

**立法會**  
***Legislative Council***

LC Paper No. LS44/11-12

**Paper for the House Committee Meeting  
on 23 March 2012**

**Legal Service Division Report on  
Proposed Resolution under section 7(b)  
of the Legal Aid Ordinance (Cap. 91)**

The Secretary for Home Affairs (the Secretary) has given notice to move a motion at the Legislative Council's meeting to be held on 28 March 2012 to seek the approval of the Legislative Council to amend Schedules 2 and 3 to the Legal Aid Ordinance (Cap. 91) (the Ordinance).

2. The Ordinance provides for the granting of legal aid in civil actions to persons of limited means. Under section 5 of the Ordinance, a person whose financial resources do not exceed \$260,000 is eligible for legal aid under a scheme which is commonly known as the Ordinary Legal Aid Scheme (OLAS). Under section 5A of the Ordinance, a person whose financial resources exceed \$260,000 but do not exceed \$1.3 million is eligible for legal aid under the Supplementary Legal Aid Scheme (SLAS). Schedule 2 lists the proceedings for which legal aid may be given under section 5. Schedule 3 stipulates the proceedings for which legal aid may be given under section 5A. Hence, Schedules 2 and 3 must be amended to expand the scope of the two schemes.

3. Currently, proceedings involving money claims in derivatives of securities, currency futures or other futures contracts are excluded from OLAS under Part II of Schedule 2. The proposed amendments to Part II of Schedule 2 mainly seek to cover money claims in derivatives of securities, currency futures or other future contracts when fraud, misrepresentation or deception is involved in respect of the sale.

4. The proposed amendments to Schedule 3 mainly seek to cover the following new categories of claims or proceedings -

- (a) 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 (proposed new paragraph 5 to Part I of Schedule 3);

- (ii) negligence claims against insurers or their intermediaries in respect of the taking out of personal insurance products (proposed new paragraph 6 to Part I of Schedule 3); and
  - (iii) monetary claims against the vendors in the sale of first-hand completed or uncompleted residential properties (proposed new paragraph 7 to Part I of Schedule 3).\*
- (b) regardless of the claim amount, representation for employees in appeals brought by either the employer or the employee against awards made by the Labour Tribunal (proposed new paragraph 8 to Part I of Schedule 3).

Also added is a new Part III which contains the definition and provisions for the interpretation of the expressions "personal insurance" and "residential property that is a first-hand property".

5. Certain textual amendments are also proposed to the existing provisions of Schedules 2 and 3 to the effect that incidental proceedings, proceedings for the defence to counterclaims, and proceedings related to the original claim in higher courts, as the case may be, would be covered. According to the Administration, the proposed amendments are to clarify existing policies by express provisions.

6. According to the draft speech of the Secretary, the proposed expansion of scope of SLAS is to implement the 2010-11 Policy Address to take forward the recommendations of the Legal Aid Services Council and to benefit more middle-class people. The proposed expansion of scope of OLAS is to take note of the fact that structured financial products are increasingly common in Hong Kong. Members may refer to the LegCo Brief (File Ref.: HAB/CR 19/1/2) issued by the Home Affairs Bureau in March 2012 for background and further information.

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\* These new claims will be subject to revised application fees and revised rate of contribution which are to be implemented by amendments to be made to Legal Aid Regulations (Cap. 91 sub. leg. A) and the Legal Aid (Assessment of Resources and Contributions) Regulations (Cap. 91 sub. leg. B).

7. At its meetings on 28 March and 20 December 2011, the Panel on Administration of Justice Legal Services (the Panel) was briefed on the Administration's legislative proposal for expanding the scope of OLAS and SLAS. Views were received from the two legal professional bodies at the meeting of 28 March 2011 and they supported the proposed expansion. Members of the Panel have been supportive of the proposed expansion and its early implementation. Some members considered the proposed expansion inadequate and, in particular, urged the Administration to further expand the scope of SLAS to include claims against property developers by minority owners in respect of compulsory sales of building units and claims against sale of goods and provision of services. Members may wish to refer to the minutes of the Panel meeting (LC Paper No. CB(2)259/11-12) for further information.

8. The proposed amendments, if approved by the Legislative Council, will come into operation on a day to be appointed by the Secretary by notice published in the Gazette.

9. The Legal Service Division is seeking clarification from the Administration on some drafting issues. A further report will be issued, if necessary.

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