

LEGISLATIVE COUNCIL BRIEF

Legal Aid Ordinance
(Chapter 91)

PROPOSED RESOLUTION UNDER THE LEGAL AID ORDINANCE

INTRODUCTION

Pursuant to section 7(b) of the Legal Aid Ordinance (Cap. 91) (“LAO”), the Legislative Council (“LegCo”) may by resolution amend Schedules 2 and 3 of the LAO, 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. It is proposed that the resolution at Annex (“the Resolution”) be passed to amend Schedules 2 and 3 of the LAO, with a view to –

Annex

- (a) expanding 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) expanding 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) expanding 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.

2. To implement the proposals, the proposed resolution at Annex needs to be passed by LegCo to effect the amendments.

JUSTIFICATIONS

Amendments to Paragraph 11, Part II to Schedule 2

3. Part II to Schedule 2 of the LAO sets out the excepted proceedings which legal aid would not be given under OLAS. Under paragraph 11(a) of Part II to Schedule 2 of the LAO, it is stipulated that proceedings involving monetary claims in derivatives of securities, currency futures or other futures contracts are excluded from the purview of OLAS.

4. Noting that structured financial products are increasingly common in Hong Kong, the Administration has conducted a study and recommended to amend the LAO with a view to enabling monetary claims in derivatives of securities, currency futures or other futures contracts to be covered under OLAS when fraud, misrepresentation or deception is involved in respect of the sale. Amendments are proposed to be made to paragraph 11(a) of Part II to Schedule 2 of the LAO to implement the legislative proposal.

Additions to Part I to Schedule 3

5. Part I to Schedule 3 of the LAO sets out the proceedings which legal aid may be given under SLAS.

6. To implement the proposal in paragraph 1(b)(i) above, a new paragraph 5 is added to Part I to Schedule 3 to expand the scope of SLAS to cover 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, with claim amounts exceeding \$60,000.

7. To implement the proposal in paragraph 1(b)(ii) above, a new paragraph 6 is added to Part I to Schedule 3 to expand the scope of SLAS to cover negligence claims against insurers or their intermediaries in respect of the taking out of personal insurance products, with claim amounts exceeding \$60,000.

8. To implement the proposal in paragraph 1(b)(iii) above, a new paragraph 7 is added to Part I to Schedule 3 to expand the scope of SLAS to cover monetary claims against the vendors in the sale of first-hand completed or uncompleted residential properties, with claim amounts exceeding \$60,000.

9. To implement the proposal in paragraph 1(c) above, a new paragraph 8 is added to Part I to Schedule 3 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 claim amounts.

Addition of Part III to Schedule 3

10. A new Part III to Schedule 3 is added for the interpretation of terms and provisions in that Schedule.

Other Amendments to Schedules 2 and 3

11. In tandem with the amendments to expand the scope of OLAS and SLAS, opportunity has been taken to clarify existing policies by express provisions to make clear 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.

LEGISLATIVE TIMETABLE

12. The legislative timetable will be as follows –

Issue notice to move the Resolution at LegCo to effect the amendments	7 March 2012
Moving the Resolution at LegCo to effect the amendments (if no Subcommittee is formed)	28 March 2012
Commencement of the Resolution (if passed by LegCo)	To be notified

PROPOSED LEGISLATIVE AMENDMENTS CONSEQUENT TO THE PASSAGE OF THE RESOLUTION

13. Subject to the passage of the Resolution at LegCo, the Chief Executive-in-Council will be invited to amend the Legal Aid Regulations (Cap. 91A) and the Legal Aid (Assessment of Resources and Contributions) Regulations (Cap. 91B) (“LA(ARC)R”) by amendment regulations (“amendment regulations”) to provide for the application fees, the rate of interim and final contributions to be levied in relation to the new types of cases mentioned in paragraph 1(b) above, and to adjust the application fee and rates of contribution for certain cases under the existing SLAS as follows –

- (a) the application fee and rates of contribution for the new types of cases mentioned in paragraph 1(b) above would be revised as follows –
 - (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) the application fee and rates of contribution as set out in paragraph 13(a) above shall also apply to the existing three types of professional negligence claims, that is, medical, dental and legal professional negligence; and
- (c) the application fee and rates of contribution for representation for employees in appeals brought by either the employer or the employee against awards made by the Labour Tribunal would be the same as those for cases under the existing SLAS before the amendment by the Resolution.

IMPLICATIONS OF THE PROPOSAL

Financial and civil service implications

14. In the 2010-11 Policy Address, it was announced that to complement the SLAS review to be completed by the Legal Aid Services Council, 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. Subject to the passage of the Resolution at LegCo and the tabling of the amendment regulations at LegCo for negative vetting, we will seek approval from LegCo Finance Committee (“FC”) on the proposed injection of \$100 million into the SLAS Fund in mid-2012. The Legal Aid Department will absorb the additional workload in handling applications and cases with its existing manpower resources.

15. It is estimated that the SLAS Fund could have a cash outflow of some \$30 million in the first three years as a result of proposed expansion in the scope of the SLAS, but the exact financial implications are difficult to estimate. We will closely monitor the operation of the SLAS Fund to ensure that the self-financing principle is observed, and consider further increasing the application fees and the contributions where appropriate if we detect signs of depletion of the Fund.

Other implications

16. The legislative proposal is in conformity with the Basic Law, including the provisions concerning human rights. It will not affect the binding effect of the LAO. It has no economic, productivity, environmental or sustainability implications.

PUBLIC CONSULTATION

17. At its meeting on 28 March 2011, we briefed the LegCo Panel on Administration of Justice and Legal Services (“AJLS Panel”) on the Administration’s proposals for expanding the scope of SLAS, including the revised application fee and contribution rates as set out in paragraph 13 above, and the proposed study on amending the LAO with a view to enabling monetary claims in derivatives of securities, currency futures or other futures contracts be covered under OLAS when fraud, misrepresentation or deception was involved at the time of purchase. On 20 December 2011, the Administration further briefed

the AJLS Panel on the proposed legislative amendments in respect OLAS and expansion of SLAS, and obtained the Panel's support.

PUBLICITY

18. A spokesperson will be made available to handle media enquiries.

BACKGROUND

19. SLAS came into operation in 1984 and aimed at providing legal assistance to people whose financial resources exceeded the upper limit allowed under OLAS¹, but below a certain amount². SLAS is a self-financing scheme³ which draws its funds from contributions from aided persons on the basis of the damages awarded, the costs recovered in successful cases and the application fees payable by applicants⁴. Because of the need to enable 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; and which involve monetary claims and have a reasonably good chance of success.

¹ With effect from May 2011, the financial eligibility limit for OLAS has been increased from \$175,800 to \$260,000. OLAS ensures that no one will be denied access to justice because of the lack of means.

² With effect from May 2011, the financial eligibility limit for SLAS has been increased from \$488,400 to \$1.3 million.

³ 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.

⁴ To maintain the financial viability of the SLAS Fund, the legally aided persons need to pay a contribution. The current contribution to SLAS is as follows –

- (a) the application fee of \$1,000 is a non-refundable fee charged to all applicants, regardless of whether legal aid is granted;
- (b) the interim contribution from the legally aided person is currently a flat rate of 25% of the financial eligibility limits for OLAS; and
- (c) the contribution from the damages recovered by the legally aided person is set at 6%, rising to 10% when the counsel has been briefed for trial.

20. 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 claims⁵. 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.

21. As at 31 December 2011, SLAS had a balance of \$88.6 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.

ENQUIRIES

22. Any enquiry on this brief should be directed to Ms Aubrey Fung, Principal Assistant Secretary (Civic Affairs) 2 of the Home Affairs Bureau, at 3509 8119.

Home Affairs Bureau
March 2012

⁵ In June 1995, the FC approved a one-off grant of \$27 million to 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.

Legal Aid Ordinance

Resolution of the Legislative Council

Resolution made and passed by the Legislative Council under section 7(b) of the Legal Aid Ordinance (Cap. 91) on 2012.

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 subparagraph (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.”

Clerk to the Legislative Council

2012

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

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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 subparagraph (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.”