

**For information on
30 March 2012**

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

INTRODUCTION

In proposing the expansion of the scope of the Ordinary Legal Aid Scheme (“OLAS”) and the Supplementary Legal Aid Scheme (“SLAS”), the Administration has also proposed to provide for the application fees, and the rates of contribution to be levied, in relation to the new types of civil proceedings under the expanded SLAS. The Legal Aid Regulations (Cap. 91A) (“LAR”) and the Legal Aid (Assessment of Resources and Contributions) Regulations (Cap. 91B) (“LA(ARC)R”) will have to be amended to effect the revised application fees and rates of contribution.

PROPOSED RESOLUTION UNDER THE LEGAL AID ORDINANCE

2. The Administration has given notice to the Legislative Council (“LegCo”) to move a motion for the passage of a resolution pursuant to section 7(b) of the Legal Aid Ordinance (Cap. 91) (“LAO”) to amend Schedules 2 and 3 of the LAO to expand the scope of OLAS and SLAS to cover more types of civil proceedings (“the Resolution”) (the Administration’s LegCo Brief ref. HAB/CR 19/1/2 refers). As far as SLAS is concerned, we propose –

- (a) to include 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

- (b) to 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.

AMENDMENT REGULATIONS

3. Subject to the passage of the proposed Resolution, the Chief Executive-in-Council will be invited to amend the LAR and the LA(ARC)R by amendment regulations to provide for the application fees, and the rate of interim and final contributions to be levied, in relation to some of the new types of civil proceedings under the expanded SLAS, and to adjust the application fees and the rates of contribution for certain civil proceedings under the existing SLAS as follows –

- (a) for the application fee and rates of contribution for any of the new types of civil proceedings mentioned in paragraph 2(a)(i) to (iii) above –
 - (i) the application fee be set at \$5,000;
 - (ii) the interim contribution rate be set at 10% of the assessed financial resources of the aided person or the current interim contribution payable by an aided person under SLAS as set out in Regulation 14(a) of the LA(ARC)R, whichever is the higher; and
 - (iii) the rate of levy on value of property recovered in the final contribution be set at 20% of the value of property recovered, and 15% where a claim is settled prior to delivery of a brief for attendance at trial to counsel;
- (b) for any of the civil proceedings in relation to existing type of claim for medical, dental and legal professional negligence, the application fee and rates of contribution be set at the same level as proposed in paragraph 3(a) above; and
- (c) for application for legal aid for representation for employees in respect of civil proceedings relating to appeals under the Labour Tribunal Ordinance (Cap. 25), the application fee and rate of contribution be set at the level under the existing SLAS before the expansion of scope¹.

¹ For the calculation of final contribution for such proceedings, the rate of contribution is 10% of the value of property recovered, and 6% where the claim is settled prior to delivery of a brief to counsel for attendance at the initial substantive proceeding in the Court of First Instance.

4. The proposed amendments to the LAR and LA(ARC)R to effect the proposed measures in paragraph 3 above are summarised at **Annex**.

ADVICE SOUGHT

5. Members are invited to note the above proposed amendments.

**Home Affairs Bureau
March 2012**

**Proposed amendments to the Legal Aid Regulations (Cap. 91A) (“LAR”)
and the Legal Aid (Assessment of Resources and Contributions) Regulations (Cap. 91B) (“LA(ARC)R”)
under the Legal Aid Ordinance (Cap. 91) (“LAO”) as amended by the proposed resolution to expand
the scope of the Ordinary Legal Aid Scheme (“OLAS”) and the Supplementary Legal Aid Scheme (“SLAS”)**

Proposed measures	Proposed amendments to give effect to the proposed measures
<p>1.(a) The application fee for the new types of civil proceedings under the expanded SLAS (other than those in relation to appeals under the Labour Tribunal Ordinance (Cap. 25) (“LTO”) as set out in the new paragraph 8 of Part I of Schedule 3 to the proposed amended LAO) would be set at \$5,000;</p> <p>(b) the existing application fee for civil proceedings for medical, dental or legal professional negligence claims (i.e. those referred to in paragraph 4 of Part I of Schedule 3 to the LAO) is proposed to be revised to \$5,000; and</p> <p>(c) the application fee for representation for employees for civil proceedings relating to appeals under the LTO (i.e.</p>	<p>Regulation 3 of the LAR is proposed to be amended to specify that the application fee for legal aid in respect of civil proceedings referred to in paragraph 1, 2, 3 or the new paragraph 8 of Part I of Schedule 3 to the proposed amended LAO (i.e. the existing types of civil proceedings and civil proceedings relating to appeals under the LTO) should be \$1,000.</p> <p>Regulation 3 of the LAR is proposed to be amended to specify that the application fee for legal aid in respect of the civil proceedings referred to in paragraph 4 or the new paragraph 5, 6 or 7 of Part I of Schedule 3 of the proposed amended LAO (i.e. new types of civil proceedings apart from those relating to appeals under LTO, and existing type of civil proceedings for professional negligence claims) should be \$5,000.</p>

Proposed measures	Proposed amendments to give effect to the proposed measures
<p>those in new paragraph 8 of Part I of Schedule 3 to the proposed amended LAO) is proposed to be set at the same level as that under the existing SLAS at \$1,000.</p>	
<p>2.(a) The rates of interim contribution for the new types of civil proceedings under the expanded SLAS (other than those in relation to appeals under the LTO as set out in new paragraph 8 of Part I of Schedule 3 to the proposed amended LAO) would be set as follows –</p> <p>(i) the interim contribution rate be set at 10% of the assessed financial resources of the aided person or the current interim contribution payable by an aided person under SLAS as set out in the existing Regulation 14(a) of the LA(ARC)R, whichever is the higher;</p>	<p>Regulation 14 of the LA(ARC)R (i.e. interim contributions under SLAS) is proposed to be amended as follows –</p> <p>Specify that for civil proceedings referred to in paragraph 1, 2, 3 or the new paragraph 8 of Part I of Schedule 3 to the proposed amended LAO (i.e. the existing types of civil proceedings and appeals under the LTO), the interim contribution rate is the rate as set out in the existing Regulation 14(a) of the LA(ARC)R.</p> <p>Specify that for civil proceedings referred to in paragraph 4 or the new paragraph 5, 6 or 7 of Part I of Schedule 3 to the proposed amended LAO (i.e. new types of civil proceedings apart from those relating to appeals under LTO, and the existing types of civil proceedings for professional negligence claims), the interim contribution rate is 10% of the assessed financial resources of the aided person or the current interim contribution rate payable as set out in the existing Regulation 14(a) of the LA(ARC)R, whichever is the higher.</p>

Proposed measures	Proposed amendments to give effect to the proposed measures
<p>(b) the interim contribution rate for civil proceedings in relation to the existing type of claim for medical, dental and legal professional negligence (i.e. those in paragraph 4 of Part I of Schedule 3 to the LAO) is proposed to be revised as set out in 2(a)(i) above; and</p> <p>(c) the interim contribution rate for civil proceedings in relation to appeals under the LTO as set out in new paragraph 8 of Part I of Schedule 3 to the proposed amended LAO is proposed to be set at the same level as that under SLAS as set out in the existing Regulation 14(a) of the LA(ARC)R.</p>	
<p>3.(a) The rate of final contribution for the new types of civil proceedings under the expanded SLAS (other than those in relation to appeals under the LTO as set out in new paragraph 8 of Part I of Schedule 3 to the proposed</p>	<p>The existing Part III of Schedule 3 to the LA(ARC)R (i.e. final contributions) is proposed to be amended as follows –</p> <p>Specify that for civil proceedings referred to in paragraph 1, 2, 3, or the new paragraph 8 of Part I of Schedule 3 to the proposed amended LAO (i.e. the existing types of civil proceedings and those relating to appeals</p>

Proposed measures	Proposed amendments to give effect to the proposed measures
<p>amended LAO) would be set as follows –</p> <p>(i) the rate of levy on value of property recovered in the final contribution be set at 20% of the value of property recovered, and 15% where a claim is settled prior to delivery of a brief for attendance at trial to counsel;</p> <p>(b) the rate of levy on value of property recovered in the final contribution for proceedings in relation to the existing type of claim for medical, dental and legal professional negligence (i.e. those in paragraph 4 of Part I of Schedule 3 to the LAO) is proposed to be revised as set out in 3(a)(i) above; and</p> <p>(c) the rate of levy on value of property recovered in the final contribution for civil proceedings in relation to appeals under the LTO as set out in the new</p>	<p>under the LTO), the rate of contribution is 10% of the value of property recovered, and 6% where the claim is settled prior to delivery of a brief to counsel for attendance at trial (for civil proceedings referred to in paragraph 1, 2, or 3 of Part I of Schedule 3 to the proposed amended LAO) or for attendance at the initial substantive proceeding in the Court of First Instance (for civil proceedings referred to in the new paragraph 8 of Part I of Schedule 3 to the proposed amended LAO).</p> <p>Specify that for civil proceedings referred to in paragraph 4, or the new paragraph 5, 6 or 7 of Part I of Schedule 3 to the proposed amended LAO (i.e. new types of civil proceedings apart from those relating to appeals under LTO, and existing types of civil proceedings for professional negligence claims), the rate of contribution is 20% of the value of property recovered, and 15% where the claim is settled prior to delivery of a brief to counsel for attendance at trial.</p>

Proposed measures	Proposed amendments to give effect to the proposed measures
<p>paragraph 8 of Part I of Schedule 3 to the proposed amended LAO, is proposed to be set at the same level as that under the existing SLAS at 10%, and 6% where the claim is settled prior to delivery of a brief to counsel for attendance at the initial substantive proceeding in the Court of First Instance.</p>	