

## ITEM FOR FINANCE COMMITTEE

### HEAD 94 – LEGAL AID DEPARTMENT

#### Subhead 700 General non-recurrent

#### New Item “Injection into the Supplementary Legal Aid Fund”

Members are invited to approve a one-off injection of \$100 million into the Supplementary Legal Aid Fund.

### PROBLEM

We need to provide additional funding for the Supplementary Legal Aid Fund (SLAF) to facilitate the continued operation of the Supplementary Legal Aid Scheme (SLAS).

### PROPOSAL

2. The Director of Legal Aid (DLA), with the support of the Secretary for Home Affairs (SHA), proposes to make a one-off injection of \$100 million into SLAF to support the operation of SLAS.

### JUSTIFICATION

#### Self-financing SLAS

3. SLAS aims at providing legal assistance to people whose assessed financial resources<sup>1</sup> exceed the upper limit allowed under the Ordinary Legal Aid Scheme (OLAS) (currently \$260,000), but below a certain amount (currently \$1,300,000). SLAS is a self-financing scheme, and is mainly funded by the application fees payable by applicants, the interim contributions from aided persons and the final contributions from a percentage deduction of the damages recovered in successful cases.

**/Expansion .....**

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<sup>1</sup> An applicant's assessed financial resources include the applicant's monthly disposable income multiplied by 12 plus the applicant's disposable capital. Items deducted from the calculation of disposable income include rates and rent/mortgage payment of the applicant's primary residence, and the statutory allowance for the living expenses of the applicant and the applicant's dependants. At the same time, the value of the applicant's primary residence, the value of household furniture and effects, personal clothing, tools and implements of trade are excluded from the calculation of disposable capital.

### Expansion of the scope of SLAS

4. In the 2010-11 Policy Address, it was announced that to complement the SLAS review to be completed by the Legal Aid Services Council (LASC)<sup>2</sup>, and to benefit more middle-class people, the Government would earmark \$100 million for injection into SLAF when necessary to expand the scheme to cover more types of proceedings. The coverage of SLAS is provided under Schedule 3 to the Legal Aid Ordinance (LAO) (Cap. 91).

5. On 17 July 2012, SHA moved, and the Legislative Council (LegCo) passed, a resolution under LAO (the Resolution) to, among other changes, amend Schedule 3 to LAO to expand the scope of SLAS to cover more types of proceedings as set out below –

- (a) 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 completed or uncompleted first-hand residential properties; and
- (b) 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.

6. Consequential to the expansion in the scope of SLAS, the Chief Executive-in-Council made the Legal Aid (Amendment) Regulation 2012 and the Legal Aid (Assessment of Resources and Contributions) (Amendment) Regulation 2012 (the Amendment Regulations) under LAO on 25 September 2012 to provide for the application fees and rates of contribution applicable to the newly added legal proceedings under the expanded SLAS. In view of the complexity and risk profile of the new types of civil proceedings covered in paragraph 5(a) above, to maintain

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<sup>2</sup> Established in September 1996, LASC is a statutory body set up under the LASC Ordinance (Cap. 489) to oversee the administration of legal aid services provided by the Legal Aid Department (LAD) and to advise the Chief Executive on policy concerning publicly funded legal aid services provided by LAD. LASC has nine non-official members, including its Chairman, and one official member (i.e. DLA).

the self-financing principle of SLAS, on LASC's recommendation, the application fees and rates of contribution for the existing professional negligence claims (i.e. medical, dental and legal professional negligence claims) and newly added types of proceedings in paragraph 5(a) above have been aligned and increased<sup>3</sup> under the Amendment Regulations.

7. The negative vetting period of the Amendment Regulations expired on 28 November 2012. The Resolution and the Amendment Regulations will commence operation on 30 November 2012.

### **Increased Financial Eligibility Limit**

8. Arising from the last review of the criteria for assessing financial eligibility of legal aid applicants, the Financial Eligibility Limit (FEL) for SLAS was increased from \$488,400 to the current level of \$1,300,000 on 18 May 2011. This, together with the expanded scope of SLAS as set out in paragraph 5 above, would allow more people to be eligible for legal aid under SLAS.

### **Expected increase in SLAS Applications**

9. We expect that the number of SLAS applications will increase with the higher FEL and the expanded scope of proceedings covered. However, the exact rate of increase in applications is difficult to estimate at this juncture, as legal aid applications are demand-driven. The need for litigation will neither arise automatically nor increase proportionately once more people become financially eligible for SLAS or as more types of proceedings fall within the scope of SLAS. In other words, changes in the number of legal aid applications and hence the caseload may not have a direct correlation with the scope of the scheme, FEL or financial resources of applicants. Nevertheless, it is reasonable to expect that with more people becoming financially eligible for SLAS and more types of proceedings covered, there will be a higher cash flow requirement for SLAF as well. As a reference, the number of applications under SLAS had increased by 15% since the increase of FEL in May 2011.

**/Need .....**

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<sup>3</sup> For these civil proceedings, an applicant has to pay an initial application fee of \$5,000. Upon acceptance of the offer of legal aid under SLAS, the applicant is required to pay an interim contribution set at 10% of his or her assessed financial resources or \$65,000 (which is equivalent to the highest contribution payable by an aided person under OLAS, i.e. 25% of FEL for OLAS), whichever is the higher. If an aided person is successful in the proceedings, he or she has to contribute 20% of the award recovered to SLAF (the final contribution), or 15% thereof if the claim is settled before the date of commencement of the trial or the hearing or if counsel is engaged, before the delivery of a brief to counsel for attendance at the trial or the hearing. The application fee and interim contribution would be credited to the aided person in the calculation of the final contribution.

### **Need for Injection**

10. Although the outstanding balance of SLAF as at 31 October 2012 was \$88.6 million, a capital injection of \$100 million is considered necessary to cope with the anticipated doubling in SLAS applications following the relaxations. The \$100 million will be a buffer to safeguard SLAF against the higher level of risk (in terms of success rates) involved in the types of claims to be covered in the expanded SLAS, and to cater for exceptionally expensive loss cases. In 2008, the loss of a SLAS funded personal injuries case with a cost of \$17 million for both the aided plaintiff and the opposite party has resulted in a drastic reduction of SLAF.

### **FINANCIAL IMPLICATIONS**

11. SLAF has been operating on a self-financing basis since its operation in 1984. The total capital injection from the Government was \$27 million and the balance as at 31 October 2012 was \$88.6 million. Under the expanded SLAS, we estimate that SLAF would run into an operating deficit from 2012-13 onwards. With the proposed injection of \$100 million, SLAF would have a total cash outflow of \$18.7 million in the first four years and be able to balance its budget from 2016-17 onwards.

12. The capital injections of \$27 million in 1995 and \$100 million under this proposal are meant to be retained under SLAF to generate interest income, provide the necessary cash flow, and a buffer for untoward and exceptional circumstances. We will closely monitor the operation of SLAF to ensure that the self-financing principle is observed. The cash flow projection of SLAF after the proposed injection is set out at Enclosure.

Encl.

### **PUBLIC CONSULTATION**

13. We briefed the LegCo Panel on Administration of Justice and Legal Services on the proposed expansion of SLAS, the amended application fees and rates of contribution, and the injection of \$100 million into SLAF on 28 March and 20 December 2011. Members supported the proposed injection and raised no objection to submitting it to the Finance Committee (FC) for funding approval. We also briefed the LegCo Subcommittee scrutinising the Resolution on 30 March and 12 April 2012, and the Subcommittee scrutinising the Amendment Regulations on 7 November 2012 on the proposed injection subject to the approval of the legislative amendments.

**/BACKGROUND .....**

**BACKGROUND**

14. SLAS was established in 1984 with a loan of \$1 million from the Lotteries Fund<sup>4</sup>. It aims at providing legal assistance to people whose financial resources exceed the upper limit allowed under OLAS<sup>5</sup>, but below a certain amount. SLAS is a self-financing scheme which operates mainly on income from the application fees payable by applicants, the interim contributions from aided persons, and the final contributions from a percentage deduction of the damages recovered in successful cases<sup>6</sup>. To ensure SLAS will remain self-financing, the scope of the scheme is confined to only those proceedings 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.

15. 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>7</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.

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<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 in 1984.

<sup>5</sup> With effect from May 2011, FEL 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>6</sup> To maintain the financial viability of SLAF, the legally aided persons need to pay a contribution. The contribution to SLAS is as follows –

- (a) the application fee of \$1,000 or \$5,000 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 set at 10% of his/her assessed financial resources or \$65,000 (which is equivalent to the highest contribution payable by an aided person under OLAS, i.e. 25% of FEL for OLAS); and
- (c) the final contribution from the damages recovered by the legally aided person is 10% or 20% of the value of property recovered, or 6% or 15% where the claim is settled before the date of commencement of the trial or the hearing, or if counsel is engaged, before the delivery of a brief to counsel for attendance at the trial or the hearing. The application fee and interim contribution would be credited to the aided person in the calculation of the final contribution.

<sup>7</sup> In June 1995, FC approved a one-off grant of \$27 million (via FCR(95-96)29) to SLAS to enable it to extend its scope to cover claims for damages arising from medical, dental and legal professional negligence, and to increase FEL from \$280,000 to \$400,000.

16. As at 31 October 2012, SLAF had a balance of \$88.6 million. SLAS handled an average of 151 applications every year in the past five years with about 81% of the applications being successful in obtaining assistance under the scheme. From the experience of the two legal aid schemes (i.e. OLAS and SLAS) in Hong Kong, the success rate of personal injuries, fatal accident and employees' compensation claims is high (about 90%), while that in respect of professional negligence cases is relatively lower (about 70%) presumably due to their complexity.

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Home Affairs Bureau  
Legal Aid Department  
November 2012

**Cash flow projection of the Supplementary Legal Aid Fund  
after the proposed \$100 million injection**

	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18
	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000
<b>Balance brought forward</b>	<b>188,562</b>	<b>185,169</b>	<b>176,945</b>	<b>170,435</b>	<b>169,877</b>	<b>170,835</b>
<b>Income</b>						
• interest	1,263	1,555	2,477	3,460	4,247	4,271
• income from legal aid cases <sup>Note 1</sup>	5,404	6,844	14,831	29,305	23,280	14,914
<b>Expenditure</b>						
• costs of legal aid cases	9,715	14,301	21,496	31,001	24,247	16,132
• administration cost of the Supplementary Legal Aid Scheme	345	2,322	2,322	2,322	2,322	1,976
<b>Surplus/(Deficit)</b>	<u>(3,393)</u>	<u>(8,224)</u>	<u>(6,510)</u>	<u>(558)</u>	<u>958<sup>Note 2</sup></u>	<u>1,077</u>
<b>Balance to be carried forward</b>	<b><u>185,169</u></b>	<b><u>176,945</u></b>	<b><u>170,435</u></b>	<b><u>169,877</u></b>	<b><u>170,835</u></b>	<b><u>171,912</u></b>

<sup>Note 1</sup> The income includes the application fees payable by applicants, the interim contributions from aided persons, the final contribution from a percentage deduction of the damages recovered in successful cases and costs recovered from successful litigation.

<sup>Note 2</sup> We expect that from 2016-17, the Supplementary Legal Aid Fund (SLAF) will start to generate a steady income and hence allow SLAF to operate on a self-financing basis again.