

**For discussion  
on 20 December 2011**

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

**Further Expansion of the Supplementary Legal Aid Scheme**

**PURPOSE**

This paper informs Members of the progress of amendments to the Legal Aid Ordinance (“LAO”) (Cap. 91) and Regulations in respect of the Ordinary Legal Aid Scheme (OLAS) and expansion of the Supplementary Legal Aid Scheme (SLAS), and reports the Administration’s views on other proposals to expand SLAS.

**PROGRESS OF LEGISLATIVE AMENDMENTS**

2. At the Panel meeting held on 28 March 2011, the Administration briefed Members on the proposed expansion of the SLAS (vide LC paper No. CB(2)1320/10-11(01)). The Administration’s proposals are recapped at **Annex** for reference. In recommending the further expansion of SLAS, we have adhered to the principles which help sustain the financial viability of the SLAS Fund. In sum, the types of cases to be covered by SLAS should –

- (a) deserve priority for public funding in the sense that significant injury or injustice to the individual is involved; i.e. socially deserving;
- (b) involve monetary claims and have a reasonably good chance of recovering damages; and
- (c) have a good cost to damage ratio.

3. We are working on the proposed legislative amendments to put in place the proposals at Annex. We aim to submit the legislative proposals to the Legislative Council (“LegCo”) for consideration and approval in early 2012. Subject to LegCo’s approval, we will seek approval from LegCo Finance Committee (“FC”) on the proposed injection of \$100 million to the SLAS Fund by mid-2012.

## **THE ADMINISTRATION’S VIEWS ON OTHER PROPOSALS**

### **(a) Derivative Claims**

4. Legal aid is currently not available for derivatives and futures claims under OLAS. The legislative intent behind relevant provisions in the LAO<sup>1</sup> is established on the premise that it is inappropriate to spend public funds to aid persons who incur losses when engaging in speculative activities. Nonetheless, noting that structured financial products are increasingly commonplace in Hong Kong, the Administration has conducted a study and recommended to amend the LAO with a view to enabling money claims in derivatives of securities, currency futures or other futures contracts to be covered under the OLAS when fraud, misrepresentation or deception was involved at the time of purchase. We will take forward the legislative amendment to implement the recommendation together with the legislative proposals at Annex in the same amendment exercise.

### **(b) Claims against Property Developers by Minority Owners in respect of Compulsory Sales of Building Units**

5. At the Panel meeting on 28 March 2011, the Administration was requested to re-consider expanding the scope of SLAS to cover claims against property developers by minority owners in respect of compulsory sales of building units.

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<sup>1</sup> It is stipulated in Schedule 2 of the LAO that proceedings involving money claims in derivatives of securities, currency futures or other futures contracts are excluded from the purview of the Ordinance.

6. After careful consideration, we do not agree that SLAS should be expanded to cover such claims as this is inconsistent with the self-financing principle of SLAS. As evidenced in the past rulings of the Lands Tribunal, the chance of granting a compulsory sale order is very high (from 1999 to March 2011, the Lands Tribunal had processed 27 applications, of which 26 were approved). Assuming continuation of this trend, the chance of a minority owner granted with legal aid losing the case and having to bear all the costs is very high. Moreover, very often, a minority owner who appears before the Lands Tribunal seeks to resist the majority owner's application for compulsory sale or, if the application is to be granted, the terms and conditions for the sale. In other words, the issues in debate are often related more to valuation rather than legal matters, and no monetary damages are involved.

7. In the light of the above, we do not recommend expanding SLAS to cover claims by minority owners in respect of compulsory sales of building units. That said, the Administration will continue to provide administrative support to owners of old buildings who may be involved in compulsory sale for redevelopment cases, such as mediation service, outreach support service for elderly owners and enhanced public education.

### **(c) Claims against Sale of Goods and Provision of Services**

8. On claims against sale of goods and services, we note that some Members did not agree with the Administration's decision of not including claims arising from the sale of goods and provision of services under SLAS on the grounds of low success rate and high cost-to-damages ratio of these claims. Some Members considered that success rate should not be a consideration as all applications for legal aid had to pass the merits test. In addition, there was a suggestion that a higher threshold be imposed on the amount of such claims.

9. The fundamental operating principles of SLAS are set out in paragraphs 12 to 15 below. After careful deliberation, we do not agree with the proposed inclusion of claims arising out of sale of goods and provision of services under the expanded scope of SLAS, because such claims generally involve small amounts of money and the litigation costs involved usually far exceed the values of the damages. Owing to the small amounts of money involved in such claims, not much contribution is expected to be generated from

successful cases. On the other hand, one lost case could have a significant impact on the SLAS Fund which has to bear the costs of both sides.

10. Furthermore, we note that the Consumer Legal Action Fund is available to provide assistance in selected cases where significant consumer interests or issues of a substantial impact on consumers are involved. We believe that consumer interests in that regard have been taken care of.

11. As the scope of “sale of goods” and “provision of services” could be very broad, virtually covering all types of goods and every service provided by any profession, and coupled with consideration of the high cost-to-damages ratio, we do not recommend to expand SLAS to these cases.

## **BACKGROUND INFORMATION**

12. SLAS came into operation in 1984 and aimed at providing legal assistance to people whose financial resources exceeded the upper limit allowed under OLAS<sup>2</sup>, but below a certain amount<sup>3</sup>. When SLAS was established<sup>4</sup>, it was intended to be self-financing, drawing its funds from contributions from aided persons on the basis of the damages awarded, the costs recovered in successful cases and the application and registration fees payable by applicants. Because of the need to enable the SLAS to remain self-financing, the scope of the scheme is confined to only those actions involving monetary claims and which have a good chance of success. All along, the guiding principles governing the scope of proceedings covered by SLAS should be those which deserve priority for public funding in the sense that significant injury or injustice to the individual, as distinct from that to a commercial concern or a group of citizens, is involved (i.e. socially deserving); and which involve monetary claims and have a reasonably good chance of success.

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<sup>2</sup> With effect from May 2011, the financial eligibility limit for OLAS was increased from \$175,800 to \$260,000. OLAS ensures that no one will be denied access to justice because of the lack of means.

<sup>3</sup> With effect from May 2011, the financial eligibility limit for SLAS was increased from \$488,400 to \$1.3 million.

<sup>4</sup> The Lotteries Fund set aside a sum of \$1 million as a loan facility to be drawn upon for setting up the fund for SLAS.

13. At the time when SLAS was first introduced, it only covered claims arising from personal injuries or death. SLAS was expanded in 1991 to include employees' compensation claims and in 1995 to include civil proceedings for medical, dental and legal professional negligence claims<sup>5</sup>. To maintain its financial viability, SLAS covers mainly cases where the defendants are insured or where the likelihood for payment of damages is high (i.e. claims for personal injuries or death and work-related accidents). The high chance of recovery of damages helps ensure, to a large extent, the financial sustainability of the scheme.

14. As at 31 October 2011, SLAS had a balance of \$89.8 million and handled an average of 100 applications every year with about 68% of the applications being successful in obtaining assistance under the Scheme. From the experience of the two legal aid schemes in Hong Kong, the success rate of personal injuries / fatal accident / employees' compensation claims is high (about 90%), while that in respect of professional negligence cases is relatively lower (less than 70%), presumably due to their complexity. SLAS has achieved the present results by having a steady and substantial income flow and losing only few cases, bearing in mind that if an aided person is unsuccessful in his claim, the SLAS has to pay the winning party's legal costs which, for a substantial personal injuries or professional negligence action concluded after trial and appeals, can accumulate to some \$10 million.

## **ADVICE SOUGHT**

15. Members are invited to note the progress for information.

**Home Affairs Bureau  
Legal Aid Department  
December 2011**

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<sup>5</sup> In June 1995, the FC approved a one-off grant of \$27 million to the SLAS to enable it to extend its scope to cover claims for damages arising from medical and dental negligence and professional negligence of lawyers, and to increase the financial eligibility limit from \$280,000 to \$400,000.

**THE ADMINISTRATION'S PROPOSALS  
ON THE EXPANSION OF SLAS**

- (a) The scope of SLAS be expanded to cover claims of the following categories, with claim amounts exceeding \$60,000, with an enhanced application fee and higher rates of interim contribution and percentage deduction:
- (i) professional negligence claims against Certified Public Accountants, Architects, Registered Professional Engineers, Registered Professional Surveyors, Authorized Land Surveyors, Registered Professional Planners, Landscape Architects and Estate Agents;
  - (ii) negligence claims arising from sale of insurance products; and
  - (iii) claims against developers in the sale of first-hand residential properties;
- (b) The application fee and rates of contribution for the new types of cases in sub-paragraph (a) above be revised as follows:
- (i) the application fee be increased to \$5,000;
  - (ii) the interim contribution rate be set at 10% of the assessed financial resources of the aided person, but in any event not less than the current interim contribution payable by the aided persons under SLAS as set out in Regulation 14(a) of the Legal Aid (Assessment of Resources and Contributions) Regulations (Cap. 91B); and
  - (iii) the final contribution rate be increased to 20% of the value of property recovered, and to 15% where a claim is settled prior to delivery of a brief for attendance at trial to counsel;
- (c) The enhanced application fee and rates of contribution as set out in sub-paragraph (b) above be also applied to the existing three types of professional negligence claims against the medical, dental or legal professions;

- (d) Employees' claims on appeals from the Labour Tribunal, regardless of claim amounts, be covered under the expanded SLAS using the existing rates of application fee and contribution;
- (e) A study be conducted on amending the LAO with a view to enabling money claims in derivatives of securities, currency futures or other futures contracts be covered under the OLAS when fraud, misrepresentation/deception is involved at the time of purchase; and
- (f) The approval of FC be sought to inject \$100 million into the SLAS Fund to facilitate the expansion of the scope of SLAS.