

# 立法會

## *Legislative Council*

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### **Panel on Administration of Justice and Legal Services**

**Updated background brief prepared by the Legislative Council Secretariat  
for the meeting on 24 April 2017**

### **Review of the Supplementary Legal Aid Scheme**

#### **Purpose**

This paper provides background information on issues relating to the review of the Supplementary Legal Aid Scheme ("SLAS") and summarizes the past discussions of the Panel on Administration of Justice and Legal Services ("the Panel") on the subject since the 2010-2011 legislative session.

#### **Background**

##### Government's legal aid policy and framework

2. According to Article 35 of the Basic Law, Hong Kong residents shall have the right to confidential legal advice, access to the courts, choice of lawyers for timely protection of their lawful rights and interests or for representation in the courts, and to judicial remedies. Article 14(1) of the International Covenant on Civil and Political Rights ("ICCPR") guarantees all individuals the right to a fair hearing in both criminal and civil proceedings. Article 14(3) further provides that a person charged with criminal offence shall be entitled to "have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him if he does not have sufficient means to pay for it." The Hong Kong Bill of Rights Ordinance (Cap. 383) incorporates into Hong Kong law the provisions of ICCPR as applied to Hong Kong.

3. The Government's policy objective on legal aid is to ensure that no one with reasonable grounds for taking legal action in the Hong Kong courts is prevented from doing so because of a lack of means<sup>1</sup>.

4. The Legal Aid Ordinance (Cap. 91) ("LAO"), enacted in 1967, sets out the

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<sup>1</sup> LC Paper No. CB(4)658/14-15(03)

legal framework for the administration of legal aid. Legal aid is provided by the Legal Aid Department ("LAD") under the Ordinary Legal Aid Scheme ("OLAS") and SLAS. Under the LAO, only applicants who have passed the means and merits tests are eligible for legal aid.

5. The Legal Aid Services Council ("LAS Council") was set up on 1 September 1996 under the Legal Aid Services Council Ordinance (Cap. 489) to supervise the provision of legal aid services provided by LAD and to advise the Government on legal aid policy.

### SLAS

6. SLAS is a self-financing scheme introduced in 1984 aiming to provide legal aid for the middle class. The scheme was limited initially to cover claims for damages for personal and fatal injuries. It was subsequently extended to cover employees' compensation claims in 1991 and medical, dental as well as legal professional negligence in 1995<sup>2</sup>. Its scope was significantly expanded in November 2012 to cover a wider range of professional negligence claims, negligence claims against insurers or their intermediaries in respect of the taking out of personal insurance products, monetary claims against the vendors in the sale of completed or uncompleted first-hand residential properties, and representation for employees in appeals against decisions made by the Labour Tribunal. In December 2012, the Administration obtained the Legislative Council ("LegCo") Finance Committee's approval to inject \$100 million into the Supplementary Legal Aid Fund ("SLAS Fund") to support the operation of the expanded SLAS<sup>3</sup>.

7. According to the Administration, 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<sup>4</sup>.

8. The Administration advised that the financial eligibility limit ("FEL") of SLAS was regularly adjusted to take into account changes in the Consumer Price Index (C) ("CPI(C)") and the financial eligibility of legal aid applicants and so on. Pursuant to a comprehensive review to enhance access to legal aid, the FEL of SLAS was significantly increased from \$488,400 to \$1,300,000 in May 2011. In July 2015, with LegCo's approval, the FEL of SLAS was further increased

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<sup>2</sup> LC Paper No. CB(2)600/11-12(01)

<sup>3</sup> See footnote 1

<sup>4</sup> See footnote 2

from \$1,348,100 to \$1,451,900 to take into account the changes in CPI(C)<sup>5</sup>.

### **Past discussions of the Panel**

9. Members' main views and concerns on issues relating to SLAS expressed at Panel meetings since 2011 are summarized in the ensuing paragraphs.

#### Expansion of the scope of SLAS

10. In response to members' long standing calls for expansion of the scope of SLAS, the Administration proposed at the meeting held on 28 March 2011 that the scope of SLAS would be expanded to cover professional negligence claims, negligence claims against insurers or their intermediaries in respect of the taking out of personal insurance products, monetary claims against the vendors in the sale of completed or uncompleted first-hand residential properties, and representation for employees in appeals against awards made by the Labour Tribunal.

11. Whilst welcoming the Administration's proposal to expand the scope of SLAS, a member expressed disagreement 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-damage ratio of these claims. The Administration explained that having considered that claims arising from the sale of goods and provision of services generally involved small amounts of money and the litigation costs involved usually far exceeded the value of the damages, and that such claims had a relatively low success rate, the Administration did not seek to expand SLAS to cover such claims.

12. In response to the concern of some members that claims against property developers by minority owners in respect of compulsory sales of building units would not be covered under SLAS, the Administration stressed that the self-financing principle of SLAS should be adhered to in considering the issue. Given that no monetary value was involved in compulsory sale cases and past results of the Lands Tribunal had shown that the chance of granting a compulsory sale order was very high, the Administration envisaged that the chance of the aided minority owner losing the case and having to bear all the costs was very high.

13. Regarding money claims in derivatives of securities, currency futures or other futures contracts, members noted that whilst the Administration would not seek to expand SLAS to cover derivative claims in the coming exercise, it would

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<sup>5</sup> LC Paper No. CB(4)485/15-16(04)

conduct a study on amending LAO with a view to enabling money claims in derivatives of securities, currency futures or other futures contracts be covered under OLAS when fraud, misrepresentation/deception was involved at the time of purchase.

14. Whilst the Hong Kong Bar Association ("Bar Association") was pleased with the Administration's proposals for expanding the scope of SLAS, it considered that there was still much room for improvement. The Bar Association was disappointed at the Administration's decision not to expand the scope of SLAS to cover property damage claims against incorporated owners of multi-storey buildings, and suggested that the scope of SLAS should be further expanded to cover more types of cases, such as claims against independent financial consultants, money claims in derivatives of securities, currency futures or other future contracts as illustrated by the Lehman Brothers case, etc. In addition, the Bar Association did not agree with the Administration's guiding principles that SLAS was aimed at cases that carried a high chance of success with good damages to costs ratio. The Law Society of Hong Kong ("Law Society") was supportive of the Bar Association's view save that the Law Society considered that the suggestions of the Bar Association could be implemented on a more gradual basis.

15. At the meetings on 20 December 2011 and 10 July 2012, the Administration further briefed the Panel on its work in taking forward the legislative proposals for the expansion of SLAS and its views on other related proposals. Members in general were supportive of the early implementation of the legislative proposals, but considered the proposed expansion inadequate. The Bar Association was of the view that the scope of SLAS should be further expanded to cover the following cases: a wider scope for professional negligence to cover estate agents, money claims in derivatives, claims against incorporated owners, property damage claims from small marine accidents, claims against property developers by minority owners in compulsory sales, claims in respect of trusts; claims involving disputes between limited companies and their minority shareholders, claims arising from sale of goods and provision of services, as well as class actions.

16. Noting that many disputes in derivatives products in the financial market involved mis-selling, misrepresentation or even fraud and it would be unfair if consumer investors who had been misled into purchasing such products did not have access to legal aid to seek redress through the Court, a member also urged the Administration to take appropriate action to cover money claims in derivatives under SLAS.

17. In response, the Administration said that upon commencement of the expanded SLAS, it would monitor the applications for the newly added proceedings and their impact on SLAS Fund, and invite LAS Council to conduct a further review on the scope of SLAS in the light of the experience gained.

18. The legislative amendments in respect of the expansion of SLAS came into operation on 30 November 2012. Notwithstanding this, some members and the two legal professional bodies continued to call for a further expansion of SLAS to meet the needs of the "sandwich class" for access to justice. The Administration informed the Panel at the meeting on 24 June 2014 that LAS Council had formed a working group to conduct a further review on the scope of SLAS.

19. At the Panel meeting on 23 March 2015, the two legal professional bodies urged LAS Council to expeditiously come up with a timetable for completing the review on expansion of SLAS, and hoped that their views would be consulted before LAS Council presenting its recommendations to the Government. Given that SLAS was a self-financing scheme and as a stringent approach was adopted by the Legal Aid Department in assessing the merits of an application under SLAS, a member expressed that he could not see why the scope of SLAS could not be further expanded to improve access to justice. At the request of a member, the Administration undertook to provide a progress report of its review on the scope of SLAS to the Panel in due course.

#### Adjustment of the financial eligibility limit of SLAS

20. Members had long held the view that the FELs under OLAS and SLAS were too low and should be reviewed. Despite the upward adjustment of FEL for SLAS in May 2011, the Law Society expressed at the Panel meeting on 10 July 2012 that the FEL for SLAS which was too low had excluded a significant portion of the sandwich class. In view of the Law Society's comment, a member enquired whether the Administration would research into legal costs of litigants to reflect on the appropriate level of FELs. The Administration advised that a new round of review on FELs of legal aid applicants would commence by end of 2012, and FELs would be reviewed thereafter on a regular basis.

21. At the meeting on 16 February 2015, suggestion was made that LAD should review the assessment of financial resources of applicants. A member pointed out that at present, the determination of an applicant's financial resources would include those of the applicant's spouse, even though the applicant had separated from his/her spouse. Another example was that in determining an application for a probate case, LAD would assess the financial resources of all of the beneficiaries of the estate concerned. As such, if, say, only the financial

resources of one of the five beneficiaries exceeded the FEL of OLAS or SLAS, legal aid would be refused.

22. A member at the Panel meeting on 23 March 2015 also considered it unreasonable to include the financial resources of the spouse of the applicant in assessing the financial resources of the applicant. The Administration responded that including the financial resources of the applicant's spouse in assessing the financial resources of the applicant was reasonable, as the spouse would also benefit from the damages or compensation recovered in the proceedings, if any, if the applicant won the case. The Administration added that using household income to assess the financial resources of legal aid applicants was practised in many overseas jurisdictions.

### **Latest position**

23. Members noted that LAS Council had completed the review on SLAS and submitted its recommendations to the Government for consideration. The Administration will brief the Panel on the review of SLAS at its meeting scheduled for 24 April 2017.

### **Relevant papers**

24. A list of the relevant papers which are available on the LegCo website is in **Appendix I**.

## Appendix I

### Review of the Supplementary Legal Aid Scheme

#### List of relevant papers

Date of meeting	Meeting	Minutes/Paper	LC Paper No.
28.3.2011	Panel on Administration of Justice and Legal Services	Administration's paper on the "Review of the Supplementary Legal Aid Scheme"	CB(2)1320/10-11(01) <a href="http://www.legco.gov.hk/yr10-11/english/panels/ajls/papers/aj0328cb2-1320-1-e.pdf">http://www.legco.gov.hk/yr10-11/english/panels/ajls/papers/aj0328cb2-1320-1-e.pdf</a>
		Submission from the Hong Kong Bar Association	CB(2)1373/10-11(01) <a href="http://www.legco.gov.hk/yr10-11/chinese/panels/ajls/papers/aj0328cb2-1373-1-ec.pdf">http://www.legco.gov.hk/yr10-11/chinese/panels/ajls/papers/aj0328cb2-1373-1-ec.pdf</a>
		Background brief on "Expansion of the Supplementary Legal Aid Scheme" prepared by the Legislative Council Secretariat	CB(2)1332/10-11(04) <a href="http://www.legco.gov.hk/yr10-11/english/panels/ajls/papers/aj0328cb2-1332-4-e.pdf">http://www.legco.gov.hk/yr10-11/english/panels/ajls/papers/aj0328cb2-1332-4-e.pdf</a>
		Minutes of meeting	CB(2)259/11-12 <a href="http://www.legco.gov.hk/yr10-11/english/panels/ajls/minutes/aj20110328.pdf">http://www.legco.gov.hk/yr10-11/english/panels/ajls/minutes/aj20110328.pdf</a>
20.12.2011		Administration's paper on the "Further expansion of the Supplementary Legal Aid Scheme"	CB(2)600/11-12(01) <a href="http://www.legco.gov.hk/yr11-12/english/panels/ajls/papers/aj1220cb2-600-1-e.pdf">http://www.legco.gov.hk/yr11-12/english/panels/ajls/papers/aj1220cb2-600-1-e.pdf</a>

Date of meeting	Meeting	Minutes/Paper	LC Paper No.
		Updated background brief on "Further expansion of the Supplementary Legal Aid Scheme" prepared by the Legislative Council Secretariat	CB(2)624/11-12(06) <a href="http://www.legco.gov.hk/yr11-12/english/panels/ajls/papers/aj1220cb2-624-6-e.pdf">http://www.legco.gov.hk/yr11-12/english/panels/ajls/papers/aj1220cb2-624-6-e.pdf</a>
		Minutes of meeting	CB(2)1932/11-12 <a href="http://www.legco.gov.hk/yr11-12/english/panels/ajls/minutes/aj20111220.pdf">http://www.legco.gov.hk/yr11-12/english/panels/ajls/minutes/aj20111220.pdf</a>
10.7.2012		Administration's paper on "Further expansion of the Supplementary Legal Aid Scheme"	CB(2)2458/11-12(01) <a href="http://www.legco.gov.hk/yr11-12/english/panels/ajls/papers/aj0710cb2-2458-1-e.pdf">http://www.legco.gov.hk/yr11-12/english/panels/ajls/papers/aj0710cb2-2458-1-e.pdf</a>
		Updated background brief on "Further expansion of the Supplementary Legal Aid Scheme" prepared by the Legislative Council Secretariat	CB(2)2541/11-12(01) <a href="http://www.legco.gov.hk/yr11-12/english/panels/ajls/papers/aj0710cb2-2541-1-e.pdf">http://www.legco.gov.hk/yr11-12/english/panels/ajls/papers/aj0710cb2-2541-1-e.pdf</a>
		Submission from the Hong Kong Bar Association	CB(2)2549/11-12(01) <a href="http://www.legco.gov.hk/yr11-12/chinese/panels/ajls/papers/aj0710cb2-2549-1-ec.pdf">http://www.legco.gov.hk/yr11-12/chinese/panels/ajls/papers/aj0710cb2-2549-1-ec.pdf</a>
		Letter dated 9 July 2012 from the Law Society of Hong Kong	CB(2)2549/11-12(02) <a href="http://www.legco.gov.hk/yr11-12/chinese/panels/ajls/papers/aj0710cb2-2549-2-ec.pdf">http://www.legco.gov.hk/yr11-12/chinese/panels/ajls/papers/aj0710cb2-2549-2-ec.pdf</a>



Date of meeting	Meeting	Minutes/Paper	LC Paper No.
		Minutes of meeting	CB(2)2876/11-12 <a href="http://www.legco.gov.hk/yr11-12/english/panels/ajls/minutes/aj20120710.pdf">http://www.legco.gov.hk/yr11-12/english/panels/ajls/minutes/aj20120710.pdf</a>
24.6.2014		Administration's paper on the "Legal Aid Services Council's recommendations on the independence of legal aid"	CB(4)822/13-14(05) <a href="http://www.legco.gov.hk/yr13-14/english/panels/ajls/papers/aj0624cb4-822-5-e.pdf">http://www.legco.gov.hk/yr13-14/english/panels/ajls/papers/aj0624cb4-822-5-e.pdf</a>
		Submission from the Hong Kong Bar Association on "The need and benefits of having an independent legal aid authority (English version only)"	CB(4)/854/13-14(01) <a href="http://www.legco.gov.hk/yr13-14/english/panels/ajls/papers/aj0624cb4-854-1-e.pdf">http://www.legco.gov.hk/yr13-14/english/panels/ajls/papers/aj0624cb4-854-1-e.pdf</a>
		Administration's paper on the "Progress report on the review of the Supplementary Legal Aid Scheme and operation of the Two-year Pilot Scheme to provide legal advice for litigants in person"	CB(4)822/13-14(06) <a href="http://www.legco.gov.hk/yr13-14/english/panels/ajls/papers/aj0624cb4-822-6-e.pdf">http://www.legco.gov.hk/yr13-14/english/panels/ajls/papers/aj0624cb4-822-6-e.pdf</a>

Date of meeting	Meeting	Minutes/Paper	LC Paper No.
		Background brief on "Implementation of the measures to strengthen the governance and operational transparency of the Legal Aid Department" prepared by the Legislative Council Secretariat	CB(4)822/13-14(07) <a href="http://www.legco.gov.hk/yr13-14/english/panels/ajls/papers/aj0624cb4-822-7-e.pdf">http://www.legco.gov.hk/yr13-14/english/panels/ajls/papers/aj0624cb4-822-7-e.pdf</a>
		Minutes of meeting	CB(4)94/14-15 <a href="http://www.legco.gov.hk/yr13-14/english/panels/ajls/minutes/aj20140624.pdf">http://www.legco.gov.hk/yr13-14/english/panels/ajls/minutes/aj20140624.pdf</a>
16.2.2015		Administration's paper on the "Proposed amendment of the Legal Aid (Assessment of Resources and Contributions) Regulations (Cap. 91B) and adjustment of the financial eligibility limits of the Ordinary and Supplementary Legal Aid Schemes"	CB(4)493/14-15(04) <a href="http://www.legco.gov.hk/yr14-15/english/panels/ajls/papers/ajls20150216cb4-493-4-e.pdf">http://www.legco.gov.hk/yr14-15/english/panels/ajls/papers/ajls20150216cb4-493-4-e.pdf</a>
		Minutes of meeting	CB(4)743/14-15 <a href="http://www.legco.gov.hk/yr14-15/english/panels/ajls/minutes/ajls20150216.pdf">http://www.legco.gov.hk/yr14-15/english/panels/ajls/minutes/ajls20150216.pdf</a>

<b>Date of meeting</b>	<b>Meeting</b>	<b>Minutes/Paper</b>	<b>LC Paper No.</b>
23.3.2015		Administration's paper on "Provision of legal aid and assignments of lawyers to legally aided persons by the Legal Aid Department"	CB(4)658/14-15(03) <a href="http://www.legco.gov.hk/yr14-15/english/panels/ajls/papers/ajls20150323cb4-658-3-e.pdf">http://www.legco.gov.hk/yr14-15/english/panels/ajls/papers/ajls20150323cb4-658-3-e.pdf</a>
		Background brief on "Provision of legal aid and assignment of lawyers to legally aided persons by the Legal Aid Department" prepared by the Legislative Council Secretariat	CB(4)658/14-15(04) <a href="http://www.legco.gov.hk/yr14-15/english/panels/ajls/papers/ajls20150323cb4-658-4-e.pdf">http://www.legco.gov.hk/yr14-15/english/panels/ajls/papers/ajls20150323cb4-658-4-e.pdf</a>
		Minutes of meeting	CB(4)1205/14-15 <a href="http://www.legco.gov.hk/yr14-15/english/panels/ajls/minutes/ajls20150323.pdf">http://www.legco.gov.hk/yr14-15/english/panels/ajls/minutes/ajls20150323.pdf</a>

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