appeal or District Court that are brought, by the person seeking legal aid, in respect of a claim for damages that falls within the following descriptions (including proceedings for the defence to a counterclaim against the person and other proceedings incidental to the civil proceedings), and proceedings in a higher court that are related to the claim—
- (a) the claim is made by the person against the legal or beneficial owner of a residential property that is a first-hand property;
- (b) the claim arises from—
- (i) an agreement for sale and purchase of the property, not being an agreement which, because of paragraph 5 or 6 of Part III of this Schedule, is not regarded as having been entered into in respect of the property; or
- (ii) a sale under the agreement described in sub-paragraph (i); and
- (c) the claim is, in the opinion of the Director, likely to exceed \$60,000.
8. Civil proceedings in the Court of First Instance or Court of Appeal that are brought in respect of an appeal under the Labour Tribunal Ordinance (Cap. 25) relating to a claim to which the person seeking legal aid is a party in the capacity as an employee (including proceedings incidental to the civil proceedings), and proceedings in a higher court that are related to the appeal.”

- (12) Schedule 3, after Part II—
Add

“Part III

Interpretation Provisions

1. In this Schedule—
- personal insurance** (個人保險) means an insurance that is taken out by an individual and under which an individual is the insured person, but does not include any such insurance the sole or predominant purpose of which is for any one or more of the following—
- (a) business or commercial insurance;
- (b) industrial insurance;
- (c) investment;
- residential property** (住宅物業) means an immovable property (whether completed or uncompleted) constituting a separate unit constructed or intended to be constructed for residential use.
2. For the purposes of paragraph 7(a) of Part I of this Schedule, a residential property is a first-hand property if no agreement for sale and purchase has ever been entered into in respect of the property.
3. For the purposes of paragraph 2 of this Part, in determining whether an agreement for sale and purchase has been entered into in respect of a residential property, paragraphs 4, 5 and 6 of this Part apply.
4. If an agreement for sale and purchase has been entered into in respect of a residential property and the agreement has been terminated or has been declared void by a court in relation to

that property, the agreement is not to be regarded as having been entered into in respect of that property.

5. If—

- (a) a development, housing estate or phase of a development or housing estate has more than one residential property (whether or not the development, housing estate or phase is completed); and
- (b) all the residential properties in that development, housing estate or phase are sold, or agreed to be sold, to any person under a single agreement for sale and purchase,

the agreement is not to be regarded as having been entered into in respect of any of those properties in that development, housing estate or phase (as the case requires).

6. If, in any case—

- (a) a building has more than one residential property (whether or not the building is completed); and
- (b) all the residential properties of the building are sold, or agreed to be sold, to any person under a single agreement for sale and purchase,

the agreement is not to be regarded as having been entered into in respect of any of those properties.

7. To avoid doubt, in determining whether a residential property is a first-hand property, the agreement for sale and purchase that is the subject of the claim or that relates to the sale giving rise to the claim is not to be taken into account.”

**Speech by the Secretary for Home Affairs
at the Legislative Council sitting on 28 March 2012**

**Proposed Resolution
under the Legal Aid Ordinance**

President,

I move the Resolution standing in my name on the agenda.

Section 7(b) of the Legal Aid Ordinance (Cap. 91) (“the Ordinance”) provides that the Legislative Council (“LegCo”) may by resolution amend Schedules 2 and 3 of the Ordinance, which specify proceedings for which legal aid may be given under the Ordinary Legal Aid Scheme (“OLAS”) and the Supplementary Legal Aid Scheme (“SLAS”) respectively. With the proposed Resolution, the Administration proposes to –

- (a) expand the scope of OLAS 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;
- (b) expand the scope of SLAS to cover claims of the following categories with claim amounts exceeding \$60,000 –
 - (i) professional negligence claims against certified public accountants (practicing), registered architects, registered professional engineers, registered professional surveyors, registered professional planners, authorised land surveyors, estate agents, and registered landscape architects;
 - (ii) negligence claims against insurers or their intermediaries in respect of the taking out of personal insurance products; and
 - (iii) monetary claims against the vendors in the sale of first-hand completed or uncompleted residential properties; and
- (c) expand the scope of SLAS to cover representation for employees in appeals brought by either the employer or the employee against awards made by the Labour Tribunal, regardless of the amount in dispute.

In the 2010-11 Policy Address, the Chief Executive announced that to complement the SLAS review to be completed by the Legal Aid Services Council (“LASC”), and to benefit more middle-class people, the Government would earmark \$100 million for injection into the SLAS Fund when necessary to expand the scheme to cover more types of cases.

Having carefully examined the recommendations of the LASC on the SLAS review, and considered the views of the LegCo Panel on Administration of Justice and Legal Services (“AJLS Panel”) and relevant stakeholders (including the two legal professional bodies), we propose to expand the scope of SLAS as set out above. In the meantime, noting that structured financial products are increasingly common in Hong Kong, the Administration has conducted a study and recommended that the scope of OLAS be expanded as mentioned above.

We also propose that an increased application fee and enhanced rates of contribution be applicable to most types of new cases to be covered under the expanded SLAS to observe the self-financing principle of the SLAS Fund. Subject to the passage of the Resolution at LegCo, amendment regulations will be made to implement the revised application fee and rates of contribution. Subject to LegCo’s passage of the Resolution and the tabling of the amendment regulations at this Council for negative vetting, we will seek approval from the LegCo Finance Committee on the proposed injection of \$100 million into the SLAS Fund in mid-2012.

We briefed the LegCo AJLS Panel on the Administration’s proposals and the proposed legislative amendments in March and December 2011 respectively, and obtained the Panel’s support. To implement the expansion of the scope of OLAS and SLAS, the proposed Resolution needs to be passed by this Council.

I invite Members to support the Resolution.