

立法會
Legislative Council

LC Paper No. CB(2)2632/11-12

(These minutes have been seen
by the Administration)

Ref : CB2/SS/3/11

**Subcommittee on Proposed Resolution under
Section 7(b) of the Legal Aid Ordinance (Cap. 91)**

**Minutes of the first meeting
held on Friday, 30 March 2012, at 4:30 pm
in Conference Room 2B of the Legislative Council Complex**

Members present : Dr Hon Margaret NG (Chairman)
Hon TAM Yiu-chung, GBS, JP
Hon Cyd HO Sau-lan
Dr Hon Priscilla LEUNG Mei-fun, JP

Member absent : Hon Albert HO Chun-yan

Public Officers attending : Item II
Home Affairs Bureau

Ms Aubrey FUNG Ngar-wai
Principal Assistant Secretary for Home Affairs
(Civic Affairs) 2

Mr Michael KWAN Ke-lin
Assistant Secretary for Home Affairs (2)1

Legal Aid Department

Ms Alice CHUNG Yee-ling
Deputy Director of Legal Aid (Administration)

Mr Thomas Edward KWONG
Deputy Director of Legal Aid (Application & Processing)

Ms Juliana CHAN Oi-yung
Assistant Director of Legal Aid (Policy & Development)

Department of Justice

Ms Frances HUI Hang-ka
Senior Government Counsel

Clerk in attendance : Ms Amy YU
Chief Council Secretary (2)6

Staff in attendance : Ms Clara TAM
Assistant Legal Adviser 9

Ms Wendy LO
Council Secretary (2)3

Miss Meisy KWOK
Legislative Assistant (2)6

Action

I. Election of Chairman

Dr Margaret NG was elected Chairman of the Subcommittee.

II. Meeting with the Administration

[HAB/CR 19/1/2, LS44/11-12, LC Paper Nos.
CB(2)1559/11-12(02) to (07)]

2. The Subcommittee deliberated (index of proceedings attached at Annex).

3. Members agreed that it was not necessary to invite views from relevant organizations on the legislative proposals.

Action

Follow-up actions required

Admin

4. The Administration was requested to –

- (a) provide for members' reference an analysis, under different scenarios, on the amount of contributions and legal costs payable by the aided persons in appeals against awards made by Labour Tribunal under the existing Ordinary Legal Aid Scheme and the proposed expanded Supplementary Legal Aid Scheme respectively;
- (b) explain the rationale for replacing "提出" by "提起" in the Chinese text of the phrase "civil proceedings brought by" (提出的民事法律程序) in Part I to Schedule 3 of the Legal Aid Ordinance (Cap. 91); and
- (c) provide illustrations on how the Legal Aid Regulations (Cap. 91A) and the Legal Aid (Assessment of Resources and Contributions) Regulations (Cap. 91B) would need to be amended to implement the revised application fee and rates of contribution, subject to the passage of the proposed resolution by the Legislative Council.

Date of next meeting

5. Members agreed that subject to the views of members on the information to be provided by the Administration, the Subcommittee would consider whether it was necessary to hold another meeting on 12 April 2012 to continue the discussion with the Administration.

(Post-meeting note: With the concurrence of the Chairman, the next meeting had been scheduled for 12 April 2012 at 8:30 am.)

III. Any other business

6. There being no other business, the meeting ended at 6:03 pm.

Council Business Division 2
Legislative Council Secretariat
27 July 2012

**Proceedings of the meeting of the
Subcommittee on Proposed Resolution under
Section 7(b) of the Legal Aid Ordinance (Cap. 91)
on Friday, 30 March 2012, at 4:30 pm
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker	Subject	Action required
000226 - 000420	Dr Margaret NG Ms Cyd HO Mr TAM Yiu-chung	Election of Chairman Opening remarks of Chairman	
000421 - 001212	Chairman Admin	Briefing by the Administration on the proposed amendments to Schedules 2 and 3 to the Legal Aid Ordinance (Cap. 91) ("LAO"); the amendments to be made to the Legal Aid Regulations (Cap. 91A) ("LAR") and the Legal Aid (Assessment of Resources and Contributions) Regulations (Cap. 91B) ("LA(ARC)R") to implement the revised application fee and rates of contribution under the expanded Supplementary Legal Aid Scheme ("SLAS") subject to the passage of the proposed resolution by the Legislative Council ("LegCo"); as well as the relevant legislative timetable. [HAB/CR 19/1/2, LC Paper Nos. CB(2)1559/11-12(02) and (06)]	
001213 - 001246	Chairman Admin	Discussions on the need to invite views from relevant organizations on the legislative proposals.	
001247 - 003050	Chairman Ms Cyd HO Admin	Ms Cyd HO sought information on the amount of contributions and costs payable; as well as damages to be recovered by an aided person in an Labour Tribunal ("LT") appeal case under the proposed expansion of SLAS. The Administration explained with examples and highlighted that – (a) an applicant had to satisfy the means and merits tests for the grant of legal aid; (b) the aided person had to pay an initial application fee of \$1,000 and an interim contribution of \$65,000 under the expanded SLAS; (c) if the aided person was successful in the appeal, the damages recovered together with the initial application fee and interim contribution would be refunded to him/her subject to the deduction of the Common Fund costs (i.e. fees paid to the assigned lawyer which were not recoverable from the employer) and a percentage of the award recovered to the SLAS Fund;	

Time marker	Speaker	Subject	Action required
		<p>(d) in successful cases, most of the costs incurred in the proceedings would be borne by the losing party and the amount of Common Fund costs paid by the aided person was normally a few thousands dollars in most cases; and</p> <p>(e) in unsuccessful cases, the application fee and interim contribution paid by the aided person would be applied towards the costs incurred in the proceedings and the shortfall, if any, would be borne by the SLAS Fund.</p> <p>The Administration was requested to provide an analysis, under different scenarios, on the amount of contributions and legal costs payable by the aided persons in appeals against LT awards under the existing Ordinary Legal Aid Scheme ("OLAS") and the proposed expanded SLAS respectively.</p>	Admin (para 4(a) of minutes)
003051 - 003215	Ms Cyd HO Chairman Admin	<p>Ms Cyd HO's view that a less stringent approach should be adopted in setting the interim contribution for appeals against LT awards under the proposed expanded SLAS, having regard to the difficulties of low-paid employees in forking out the interim contribution.</p> <p>The Administration's response that –</p> <p>(a) in consideration of the difficulties faced by employees in LT appeals, the Administration had accepted the recommendation of the Legal Aid Services Council to exempt this type of cases from the increased rates of application fee and contribution proposed to be applied to other new types of cases under the expanded SLAS; and</p> <p>(b) the Administration, however, did not agree to further relax the requirement for interim contribution as this violated the self-financing principle of SLAS and would have significant read-across implications on other types of SLAS claims.</p>	
003216 - 003624	Mr TAM Yiu-chung Chairman Admin	Information provided by the Administration on provision of legal aid for employees' recovery of wages owed by insolvent employers under OLAS.	
003625 – 004311	Ms Cyd HO Mr TAM Yiu-chung Chairman Admin	Ms Cyd HO's expression of concern that individual employees who were dismissed unreasonably and were not eligible for applying for ex-gratia payment from the Protection of Wages on Insolvency Fund would have difficulties in forking out the interim contribution under the expanded SLAS to pursue their claims.	

Time marker	Speaker	Subject	Action required
		<p>Mr TAM Yiu-chung's views that -</p> <p>(a) it was the view of the labour associations that employee claims on appeal from LT should be exempted from the means test but the Administration had not taken on board such recommendation; and</p> <p>(b) nevertheless, with the increase in the financial eligibility limits for legal aid, it was expected more employees would be granted legal aid in appeals against LT awards.</p>	
004312 – 004653	Chairman Admin	<p><u>Scrutiny of detailed provisions</u> [HAB/CR 19/1/2 and LC Paper No. CB(2)1559/11-12(02)]</p> <p><u>Paragraph 11 of Part II to Schedule 2 of LAO</u></p>	
004654 - 005337	Chairman Admin ALA9 Ms Cyd HO	<p><u>Part I to Schedule 3 of LAO</u></p> <p>Ms Cyd HO's enquiries about the reason for replacing "提出" by "提起" in the Chinese text of the phrase "civil proceedings brought by" (提出的民事法律程序) in Part I to Schedule 3 of LAO.</p> <p>The Administration's explanation that the proposed amendment sought to achieve consistency with other existing legislation and it was more appropriate to use "提起" to match with "訴訟" or "法律程序".</p> <p>Members queried the appropriateness of using "提起" instead of "提出" to match with "法律程序" in Chinese.</p> <p>The Administration was requested to explain the rationale for replacing "提出" by "提起" in Part I to Schedule 3 of LAO.</p>	Admin (para 4(b) of minutes)
005338 - 005425	Chairman Admin	<u>Paragraph 5 of Part I to Schedule 3</u>	
005426 - 005537	Chairman Admin	<u>Paragraph 6 of Part I to Schedule 3</u>	
005538 - 005727	Chairman ALA9 Admin	<u>Paragraph 7 of Part I to Schedule 3</u>	
005728 - 005852	Chairman Admin Ms Cyd HO	<u>Paragraph 8 of Part I to Schedule 3</u>	

Time marker	Speaker	Subject	Action required
005853 - 011205	Chairman Admin ALA9	<p><u>The new Part III (Interpretation Provisions) to Schedule 3</u></p> <p>Regarding the definition of "residential property" (住宅物業) in paragraph 1 of the new Part III to Schedule 3, the legal adviser to the Subcommittee's view that as the description of property in agreements for sale and purchase of a property only included a reference to the exclusive right to occupy the unit, the proposed description of "constructed or intended to be constructed" in the definition of "first-hand residential property" might not be necessary as legal aid applicants might have difficulties in providing information on whether the property concerned was "constructed or intended to be constructed" for residential purpose.</p> <p>The Administration explained that as it was its policy intent to cover pre-sale of first-hand residential properties, it was considered appropriate to retain the phrase "constructed or intended to be constructed" in the definition of "first-hand residential property".</p> <p>The Administration informed members that in the light of the comment of the legal adviser to the Subcommittee, the Administration agreed to include additional provisions in Part III to Schedule 3 to the effect that agreements for sale and purchase of residential properties between a company and its associate corporations or holding companies would not be regarded as an agreement that had been entered into in respect of the residential properties involved, so as to block this possible escape route for excluding monetary claims in the sale of first-hand residential properties from the purview of the expanded SLAS.</p>	
011206 - 012330	Chairman Admin	Briefing by the Administration on the proposed amendments to be made to LAR and LA(ARC)R to implement the revised application fee, and contribution rates under the expanded SLAS subject to the passage of the proposed resolution by LegCo. [LC Paper No. CB(2)1559/11-12(06)]	
012331-013231	Chairman Admin	The Administration was requested to provide illustrations on how the LAR and the LA(ARC)R would need to be amended to achieve the policy to the Subcommittee.	Admin (para 4(c) of minutes)
013232-013407	Chairman Ms Priscilla LEUNG	Date of next meeting	