

**Hong Kong Bar Association's Submissions for the Legislative Council Panel on
Administration of Justice and Legal Services Review of SLAS
for discussion on 24th April 2017**

**THE HONG KONG BAR ASSOCIATION WANTS TO MOVE LEGAL AID
PROVISION FORWARD AND IMPROVE ITS COVERAGE**

1. **The HKBA has worked consistently for many years with the package of proposals which we suggested 15 years ago in 2002.**
2. **Summary. Back-tracking on proposed and promised reforms is regrettably evident in LC Paper No. CB(4)817/16-17(03) provided on the 13th April 2017.**
3. **The past history of Reform proposals is not accurately presented. This has been on going with a package of proposals from the legal professions and LASC since at least 2002.**
4. **The submissions of the Hong Kong Bar Association, repeated over the years, have not been addressed. This is regrettable.**
5. **Instead of considering the Census and Statistics Department figures the Home Affairs Bureau have made unsupported generalised assertions.**
6. **The background to these reforms and submissions is summarized in the extracted document, a Checklist of the Reform Position by the Hong Kong Bar Association dated 5th July 2012 and which was appended for the meeting of 24th June 2014, some 3 years ago. This is attached again so that Members can trace the back-tracking and lack of progress and the failures to address reasoned argument.**
7. **The LASC Preliminary Proposal of the Working Group on the expansion of SLAS of July 2015 is not referred to by the HAB Paper of April 2017, but a copy is attached. The Hong Kong Bar Association submissions of 18th November 2015 with its usual supporting detail was not referenced so a copy is attached. There was no LASC reply to this letter, which invited discussion.**
8. **Instead, the LASC submitted its Report to the Chief Executive 15th July 2016, changing its mind and reducing the reforms suggested in the July 2015 document without consultation or reply to the Hong Kong Bar Association. Copy attached. These 3 documents are attached for LegCo Members information.**
9. **This process demonstrates the continuing unwillingness of LASC to engage with the Professions on a proper consultation basis. Making proposals to the Chief Executive without proper consultation is regrettable. For example under a previous**

chairman, there was no consultation to deal with the defective Deloitte Report on Independence of the DLA.

- A. What is the explanation of the Chairman of the LASC – as to why items have been taken off the list of the Package of Reforms proposed in 2002?
- B. Why has the LASC not responded to our invitation to our have discussions?

INCREASING THE SCOPE OF SLAS

10. The Scope and Guiding Principle of SLAS in the Paper contain inaccuracies or misstatements which have previously been dealt with but not addressed.

LegCo Members are asked to read the HAB Paper with caution. HAB should not be adding obstacles to expanding SLAS without a policy paper and discussion with the legal professions and LegCo. **There are inconsistencies in the LASC/HAB decision making processes.** If however the HAB/LASC are expanding SLAS based on “winning cases” and where there was a good probability of recovery of costs, **then the 3 following areas below ought to have been chosen.**

HAB as a matter of policy should be looking at the gains to society, the bigger picture, and provide reforms which help improve the housing stock, our quality of life and our reputation as a finance, regulatory and legal centre which flow from the 3 reforms considered herein. **LegCo support is therefore suggested.**

11. Claims against the Incorporated Owners of the Multi-Storey Building.

- A As seen from the Checklist of 2012 this had been rejected by HAB despite Legco’s support. In the July 2015 Preliminary Proposal, LASC accepted the core needs for SLAS to be expanded to cover monetary claims exceeding \$60,000 based on the improprieties of Incorporated Owners of Multi-Storey Buildings (and nothing to do with bid rigging).
- B However, without warning or consultation, the LASC’s Report to the Chief Executive rejected this reform based on concerns about claims for bid-rigging which was not the point of the reform as intended. Under the Competition Ordinance individuals have no right to sue for bid rigging so this new objection is invalid.
- C Also, the LASC and as copied by the HAB in the 2017 Paper, asserted that such a claim would be giving a special privilege to those pursuing Incorporated Owners since Legal Aid would not be available for claims where there are no Incorporated Owners. There is no logic in HAB Paper Paragraph 12 in alleging a unfair privilege for one class when there is no other class of person who can claim to be unfairly discriminated against. The claims against the IO should not cover personal disputes between one group of owners and

another. **HAB forgets the good recovery argument as IOs are insured.** Where there is no IO, there is no insurance cover.

- D IOs by virtue of their size and power place poor claimants at a disadvantage, when they refuse to carry out repairs, favour the original developers in use of common areas, etc., and hence there are unmet needs for access to justice for people who are suffering as a result of their impropriety. These are well known complaints, both to practitioners and District Offices.
- E Legal aid in this new category of SLAS will be given typically to leaking pipes cases, or relating to other defective facilities – or the external structure of the building: **The Court of Final Appeal has decided the IO is responsible for the whole structure.**
- F These are solid claims as the Building Management Ordinance provides for compulsory Insurance Cover. Also new duties have been imposed on IO to employ managers to carry out improvement works:
- G There is widespread **support for our position on expanding SLAS to cover this area.** The Home Affairs Bureau should support this extension of SLAS as many District Offices receive complaints about building maintenance cases.
- H **Much of the housing stock in Hong Kong is now very old, other departments are working to improve our defective housing stock and hence Legislative Council should support this reform.** Quality of life and society gains are achieved, which are part of the bigger picture.

12. Minority property owners' claims against property developers.

- A This is a potential winner for SLAS, as the minority owners get compensation and costs in 100 % of cases as part of the compromise or the court order.
- B The **HAB Paper paragraph 14 is wrong** in asserting. - "As the Lands Tribunal's orders for compulsory sales normally do not involve monetary claims, LASC considered that.... compulsory sales do not meet the principle of SLAS...".
- C When there is a compulsory sale, a sale price is assessed. Then this sum has to be paid, in the same way that damages are paid, together with costs and interest. **Clearly this category involves monetary claims.** See Sections 3 and 4 of the Land (Compulsory Sale for Redevelopment) Ordinance Cap545. **The objection having been based on error, Legislative Council should support SLAS to cover this unmet need.** Society gains as a result.

13. Claims for minority oppressed share owners – class actions –

- A In Re PCCW Ltd, CACV 85 of 2009, the Court of Appeal allowed an appeal by minority shareholders and others against a proposed Scheme of Arrangement.
- B Indemnity costs were given to the minority shareholders.
- C **Protection of minority shareholder rights under the rule of law is important for Hong Kong to advance its position as a secure place for investors to place their money.** This is part of THE BIG PICTURE which the Administration and the Securities and Futures Commission desire. The Hong Kong Stock Exchange did not allow Alibaba to be listed as it had weighted shareholdings, i.e. preference shares in its structure. They wanted to ensure the principle of one share one vote continued. Oppressed minorities cannot express their rights without SLAS.
- D **The HK Stock Exchange Paper on Weighted Shareholders’ Rights published in August 2014 and the SFC’s response of 25th June 2015 are relevant.** Have the LASC and HAB read these reports before forming its view?
- E The Grant of SLAS for minority shareholders will allow the courts to uphold the “core principles of fairness and transparency which underpin Hong Kong’s reputation as an international financial centre.” At present individual shareholders cannot obtain legal aid to protect their rights. Members of Legco should press for this extension of SLAS.
- F Whilst there are ongoing deliberations about Class Actions in general, we note that in the Interim Report for Civil Justice Reform in 1996, Class Actions were recommended already. In any event Legislative Council is asked to support **SLAS actions for minority shareholders, be they individual or in a class.**

AGE EXEMPTION FOR THE ELDERLY

- 14. **The reduction of the age related exemption for assets test from 60 to 55 has been supported by LASC for many years.** The LASC Proposal of July 2015 and the July 2016 Report supported this. However, the HAB Paper of 2017 informs that HAB are actually rejecting the LASC on this long-standing reform.

- A **HKBA informs HAB and LASC of the Facts**

Attachment I shows the parlous state of our elderly at 65 +

- B The HAB assertions that people now starting to work longer and to older ages now may only apply to Government servants. The denial of this reform to

ordinary persons without such privileges based on such a flimsy assertion is unacceptable when the facts show the poor state of our ageing population at **65 +**. **The purpose of the reduction in age to 55 was to try to ensure older people have exemption at that age, so they can preserve their savings for retirement when it comes.**

C 87.6 % of our current retired of 65 + retired at 50. And only 39.1 % made some provision for retirement.

D The 2016 Census + Statistics Table 74.6 (page 107). Attachment II – shows that contrary to HAB’s assertions: assumed Labour Participation Rates for the elderly actually have gone down between 1986 -2015

50-59 Group	Female	35.9 %	gone up to 58.2%
	Male	87.9 %	gone down to 86.7%
60 + Group	Female	13.6 %	gone down to 11.4 %
	Male	37%	gone down to 28.4 %

Overall the Assumed Labour Participation Rates for 50 + have gone down by nearly 4 %

Table 7 Attachment III May June 2016 also shows median earnings drop of 20 % from under 55 to over 55;

The median wages for May to June 2016 – Table 7 for full time employees under 55 at the 50th percentile is \$16,600 per month and above 55 \$13,400 per month, demonstrating a drop of 20 % in average wages as people get older.

HKBA has been advocating for years that the age exemption be reduced. Statistics support the reasons.

15. Para 25 of the Paper states “However in view of the world trend in extension of retirement age, ... we do not see strong justifications for lowering the age limit (from 60 to 55). **HAB are saying ‘No need for Hong Kong’s greying community to be helped because of world trends’ while not addressing Hong Kong actual figures. This HAB paper ignores the following facts:**

A The provision rate for retirement in Hong Kong has been so low for years. Only 28 % of our GDP is saved for retirement: UK is 80 % Singapore over 100% The Netherlands 160 % (ADB Study 2013/2014)

B The average MPF fund now stands at \$250,000 and the contribution rate is only 10 % compared with Singapore at nearly 35 % now.

C Singapore has a similar ageing population when compared with Hong Kong.

D The Government proposals for a “universal pension scheme”, currently only cover 200,000 people at most. **Will HAB advocate for Hong Kong people the “world trends” for the elderly as shown by these figures? We are far behind.**

- E** Anyone over 55 now has a life expectancy of 85 for men and 90 for women.
- F** 40 % of all women do not have an MPF Scheme as they do not work. More people are having to work over 60 because they have little or no retirement provision.
- G** **There is no rationale for rejecting the reform of lowering the age exemption to 55. Without further delay, Legislative Council Members are asked to support this Reform.**

Not enough applicants are being offered SLAS. An Overview based on Principle and Statistics

- 16. Financial Eligibility Levels have been under stated by Half because set on a wrong basis.** For the Financial Eligibility Limit, the LASC and HAB continue to refuse to address the Bar Association’s submissions that the FELs are being set on a mistaken basis. See Paragraph 22 and 23 of our November 2015 Submission. **The figures currently in use were not based on the average legal costs of both parties but only the average legal cost of one side only.** The FEL’s should not have been only \$1.3 million but more like \$2.6 million or \$3 million as advised by the Bar and the Law Society years ago. The Scott Report years ago pointed out this was the proper approach which the Chief Executive accepted was the proper basis for averaging. Changing this principle without proper discussion is therefore inappropriate. The LASC has also failed to deal with the automatic adjustments required in the FELs to take account of inflation. This should be a mandatory part of the LASC’s duties.”
- 17. The Bar repeats its Submissions of 18th November 2015 generally.**
- A. Not such a big increase as expected given the FELS increase by a factor of 3;**
 - B.** There is an improvement in the number of grants of SLAS since the Supplementary Scheme FELS were increased from \$488,000 to \$1.3 million – 60 % increase recently – one would expected to see a much bigger increase given the broader subject areas and this big FELS increase.
- 18. Judiciary Statistics still show an unreasonably high percentage of unrepresented cases in Civil Trials**
- judges and increases their workloads, and the Judiciary have just asked for more posts, and unrepresented cases must be part of the reason for this.
- | | |
|-----------------------------------|---|
| Civil First Instance Cases | 2015 33 % - jump to 2016 to 40 % of all civil trials |
| District Court | 2015 53 % down to 2016 to 46 % |
| Civil Appeals | 2015 32 % down to 2016 to 25 % |

19. **Thus on current areas covered by SLAS – the Scheme is just marking time, and not going forward. These figures demonstrate unacceptably high figures for unrepresented cases in a developed society, even in areas where there is now compulsory mediation: e.g. Personal Injuries and Matrimonial Cases;**

20. **“Playing Catch up” Is \$1.3 m to \$1.5 million enough?**

In OLAS there has been a decline in the Civil Legal Aid grant of Certificates of about 15 % since 2011 –in 6 years. So if there has been an increase in inflation, this will probably mean the FELs for SLAS are down by about 20 % or more as there is delayed “catch up”. Further of course there will be more lag until the next increase
So the HKBAR Association suggest a true measure should be $\$1.3\text{million} \times 125\% = \1.625million at least on that basis.

However, we have reminded HAB that it should be reflecting the true provisions for **both sides’ costs**. Also the original \$1.3 million figure was reached in relation to the question of a party’s costs, not current inflation. There is a confusion of principles here.

CONCLUSION

21. There are significant unmet needs for Legal Aid which can be covered with SLAS and yield awards and costs orders which will protect the Fund overall.

SLAS helps more Hong Kong people have access to justice in the courts so our rule of law can be actually applied to help our people. HK Bar Association mapped out **how continuous improvements should be made as a package of reforms from 2002, and with reasoned thought, genuine consultation, and examination of the available statistics, LegCo Members have the means to ensure these continuous reforms bear fruit.**

LegCo is asked to set a timetable for further work and meetings on SLAS so these reforms are taken forward with expedition.

Ruy Barretto S.C. and Nicholas Pirie

Members of the HKBA
Standing Committee on Legal Aid Reform
24th April 2017
[9115.rb]

HK Overview (65+)

- 14.8% live alone
- 69% not further than primary education
- 93% unemployed
- 78% chronic illness
- 1/3 in poverty
- 8.6% in care homes/hospitals/prisons
- 38.6% in public housing
- Median income: (employed) \$9,070. (unemployed) \$3,070
- (based on Thematic Rep 2011 Census +Statistics)

HK Overview (65+) p 2

- 87.5 % claimed CSSA only 8.4 % had pensions
- 87% had income of less than \$7,000 p m
- median personal income was \$2,000
- 87.6% of current retired stopped working at the age of 50 (Para 9.13)
- 19.2 % had MPF, 9.3 % had ORSO+ 5% Civil service pensions
- Only 39.1 % had made some provision for retirement.
- 63 % of all persons 35 -65 said they would have to work after retirement
- (This is based on the Census + Statistics Study 2013 - No 52)

SFC statement on the SEHK's draft proposal on weighted voting rights

25 Jun 2015

The Securities and Futures Commission (SFC) issues the following statement in relation to The Stock Exchange of Hong Kong Limited's (SEHK) draft proposal on weighted voting rights (WVR).

The SEHK's Consultation Conclusions on WVR published on 19 June 2015 outlined some of the relevant features of the draft proposal for a second stage consultation on WVR. The SFC has considered a more detailed version of the proposal.

The Board of the SFC has unanimously concluded that it does not support the draft proposal for primary listings with WVR structures.

The Board's views are set out below.

Eligible applicants would be required to have a very high expected market capitalisation

- Size offers no assurance that a company would treat its shareholders fairly. Any corporate misconduct by an issuer with a large market capitalisation will likely affect more investors and have a greater impact on our markets. For example, these issuers are more likely to become index components which will compel index funds and other types of "passive" institutional investors (which invest public money) to buy and hold their stocks even if fund managers disagree with their WVR structures.

The SEHK would expect eligible applicants to have certain features relating to their businesses and the contribution of their founders as identified in a set of "enhanced suitability" criteria

- The SFC has significant concerns about these proposals that require regulators to assess compliance with the criteria for companies to be eligible for WVR (for example, whether the applicant has some unique features that cannot be easily replicated and are likely to provide a sustainable competitive advantage, as well as the contribution of the founder or founders). Such criteria can only be applied subjectively and are therefore inherently vague. A regime that relies on the subjective judgement of regulators to determine which listing applicants are eligible for WVR would give rise to regulatory uncertainty and could result in inconsistent and unfair decision-making. The SFC is opposed to proceeding on this basis.

WVR structures would be permitted for new listing applicants only (with appropriate anti-avoidance measures)

- The SFC is of the view that Hong Kong's securities markets and reputation would be harmed if WVR structures became commonplace. Among other things, the SFC considered whether the draft proposal justifiably restricts the extent to which WVR structures would be permitted and whether there were effective measures to prevent circumvention of these restrictions by ineligible applicants.
- For example, the draft proposal limits WVR structures to new applicants only. This means that existing listed companies and future issuers that list without WVR structures would not be permitted to adopt such structures. For this feature to work, there must be effective measures to prevent ineligible issuers from bypassing the limitation through arrangements such as spin-offs, assets transfers or other forms of corporate restructuring. The SFC has significant concerns regarding the effectiveness of anti-avoidance provisions proposed by the SEHK.

- It is insufficient to look only at controlling the number of WVR issuers. The SFC is concerned, for example, with the potential impact of acquisitions of existing listed assets by WVR issuers. Unrestricted, post-listing transactions could over time result in the transfer of a significant proportion of existing listed businesses and assets to WVR structures. In the SFC's view, such a development would be detrimental to our markets and the interests of the investing public generally.
- Separately, the draft proposal does not explain how many proposed safeguards and conditions (for example, whether a founder remains actively involved in management) can be monitored on an ongoing basis and what actions can be taken either by regulators or by public shareholders if they are not complied with.

A focus of the discussion to date on WVR has been competition from the United States for the listing of Mainland China businesses. Hong Kong's business and competitive environment is affected by many factors and can change significantly within a relatively short period. In carrying out its regulatory functions, the SFC considers both long term and short term objectives and seeks to uphold the core principles of fairness and transparency which underpin Hong Kong's reputation as an international financial centre.

The Board of the SFC has noted the extensive local and international public debate on and widespread coverage of the WVR issue over many months and has discussed the importance of Hong Kong's reputation as an international financial centre. Against this background, the Board decided that it is in the public interest to issue this statement.

End

Page last updated : 25 Jun 2015



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Legal Aid Service Council
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 Hong Kong

18th November 2015

Ref: LM(1) to LASC/CR2/2/1

Dear Sirs,

Re: Expansion of Supplementary Legal Aid Scheme

1. Thank you for your letter of 17th July 2015 and reminder of 30th October 2015. We are happy that this work is continuing. As far as I can remember this work has been going since at least 2002. Is the document sent the actual Report of the Working Group on Expansion of SLAS or is there a more fully reasoned document? You have sent us a document called the Preliminary Proposal of the Working Group. If there is an actual Report with more explanation, which the Bar Association and the Law Society could see, that would be most helpful, so we can compare this with past work done, as it would appear that past principles established over decades may have been omitted, or not referred to.
2. The Preliminary Proposal refers to the last or "previous reviews". Please could you provide us with copies for our consideration, in order that we can see what the relevant working papers were.
3. What is the timetable for this work?

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4. At some stage it would be useful to have a meeting with yourselves or the Working Group and the Law Society Legal Aid Committee, so that further improvements can be made.
5. **Undesirable obstacles.** Paragraph 1 of the Preliminary Proposal appears to set out numerous obstacles to expanding SLAS, some of which may not have been fully discussed with both sides of the profession. The Bar has previously shown how imposing additional hurdles which were not imposed in the past are not justified, the more particularly when they have not been discussed with either the Bar Association and the Law Society. So, for example, it goes against the basic principles of SLAS, that a particular type of case is to be self financing, and financially viable. This is not appropriate, and the Medical Negligence Class would have been closed down some years ago, when a very large costs award was made against the legally aided client. HK \$10 million plus was the figure.
6. **The Introduction of a Costs Ratio.** The primary objective of and the rationale for the setting up of SLAS, was to cover unmet needs for access to justice. This must be its prime objective, and not whether in a particular class of case, costs are recoverable over the whole class.
7. Recoverability has never been the prime criteria, and the establishment of a "costs recoverability and damages to cost ratio" is not appropriate, and certainly not for each and every particular class of case. So far as we are aware, the Legal Aid Department has adjusted the percentage of costs recovered in SLAS cases, out of damages on a yearly basis overall over the whole SLAS Scheme, on an *ex post facto* basis for statistic purpose. This so called "ratio" should not be using as an initial criteria or obstacle for widening classes of the class of case to which SLAS could be extended.
8. **Claims against Incorporated Owners of a Multi-Storey Buildings.** We are happy that this reform has been accepted. We agree that the absence of mandatory insurance cover should not be an obstacle. Individuals who are members of the Incorporated Owners will be owners of flats and those flats could be the subject of charging orders so that claims and costs can be satisfied and the fund reimbursed. Similarly, it is appropriate that claims for improprieties by the Incorporated Owners themselves, should be covered by SLAS as again, costs etc. can be recovered by charges against properties owned by the individuals. This has long been the practice by other Government Departments, where emergency repairs are needed, or expensive slope works have to be undertaken by the Lands Department. The Colonial Treasurer Incorporated, took a charge over the whole building. When an individual flat was sold, the due proportion of that charge had to be paid off. So there is no reason why in SLAS cases such a charge could be taken, where the Incorporated Owners are at fault for some defect in the building or its maintenance system.

9. **Independent financial consultants.** This is appropriate and this reform needs to be brought forward as a priority. It should not be limited to only those registered under the Commission and those persons, who were required to have insurance, but do not have effective cover. This could lead to the risks of consultants using unregistered subsidiary companies and exploiting a loophole.
10. **Derivative claims.** We are pleased that since OLAS was expanded therefore SLAS has been likewise expanded to cover these claims. This is a priority.
11. **Small Marine Accidents.** (And other Marine Accidents) Property damage claims from small marine accidents have been rejected but with no adequate reasons. The Bar Association has in the past taken the lead in improving marine insurance cover for Small and other Vessels, and are about to recommence discussions with the Marine Department about this. Further consideration and reasoning is required and the Bar Association, and no doubt the Law Society too, would like to make further representations about this.
12. **Claims against property developers by minority owners in compulsory sales.** This has been rejected because it is said they normally do not involve monetary claims. This is not correct. Additionally money claims are not the sole criteria for SLAS as seen above in the case of claims against Incorporated Owners. Property is involved, this has monetary value, and can be easily attached to recover costs as appropriate. Funding access to justice will speed up the process of fair compensation and more efficient property development in future. Further consideration here is required.
13. **Trusts.** Trusts have been rejected because it is believed that this is recovered under Professional Negligence Claims Insurance. The required paid up capital of a Trust Company is only HK \$3 million, and it is in the HKTA Code of Conduct that these Trust Companies should have professional indemnity cover. So we understand that most HKTA members have this cover.
14. A claim for breach of trust can be much easier to prove than professional negligence, and most importantly, an Order for Indemnity or Common Fund Costs is usually awarded for breach of trust. So the recoverability should be the higher. These claims would have a much better prospect of recovering sums of money, than claims in Professional Negligence. In any event, both types of claims would be covered under the Professional Indemnity Insurance cover we believe. So there is no reason for this exclusion from SLAS and the reasoning does not stand up to analysis.
15. **Disputes between limited companies and their minority shareholders.** Again, the reasoning here is shallow, and is obviously made without reference to the judgment of Rogers JA in the Hong Kong Telephone Company Case, wherein he made an order for the provision of minority shareholders' costs under the previous Company Law provisions. The new provisions are to be found in Section 738 of Cap 622 . Remedies for fraud against minorities can be achieved, and damages and costs can be extracted from the companies and the directors concerned, and often upon either a Common Fund or an

Indemnity basis. See the judgment of Kwan J in Re F & S Express Ltd. [2005] 4 HKLRD 743 . The SLAS fund would therefore be protected. This is a major area of law where access to justice needs to be provided now. This was in the list of requests for expansion of SLAS in 2002, and there has been no major progress on this since then despite the advances in Company Law and Minority Protection in Hong Kong.

16. **Sale of goods and provision of services.** This is excluded because other quasi administrative or enforcement bodies may provide help on this. The record of the Consumer Council is poor, and relatively few cases get funded.
17. Access to justice is the key to quality of life through improved goods and services provision. Legal Aid ought to be granted in cases for example where pace makers go wrong, and need to be replaced, or there is a basic fault in the design and manufacture of motor cycles, and people are thereby injured. Members of this Association had to deal with a number of cases privately where accidents were caused by defective design on workmanship in the front forks in motorcycles.
18. It is wrong to deprive people of their rights at law and limit them to administrative type compromises and mediation which is ineffective because the defendants know actual litigation will be unlikely because it is not legally aided. Access to justice is vital in ensuring quality of life through higher standards in our consumer law. This area needs to be reconsidered.
19. **Class actions.** The Bar welcomes the Working Group's favourable consideration of this. The Bar has suggested specific types of class actions for disasters, environmental damage, consumer or product liability claims by employees against employers where insolvency proceedings have been instituted or are being instituted and building management disputes. We commend these class action headings as part of the active consideration as soon as possible.
20. We also agree that the Director of Legal Aid should have **discretion to grant Legal Aid in appropriate class action cases** to allow flexibility to deal appropriately with an evolving situation and unusual circumstances. SARS cases and the HIV infected blood cases, are obvious examples in the past where Legal Aid should have been provided on a Class Action basis against the public authorities.
21. **Defamation proceedings and election petitions** have been rejected. This was not one of the Bar's list for reform from 2012 onwards. So we have no strong view on this conclusion.
22. **The Financial Eligibility Levels "FELs"**. We believe the LASC is acting under a mis-apprehension here in 2 respects. The figures currently in use were not based on the average legal costs of both parties but only the average legal costs of **one side only**. The FELs should not have been only \$1.3 million but more like \$2.6 million or \$3 million as advised by the Bar and the Law Society years ago. The Scott Report years ago pointed out this was the proper

approach which the Chief Executive accepted was the proper basis for averaging. Changing this principle without proper discussion is therefore inappropriate. The LASC has also failed to deal with the automatic adjustments required in the FELs to take account of inflation etc., and this should be a mandatory part of the LASC's duties.

23. **The Statistics continue to demonstrate the unmet needs for access to justice.** There has been no improvement. This was amply illustrated by the substantial increase in FELs in 2013/4, which resulted in about a 50 % increase in Applications and Grants for SLAS. This was a rise in disposable capital requirements from \$488,000 to \$1.3 million. We asked for a rise based on \$2 million plus, but this was turned down. We believe the FELs now are set at levels which are too low generally, and the LASC should be looking at this urgently.
24. Just based on inflation since 2012 when the FELs were last considered, there should be at least an uplift in the FELs now by 12.5 to 15%. This aspect should be considered
25. **Age Related Exemptions.** The Bar agrees that the **Age Related Exemption for Assets Test should be based on the age 55** so as to protect the assets of the elderly litigants from being used up in litigation when they are approaching the end of their working life and thus not able to save back the funds used up for litigation.
26. **Publicity.** It is essential that the public be aware of their right to access to justice and equality before the law. Enhanced publicity is important. We were all very disappointed by the low level of uptake in 2013/2014 when the FELs were increased. The Bar Association feels that the LASC should be looking at the budget provided for advertising the utility and benefits of our Legal Aid Scheme should be substantially increased.

Conclusion

27. The Bar Association commends the LASC for the work done so far under its new Chairman. However we do feel that the lines of communication should be open, and proper consultations made with both the Law Society and the Bar Association, before any of the proposals are properly considered and rejected. We do not want to see that amendments to SLAS are rejected, and these rejections are cast in stone, especially when there are demonstrated unmet needs, and reported cases which are not apparently considered by the LASC when considering future improvements in access to justice.
28. It is in this light that we make our requests for the information above. We suggest more open discussion with the Bar Association and the Law Society on the reasoning adopted for the various proposals for amendment of this excellent Scheme which has been copied in other common law jurisdictions. We are advised there have been no recent discussions with the Law Society

Legal Aid Committee either, and this has been confirmed by the Director of Practitioners' Affairs, Mr. Kenneth Fok.

29. Thus, we all need to be involved if there are to be changes in or deviation from basic principles. We need to be involved in the timetable and procedures to be followed. We wish to continue the search for reforms and improvements in SLAS to enable better access to justice to be provided for all potential litigants.

Yours sincerely,

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

Ruy Barretto S.C.
Chairman

Special Committee on Legal Aid Reform

住戶收入

7.11 在 2011 年，有長者居住的家庭住戶中有 40.9% 家庭住戶每月收入在 10,000 元以下。這百分比比較 2001 年的 42.1% 略低。(表 7.9)

7.12 有長者居住的家庭住戶每月收入中位數在 2011 年為 13,040 元，較 2001 年的 12,210 元上升 6.8%。當中獨居的長者每月收入中位數由 2001 年的 3,130 元下降至 2011 年的 3,000 元。相反，其他住戶人數的有長者居住家庭住戶的每月收入中位數在同期間均錄得升幅。(表 7.10)

7.13 在所有住戶人數組別中，有長者居住的家庭住戶的家庭住戶每月收入中位數均較全港住戶收入中位數為低，其中以 1 人及 2 人住戶的差距更為明顯。(表 7.10)

7.14 有長者居住的家庭住戶的住戶收入分布可進一步按長者住戶類型及收入來源作詳細的分析。在 2011 年，有 91.2% 的所有成員均為長者的家庭住戶（長者住戶）是沒有職業收入。這比例明顯較長者與非長者同住的家庭住戶的 14.2% 及全港家庭住戶的 17.1% 為高。有職業收入及沒有職業收入的長者住戶的家庭住戶每月收入中位數分別是 9,070 元及 3,070 元。這兩個數字均顯著較長者與非長者同住的家庭住戶的 21,540 元及 5,500 元為低。(表 7.11)

Household income

7.11 In 2011, 40.9% of domestic households with older persons had less than \$10,000 monthly domestic household income. The percentage was slightly lower than that of 42.1% for 2001. (Table 7.9)

7.12 The median monthly domestic household income of domestic households with older persons stood at \$13,040 in 2011, which was 6.8% higher than \$12,210 in 2001. There was a decrease in the median monthly domestic household income of older persons living alone from \$3,130 in 2001 to \$3,000 in 2011. On the contrary, the median monthly domestic household incomes of the households with older persons of other household sizes recorded increases over the same period. (Table 7.10)

7.13 Comparing to the corresponding figures for all domestic households, the median monthly domestic household income of domestic households with older persons were lower for all household sizes. The difference is more significant for the 1- and 2-person households. (Table 7.10)

7.14 The household income distribution of domestic households with older persons can be further analysed by type of older-person household and source of income. It is noted that 91.2% of domestic households with all members being older persons (elderly households) had no employment income in 2011. This proportion was significantly greater than those among domestic households with older persons living with non-older persons and all domestic households in Hong Kong at 14.2% and 17.1% respectively. The median monthly domestic household income of elderly households with and without employment income were \$9,070 and \$3,070 respectively. Both were lower than the corresponding figures for domestic households with older persons living with non-older persons at \$21,540 and \$5,500 respectively. (Table 7.11)

Thematic Survey 52 27th June 2013

employer (in the case of an employee) are not required to make mandatory contribution in respect of the excess relevant income. [Note: The maximum relevant income was \$20,000 during the survey period.] Except for some special circumstances, accrued benefits can be withdrawn when scheme members reach the age of 65, as stipulated in the Mandatory Provident Fund Schemes Ordinance.

- 「職業退休計劃」是由僱主自願為他們在香港的僱員設立的退休保障計劃。由於該計劃是自願設立，其管限規則是由個別僱主自行釐定。
- 「公務員退休金計劃」是政府為按可享退休金條款受聘的公務員，設有的退休金計劃。一般來說，公務員會於退休時或在退休金法例規定的其他情況下獲發退休金。公務員的退休金是根據退休金法例訂定的計算方法計算，方法是按該員的薪金、服務年資、及所屬退休金計劃下的退休金計算因子，計算出該員可領取的退休金。公務員可選擇把一定比例的退休金折算為一筆過的退休酬金，餘額則按月發放給該員，直至他逝世為止。
- “Schemes under the Occupational Retirement Schemes Ordinance” are retirement protection schemes set up voluntarily by employers to provide retirement benefits for their employees in Hong Kong, and as such the governing rules are drawn up by individual employers.
- “Civil Service Pension Schemes” are Government pension schemes for civil servants who are serving on pensionable terms. Pension is normally granted to an officer when he retires from the service, or in other circumstances as provided under the pensions legislation. An officer's pension is calculated on the basis of his salary, length of service and pension factor under the respective pension schemes according to the prescribed formulae in the pensions legislation. An officer may choose to commute a certain percentage of his pension into a lump sum pension gratuity. The remaining part of the pension will be payable to the officer on a monthly basis until the officer passed away.

統計調查的主要結果

現正退休人士及未來退休人士的人口、社會及經濟特徵

9.6 在統計期間，估計約有 1 153 900 名現正退休人士及 3 000 000 名未來退休人士。
(表 9.1a)

Major findings of the survey

Demographic and socio-economic characteristics of current and future generations of retired persons

9.6 At the time of enumeration, it was estimated that there were 1 153 900 persons who were current generation of retired persons (CR) and 3 000 000 persons who were future generation of retired persons (FR). (Table 9.1a)

年齡 / 性別

9.7 基於上文第 9.5 段的概念及定義，約四分之三的現正退休人士年齡為 65 歲及以上，餘下的現正退休人士(25.6%)年齡則介乎 35 至 64 歲。相反，未來退休人士中大部分的年齡介乎於 35 - 54 歲(74.9%)，其次為 55 - 64 歲(23.3%)及 65 歲及以上(1.8%)。(圖 9.1 及表 9.1a)

9.8 現正退休人士和未來退休人士的性別分布大致相若，約 52% 為女性及約 48% 為男性。(表 9.1a)

經濟活動身分

9.9 按經濟活動身分分析，大部分(81.3%)在現正退休人士組別內的是退休人士，只有 3.0% 有從事經濟活動(例如：到達退休年齡後繼續工作)。相反，約五分之四(79.8%)的未來退休人士有從事經濟活動(包括就業及失業人士)。(表 9.1b)

選定人息來源

9.10 關於統計時的個人人息來源，大部分(87.6%)有入息的現正退休人士稱有「綜合社會保障援助 / 傷殘津貼 / 高齡津貼」收入，8.4% 有「退休金 / 長俸」收入。基於上文第 9.5 段的概念及定義，絕大部分有入息的未來退休人士(96.6%)稱有「就業收入 / 花紅 / 房屋津貼」，而 4.7% 有「利息 / 股息 / 投資計劃收入」。(表 9.2)

每月個人人息

9.11 現正退休人士及未來退休人士兩個組別因為有著不同的組合成分(現正退休人士主要為老年人或退休人士，而未來退休人士則主要為在職人士)，兩者的每月個人人息亦有著不同分布。逾半數(55.9%)的未來退休人士每月個人人息為 \$10,000 及以上，而大部分(87.0%)的現正退休人士的每月個人人息為少於 \$7,000。現正退休人士及未來退休人士的每月個人人息中位數

Age / sex

9.7 By virtue of the concepts and definitions in paragraph 9.5 above, about three-quarters of CR were persons aged 65 and over. The remaining (25.6%) were aged 35 to 64. On the contrary, the highest proportion of FR were those aged 35 - 54 (74.9%), followed by those aged 55 - 64 (23.3%) and aged 65 and over (1.8%). (Chart 9.1 and Table 9.1a)

9.8 The sex distribution among CR and FR was similar, with around 52% of females and 48% of males. (Table 9.1a)

Economic activity status

9.9 Analysed by economic activity status, the majority (81.3%) of CR were retired persons and only 3.0% were economically active (e.g. persons continued to work after reaching their retirement age). On the contrary, about four-fifths (79.8%) of FR were economically active persons (including employed and unemployed persons). (Table 9.1b)

Selected sources of income

9.10 On the sources of personal income at the time of survey, the great majority (87.6%) of CR who had income cited that they had "Comprehensive Social Security Assistance / Disability Allowance / Old Age Allowance"; and 8.4% had "retirement fund / pensions". By virtue of the concepts and definitions in paragraph 9.5 above, nearly all FR (96.6%) who had income cited that they had "employment earnings / bonus / housing allowance"; and 4.7% had "interest / dividend / income from investment plan". (Table 9.2)

Monthly personal income

9.11 The distribution of monthly personal income differs between CR and FR owing to different composition of the two groups (with CR mainly comprising older, retired persons and FR mainly comprising employed persons). Over half (55.9%) of FR had monthly personal income of \$10,000 and above, while the majority (87.0%) of CR had income of less than \$7,000 a month. The median monthly personal income for CR and

退休計劃及老年經濟狀況

分別為\$2,000及\$11,100。在是項統計調查中，每月個人入息並不包括同住家人的經濟支援。有關家人提供的經濟支援的資料分別載於下文第9.22段及9.23段。(表9.3a)

自我評估經濟穩定狀況

9.12 與現正退休人士(38.1%)相比，未來退休人士有較高比例認為自己於統計時有穩定的個人經濟狀況(49.8%)。另一方面，在現正退休人士及未來退休人士中，兩者均有約4成認為個人經濟穩定狀況屬「一般」。(圖9.2及表9.3b)

工作提供的退休保障

退休年齡 / 預期退休年齡

9.13 在統計調查中，曾經工作的現正退休人士會被問及退休年齡或停止工作年齡。另一方面，未來退休人士會被問及他們「預期」的退休年齡或停止工作年齡。在1 064 100名於退休前有工作的現正退休人士中，大部分(87.6%)於50歲及以上時退休 / 停止工作。至於該2 699 200名曾經工作或現時有工作的未來退休人士，近3成(28.9%)是 / 打算於50-64歲時退休 / 停止工作，另11.4%是 / 打算於65歲及以上時退休 / 停止工作。同時，31.2%表示「會工作直到沒有工作能力」及16.2%表示「視乎情況 / 未曾想過這問題 / 不知道」。(表9.4)

退休保障計劃的類別

9.14 根據是項統計調查結果，在統計時約有3 763 400名35歲及以上曾經工作或在職人士。他們被問及退休前 / 現時的工作有否提供退休保障計劃及計劃類別(如有)。與現正退休人士相比，未來退休人士的工作有提供退休保障計劃的比例(79.2%)顯著大於現正退休人士的相應比例(33.6%)。(表9.5)

FR were \$2,000 and \$11,100 respectively. In the survey, monthly personal income does not include financial support from family member(s) living together. Information on family support from family member(s) is separately presented in paragraphs 9.22 and 9.23 below. (Table 9.3a)

Self-perceived financial stability

9.12 When compared with CR (38.1%), a relatively higher proportion of FR (49.8%) perceived that they were financially stable at the time of survey. On the other hand, about 40% of both CR and FR rated "average" in respect of their self-perceived financial stability. (Chart 9.2 and Table 9.3b)

Retirement protection from work

Age / expected age of retirement

9.13 In the survey, persons in CR who had ever worked were asked about their retirement age or the age that they stopped working. On the other hand, persons in FR were asked about their age stopped working or "expected" retirement age. For those 1 064 100 persons in CR who had ever worked, the majority of them were retired / stopped working at the age of 50 and over (87.6%). Regarding those 2 699 200 persons in FR who had ever worked or were employed at the time of enumeration, nearly 30% (28.9%) cited that they stopped working or expected to retire at the age of 50 - 64 and another 11.4% at the age of 65 and over. Meanwhile, 31.2% indicated that they "would work until unable to work anymore" and 16.2% indicated "depended on situation / never think about it before / did not know". (Table 9.4)

Type of retirement protection schemes

9.14 It was estimated that there were a total of 3 763 400 persons aged 35 and over who had ever worked or were employed at the time of survey. Those persons were asked whether their previous / current jobs provided retirement protection scheme and the type of scheme (if any). When compared with CR (33.6%), a significantly higher proportion of FR (79.2%) cited that they had retirement protection from work. (Table 9.5)

退休計劃及老年經濟狀況

9.15 按退休保障計劃類別分析，大部分(68.4%)的未來退休人士表示受強制性公積金計劃保障，另有 7.1%及 4.0%分別受職業退休計劃及公務員退休金計劃保障。現正退休人士的相應百分比分別為 19.2%、9.3%及 5.0%。(表 9.5)

9.15 Analysed by type of retirement protection scheme, the majority (68.4%) of FR cited that they were protected by the Mandatory Provident Fund Schemes, 7.1% by the schemes under the Occupational Retirement Schemes Ordinance and 4.0% by Civil Service Pension Schemes. The corresponding figures for CR were 19.2%, 9.3% and 5.0% respectively. (Table 9.5)

為退休後 / 年老時的金錢需要作出的預備

Preparation or provisions made for meeting
financial needs after retirement / in old age

*有否為退休後 / 年老時的金錢需要作出
預備(不包括工作提供的退休保障)*

*Whether had made preparations
(excluding retirement protection from
work) for financial needs after retirement /
in old age*

9.16 除工作提供的退休保障外，2 392 400 名 35 歲及以上人士(佔所有 35 歲及以上人士的 57.6%)於統計時有為其退休後 / 年老時的金錢需要作出預備。他們最普遍提及的預備為「儲蓄及投資」(現正退休人士中有 39.1%提及，未來退休人士則有 50.9%)。至於其他的預備，較大比例(27.1%)的現正退休人士表示「養育子女並期望在年老時子女供養作回饋」，而未來退休人士則有較大比例(17.1%)表示「購買保障年老時可能出現的各種長期疾病的醫療及護理保險」。(表 9.6a)

9.16 Excluding retirement protection from work, 2 392 400 persons aged 35 and over (or 57.6% of all persons aged 35 and over) had made some preparations for their financial needs after retirement / in old age by the time of survey. "Savings and investment" was the most commonly cited way of preparation (as cited by 39.1% of CR and 50.9% of FR). For other ways of preparation, a higher proportion of CR (27.1%) indicated "raising children and expecting, in return, financial support from children in old age", whereas a higher proportion of FR (17.1%) cited "purchase of insurance to cover possible medical and health care expenses for chronic illness in old age". (Table 9.6a)

開始預備退休後 / 年老時生活開支的年齡

*Age started making provisions for financial
needs after retirement / in old age*

9.17 所有未來退休人士均被問及開始預備退休後 / 年老時生活開支的年齡。在該 3 000 000 名未來退休人士中，約半數於 45 歲前已開始預備退休後 / 年老時的生活開支。另有 8.3%表示於 45 歲及以上時開始預備退休後 / 年老時的生活開支，而 39.1%則表示沒有計劃。(表 9.9)

9.17 All persons of FR were enquired about the age they started making / intended to make provisions for financial needs after retirement / in old age. Among those 3 000 000 persons in FR, about half of them had already made such provisions before they reached 45 years of age. While 8.3% had already made provisions at the age of 45 and above, another 39.1% cited that they had no plan to make provision yet. (Table 9.9)

退休計劃及老年經濟狀況

預計於到達退休年齡後會繼續工作或完全退休

9.18 是項統計調查中，在職或有打算工作的人士會被問及會否於到達退休年齡後完全退休。在 2 453 600 名 35 歲及以上就業、失業及非從事經濟活動(退休人士除外)但有打算工作的人士中，38.7%表示於到達退休年齡後會完全退休，37.1%會繼續全職或兼職工作，而 24.2%則表示不知道。(表 9.10)

預計到達退休年齡後會繼續工作的最主要原因

9.19 在該 910 800 名 35 歲及以上預計於到達退休年齡後會繼續工作的人士中，最普遍提及會繼續工作的最主要原因為「為生活 / 經濟問題」(63.3%)。其次為「有助消磨時間」(21.1%)、「為興趣」(8.5%)及「工作有助身體健康」(5.7%)。(表 9.11)

預期 / 現正由家人提供的經濟支援

對子女有責任供養父母的意見

9.20 大部分(約 8 成)的現正退休人士及未來退休人士均同意「子女是有責任供養父母」。(表 9.6b)

被認為最應該負起退休後 / 年老時的生活保障的人士

9.21 近半數(49.9%)的 35 歲及以上人士表示「自己」為最應該負起退休後 / 年老時的生活保障的人士(現正退休人士中有 39.2%提及，而未來退休人士則有 54.0%)，其次為「兒孫(包括同住或非同住兒孫及其配偶)」(19.0%)及「配偶」

Whether would continue working or retire completely after reaching the retirement age

9.18 In the survey, persons who were employed or had intention to work at the time of enumeration were asked whether they would retire completely after reaching their retirement age. Among those 2 453 600 persons aged 35 and over who were employed, unemployed or economically inactive (other than retired persons) but had intention to work, 38.7% indicated that they would retire completely after reaching the retirement age. Another 37.1% indicated that they would continue working full-time or part-time; while 24.2% said they did not know yet. (Table 9.10)

Main reason for continuing working after reaching the retirement age

9.19 Of those 910 800 persons aged 35 and over who had intention to continue working after reaching the retirement age, the most commonly cited reason was “to make a living / for financial reasons” (63.3%), followed by “to kill time” (21.1%), “for interests” (8.5%) and “working is beneficial to health” (5.7%). (Table 9.11)

Expectation for / actual financial support from family members

Views on whether children should be responsible for providing financial support for parents

9.20 The majority (about 80%) of both CR and FR agreed that “children should be responsible for providing financial support for parents”. (Table 9.6b)

Person perceived as the most responsible person for providing one's financial protection after retirement / in old age

9.21 Half (49.9%) of persons aged 35 and over perceived that “oneself” was the most responsible person for providing one's financial protection after retirement / in old age (as cited by 39.2% of CR and 54.0% of FR), followed by “children / grandchildren (irrespective of living

退休計劃及老年經濟狀況

(10.2%)。少於 1 成的 35 歲及以上人士表示「政府」為最應該負起退休後 / 年老時的生活保障。與未來退休人士(8.0%)相比，現正退休人士有較大比例(13.4%)表示「政府」為最應該負起退休後 / 年老時的生活保障。(表 9.6c)

together or not and including their spouses)” (19.0%) and “spouse” (10.2%). While less than 10% of persons aged 35 and over cited that “Government” was the most responsible party, a comparatively higher proportion of CR (13.4%) did so when compared with FR (8.0%). (Table 9.6c)

現時 / 預期家人每月平均供給的生活費

Average / expected amount of monthly financial support from family members

9.22 約 7 成的現正退休人士(或 804 500 人)表示其家人(不論同住或非同住)現時有提供經濟支援，其中 16.7%表示由家人提供的每月平均生活費為\$1 - \$1,999，30.8%為\$2,000 - \$3,999，而 48.5%則為\$4,000 及以上。該些現正退休人士現時平均每個月由家人供給的生活費中位數為\$4,000。(表 9.8)

9.22 About 70% of CR (or 804 500 persons) indicated that their family members (irrespective of living together or not) currently provided financial support to them. Among them, 16.7% cited that the average amount of monthly financial support provided by family members was \$1 - \$1,999; 30.8% cited \$2,000 - \$3,999; and 48.5% cited \$4,000 and more. The median average amount of monthly financial support provided to those CR by their family members was \$4,000. (Table 9.8)

9.23 是項統計調查中，未來退休人士會被問及預期家人在其退休後 / 年老時提供的經濟支援。約 1 576 800 名未來退休人士(或 52.6%)預期有家人在退休後 / 年老時提供經濟支援，當中 20.1%表示不知道預期提供的生活費。另 5.9%表示預期提供的每月平均生活費為\$1 - \$1,999，23.9%為\$2,000 - \$3,999 及 49.1%為\$4,000 及以上。該些未來退休人士的預期家人每月平均供給的生活費中位數為\$4,800。(表 9.8)

9.23 In the survey, FR were asked about their expectation on financial support from family members after retirement/in old age. Some 1 576 800 persons in FR (or 52.6%) expected to have such support and 20.1% could not tell the amount at the time of survey. Another 5.9% expected that the average amount of monthly financial support provided by family members was \$1 - \$1,999; 23.9% cited \$2,000 - \$3,999; and 49.1% cited \$4,000 and more. For those FR, the median average amount of monthly financial support expected to be provided by family members was \$4,800. (Table 9.8)

退休後移居到其他國家 / 地區的意向

Inclination towards emigration after retirement

打算退休後移居到其他國家 / 地區的意向

Intention of emigration after retirement

9.24 大部分的現正退休人士(88.4%)及未來退休人士(76.9%)表示「多數不會 / 一定不會」在退休後移居到其他國家 / 地區。另一方面，4.2%的現正退休人士及 8.1%的未來退休人士表示「一定會 / 多數會」在退休後移居外地。(表 9.6d)

9.24 The majority of CR (88.4%) and FR (76.9%) indicated that they would “definitely not / most unlikely” to emigrate to other countries / regions after retirement. On the other hand, 4.2% of CR and 8.1% of FR cited that they would “definitely / most likely” to emigrate after retirement. (Table 9.6d)

打算退休後移居其他國家 / 地區的原因

9.25 約 292 900 名 35 歲及以上人士打算退休後移居到其他國家 / 地區。當中，未來退休人士最普遍提及的原因為「有更適合長者居住的環境」(佔未來退休人士的 50.3%)，其次為「生活 / 消費水平較低」(35.2%)及「有更完善的社區 / 醫療設施」(27.1%)。另一方面，現正退休人士最普遍提及的三個移居原因為「生活 / 消費水平較低」(佔現正退休人士的 34.6%)，「有更適合長者居住的環境」(33.3%)及「有親友在其他國家 / 地區居住 (不包括配偶 / 子女)」(26.1%)。(表 9.7)

Reasons for intending to migrate to other countries / regions after retirement

9.25 Some 292 900 persons aged 35 and over indicated that they intended to migrate after retirement. The most common reason cited by FR were "living environment more suitable for the elderly" (50.3% of FR), followed by "lower cost of living" (35.2%) and "having better and comprehensive community / medical facilities" (27.1%). On the other hand, the three most common reasons cited by CR were "lower cost of living" (34.6% of CR), "living environment more suitable for the elderly" (33.3%) and "having relatives living in other countries / regions (excluding spouse / children)" (26.1%). (Table 9.7)

SFC statement on the SEHK's draft proposal on weighted voting rights

25 Jun 2015

The Securities and Futures Commission (SFC) issues the following statement in relation to The Stock Exchange of Hong Kong Limited's (SEHK) draft proposal on weighted voting rights (WVR).

The SEHK's Consultation Conclusions on WVR published on 19 June 2015 outlined some of the relevant features of the draft proposal for a second stage consultation on WVR. The SFC has considered a more detailed version of the proposal.

The Board of the SFC has unanimously concluded that it does not support the draft proposal for primary listings with WVR structures.

The Board's views are set out below.

Eligible applicants would be required to have a very high expected market capitalisation

- Size offers no assurance that a company would treat its shareholders fairly. Any corporate misconduct by an issuer with a large market capitalisation will likely affect more investors and have a greater impact on our markets. For example, these issuers are more likely to become index components which will compel index funds and other types of "passive" institutional investors (which invest public money) to buy and hold their stocks even if fund managers disagree with their WVR structures.

The SEHK would expect eligible applicants to have certain features relating to their businesses and the contribution of their founders as identified in a set of "enhanced suitability" criteria

- The SFC has significant concerns about these proposals that require regulators to assess compliance with the criteria for companies to be eligible for WVR (for example, whether the applicant has some unique features that cannot be easily replicated and are likely to provide a sustainable competitive advantage, as well as the contribution of the founder or founders). Such criteria can only be applied subjectively and are therefore inherently vague. A regime that relies on the subjective judgement of regulators to determine which listing applicants are eligible for WVR would give rise to regulatory uncertainty and could result in inconsistent and unfair decision-making. The SFC is opposed to proceeding on this basis.

WVR structures would be permitted for new listing applicants only (with appropriate anti-avoidance measures)

- The SFC is of the view that Hong Kong's securities markets and reputation would be harmed if WVR structures became commonplace. Among other things, the SFC considered whether the draft proposal justifiably restricts the extent to which WVR structures would be permitted and whether there were effective measures to prevent circumvention of these restrictions by ineligible applicants.
- For example, the draft proposal limits WVR structures to new applicants only. This means that existing listed companies and future issuers that list without WVR structures would not be permitted to adopt such structures. For this feature to work, there must be effective measures to prevent ineligible issuers from bypassing the limitation through arrangements such as spin-offs, assets transfers or other forms of corporate restructuring. The SFC has significant concerns regarding the effectiveness of anti-avoidance provisions proposed by the SEHK.
- It is insufficient to look only at controlling the number of WVR issuers. The SFC is concerned, for example, with the potential impact of acquisitions of existing listed assets by WVR issuers. Unrestricted, post-listing transactions could over time result in the transfer of a significant proportion of existing listed businesses and assets to WVR structures. In the SFC's view, such a development would be detrimental to our markets and the interests of the investing public generally.
- Separately, the draft proposal does not explain how many proposed safeguards and conditions (for example, whether a founder remains actively involved in management) can be monitored on an ongoing basis and what actions can be taken either by regulators or by public shareholders if they are not complied with.

A focus of the discussion to date on WVR has been competition from the United States for the listing of Mainland China businesses. Hong Kong's business and competitive environment is affected by many factors and can change significantly within a relatively short period. In carrying out its regulatory functions, the SFC considers both long term and short term objectives and seeks to uphold the core principles of fairness and transparency which underpin Hong Kong's reputation as an international financial centre.

The Board of the SFC has noted the extensive local and international public debate on and widespread coverage of the WVR issue over many months and has discussed the importance of Hong Kong's reputation as an international financial centre. Against this background, the Board decided that it is in the public interest to issue this statement.



司法機構政務處

Judiciary Administration

電話 Tel: 2867 3534

傳真 Fax: 2523 2042

本函檔號 Our Ref.:

來函檔號 Your Ref.:

18 April 2017

Mr Nicholas Pirie
Barrister-at-law
Room 102, Wilson House
27 Wyndham Street
Central
Hong Kong

Dear Mr Pirie,

**Statistics for Unrepresented Litigants
in Civil and Criminal Cases in
the High Court and District Court**

I refer to your letter dated 3 March 2017 which was received on 5 April 2017.

As requested, enclosed please find the figures for 2016 in the usual format provided before.

Your faithfully,



(M.K. Lam)

for Judiciary Administrator

Statistics on Appeals/Trials/Substantive Hearings
involving Unrepresented Litigants*
in the High Court and District Court for 2016

Year		2016
Court of Appeal, High Court	Civil Appeals	25%
	Criminal Appeals	53%
Court of First Instance, High Court	Civil Trials/ Substantive Hearings	40%
	Tribunal and Master Appeals	57%
	Criminal Trials	1%
	Appeals from Magistrates' Courts	62%
District Court	Civil Trials/ Substantive Hearings	46%
	Criminal Trials	4%

* Appeals/Trials/Substantive Hearings involving unrepresented litigants refer to those appeals/trials/substantive hearings in which at least one of the parties is unrepresented.

HK Overview (65+)

- 14.8% live alone
- 69% not further than primary education
- 93% unemployed
- 78% chronic illness
- 1/3 in poverty
- 8.6% in care homes/hospitals/prisons
- 38.6% in public housing
- Median income:
(employed) \$9,070,
(unemployed) \$3,070
- (based on Thematic Rep
2011 Census +Statistics)

HK Overview (65+) p 2

- 87.5 % claimed CSSA only 8.4 % had pensions
- 87% had income of less than \$7,000 p m
- median personal income was \$2,000
- 87.6% of current retired stopped working at the age of 50 (Para 9.13)
- 19.2 % had MPF, 9.3 % had ORSO+ 5% Civil service pensions
- Only 39.1 % had made some provision for retirement.
- 63 % of all persons 35 -65 said they would have to work after retirement
- (This is based on the Census + Statistics Study 2013 – No 52)

表 4.6 (續) 按年齡組別、婚姻狀況及性別劃分的勞動人口參與率
Table 4.6 (Cont'd) Labour force participation rates by age group, marital status and sex

				百分比 Percentage								
年齡組別 Age group	婚姻狀況 Marital status	性別 Sex	Sex	1986	1991	1996	2001	2006	2011	2013	2014	2015
50 - 59	從未結婚	女	F	66.5	77.6	73.3	74.9	69.9	75.6	78.6	77.4	79.1
	Never married	男	M	84.7	83.8	77.3	72.6	70.3	72.0	79.1	76.0	75.6
	已婚	女	F	34.2	33.4	31.2	39.3	42.4	47.6	51.8	53.2	53.6
	Now married	男	M	88.4	87.9	85.4	86.6	84.8	86.5	88.3	88.6	88.6
	喪偶/離婚/分居	女	F	41.1	36.3	36.6	47.6	52.5	58.2	62.5	62.6	65.3
	Widowed/ divorced/ separated	男	M	80.4	76.8	70.8	76.4	70.9	76.6	77.2	76.8	77.0
	合計	女	F	35.9	34.6	32.9	41.9	45.7	51.6	56.1	57.1	58.2
Overall	男	M	87.9	87.2	84.5	85.5	83.3	84.9	86.8	86.7	86.7	
≥ 60	從未結婚	女	F	30.2	27.3	12.8	10.3	11.7	22.8	24.9	30.8	28.7
	Never married	男	M	49.5	44.8	31.0	17.7	16.1	21.4	23.8	26.1	27.2
	已婚	女	F	15.3	11.1	6.4	5.1	6.3	10.2	11.1	12.4	13.3
	Now married	男	M	38.9	34.9	27.2	22.4	21.0	25.3	28.4	29.4	30.0
	喪偶/離婚/分居	女	F	11.2	7.3	3.2	2.2	2.3	4.8	6.6	6.6	7.1
	Widowed/ divorced/ separated	男	M	24.1	20.3	12.9	10.3	9.0	11.7	17.5	17.7	18.6
	合計	女	F	13.6	9.8	5.0	3.8	4.5	8.1	9.6	10.6	11.4
Overall	男	M	37.0	33.3	25.4	20.4	19.3	23.4	26.9	27.8	28.4	
合計 Overall	女	F	48.9	47.9	47.8	50.8	52.6	53.0	54.5	54.6	54.8	
	男	M	80.5	78.9	75.7	73.0	70.9	68.4	69.1	68.8	68.8	
	合計	Overall	65.1	63.5	61.6	61.5	61.2	60.1	61.2	61.1	61.2	

註釋： ‡ 由於抽樣誤差大，有關統計數字不予公布。
Note: ‡ Statistics are not released due to large sampling error.

資料來源： 政府統計處社會分析及研究組(二) (查詢電話： 2887 5508； 查詢電郵： ghs@censtatd.gov.hk)
Source: Social Analysis and Research Section (2), Census and Statistics Department
(Enquiry telephone no.: 2887 5508; Enquiry e-mail: ghs@censtatd.gov.hk)

表 7
Table 7

2016年5月至6月按年齡組別劃分的每月工資水平及分布
Monthly wage level and distribution analysed by age group, May – Jun 2016

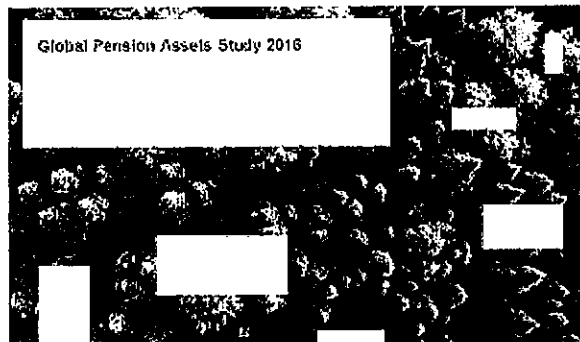
年齡組別 Age group	僱員 Employees		每月工資 (港元) Monthly wage (HK\$)		
	人數 Number (’000)	百分比 Percentage (%)	第二十五個 百分位數 25 th percentile	第五十個 百分位數 50 th percentile	第七十五個 百分位數 75 th percentile
所有僱員 All employees					
15-24	226.7	7.5	9,600	11,900	14,900
25-34	778.1	25.8	12,800	16,800	24,000
35-44	775.3	25.7	13,300	19,000	31,000
45-54	757.7	25.1	11,500	16,600	26,600
≥ 55	475.2	15.8	10,200	13,400	20,800
所有以上年齡組別 All age groups above	3 012.9	100.0	11,600	16,200	25,400
全職僱員 Full-time employees					
15-24	185.9	6.6	10,900	12,500	15,600
25-34	748.2	26.7	13,000	17,000	24,600
35-44	733.4	26.2	14,200	20,000	32,000
45-54	702.2	25.1	12,200	17,500	28,000
≥ 55	430.6	15.4	11,000	14,400	22,000
所有以上年齡組別 All age groups above	2 800.4	100.0	12,400	16,900	26,000

Global Pension Assets Study 2016

February 2, 2016

AT A GLANCE

- At the end of 2015, total pension assets were estimated at USD 35.4 trillion, which represents a decrease of 0.5% compared to USD 35.6 trillion at the end of 2014
- Pension assets relative to GDP reached 80% in 2015, which represents a decrease of 4% from the 2014 ratio of 84%
- The largest pension markets are the US, UK and Japan with 62%, 9% and 8% of total pension assets in the study, respectively



Download PDF

(<https://www.towerswatson.com/~media/WTW/PDF/Insights/2016/02/Global-Pensions-Asset-Study-2016.pdf?la=en>)

This year the Global Pension Assets Study 2016 (GPAS) added Chile, India and Spain to its study of the 19 largest pension markets in the world, (other countries include: Australia, Brazil, Canada, France, Germany, Hong Kong, Ireland, Japan, Malaysia, Mexico, Netherlands, South Africa, South Korea, Switzerland, the UK and the US).

The Global Pension Assets Study 2016 pension markets analysis is organised in four sections:

- Asset size, including growth statistics and comparison of asset size with GDP
- Asset allocation
- Defined benefit (DB) and defined contribution (DC) share of pension assets
- The faces of change - six medium-term factors growing in influence on pension fund development.

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Global Pension Assets Study 2016

(<https://www.slideshare.net/TowersWatson/global-pension-assets-study-2016>)

from **Willis Towers Watson** (<https://www.slideshare.net/TowersWatson>)

Press release

- **Global pension fund assets crab sideways**
(<https://www.willistowerswatson.com/en/press/2016/02/global-pension-fund-assets-crab-sideways>)

Also of Interest

- **The world's 300 largest pension funds – year end 2014**
(<https://www.towerswatson.com/en/Insights/IC-Types/Survey-Research-Results/2015/09/The-worlds-300-largest-pension-funds-year-end-2014>)
- **Global Alternatives Survey 2015**
(<https://www.towerswatson.com/en/Insights/IC-Types/Survey-Research-Results/2015/07/Global-Alternatives-Survey-2015>)
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CACV 85/2009

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF APPEAL
CIVIL APPEAL NO. 85 OF 2009
(ON APPEAL FROM HCMP NO. 2382 OF 2008)

IN THE MATTER of PCCW LIMITED
(電訊盈科有限公司)

and

IN THE MATTER of the Companies Ordinance, Chapter 32

Before: Hon Rogers VP, Lam and Barma JJ in Court

Dates of Hearing: 16-18 & 20-22 April 2009

Date of Judgment: 22 April 2009

Date of Handing Down Reasons for Judgment: 11 May 2009

REASONS FOR JUDGMENT

Hon Rogers VP:

1. This was an appeal from a judgment of Kwan J given on 6 April 2009. The matter before the judge was a petition that had been presented on 11 February 2009 by PCCW Limited 電訊盈科有限公司 (“the Company”). The petition sought sanction of a **scheme of arrangement** (“the Scheme”)

Retirement Protection Forging Ahead

Consultation Document



Commission on Poverty
December 2015

3. A Checklist of the Reform position.

- (a) HAB principles for the expanded SLAS are contrary to past principles and not consistent with Article 35 of the Basic Law nor Section 10(3) of the LA Ordinance – the key principle of expanding legal aid scope to increase access to justice and the rule of law was identified by LegCo members;
- (b) HAB Failed to see the Reforms as a Package – however, proceeding piece meal is better than nothing provided there is continuous progress in reform; the \$100 million injection was promised on the assumption there was a coherent package of reforms giving wider access to justice.
- (c) No sound reason given for refusing to adopt the Financial Eligibility Limits (FELs) proposed by the Bar for OLAS \$350,000 and for SLAS \$3m – HAB contrary to Scott Report principles. (must include costs of Defendants not only Plaintiff costs as the actual total cost of proceedings) - but better than nothing. The Take up Rate for OLAS occasioned by the increase in FELs from \$175,800 to \$260,000 has yielded only a 3.5 % increase in Applications and grants for Legal Aid. The increase in FELs for SLAS from \$488,000. To \$1.3 m has yielded a 14 % increase in applications and grants. (On 30th March 2011 a Resolution of the Legislative Council, LN 51 of 2011 set out the changes and . By LN 83 of 2011 this came into operation on 18th May 2011.) See Legal Aid Letter 28th June 2012 to NP

The Bar Association and Law Society had advocated a much bigger increase for OLAS to \$350,000 and SLAS to \$3 million, in view of the unmet needs. These are small percentage increases given the 50 % increase in OLAS Fels (3.5 %) only 15 % for SLAS when the FEL was raised 3 times. Therefore in the next session we would ask the Sub-Committee to revisit this, and the former Chief Executive committed HK \$100 million to this process. We have had inflation over the last 2 year since we started this process of the order of 10-12 % in any event.

The continuing unmet needs are demonstrated by the Judiciary Administrator's Letter of the 9th February 2012, demonstrated the under representation in civil cases in both the District and High Courts.

The overall number of Certificates from 2006 through to 2011 has remained much the same. See Summary Sheet by the Legal Aid Department to NP dated 1st August 2011. Marked Appendix F

- (d) Proposal for Age related exemption for assets test, should be age 55. However, the age 60 compromise proposed by Administration is a reasonable beginning. However, there is only partial exemption of assets of only up to \$260,000 given per LN 35 of 2011 dated 15th February 2011. Such a limited exemption is mean spirited and is contra to the intention of the reform, which is to protect the assets of the elderly from having to be 'used up' in litigation

before they become "eligible" and when they cannot earn back those monies because they are approaching the end of their working life.

- (e) Amendments to cover CFA cases still needed; see Bar draft Bill of July 2011;
- (f) Expansion of scope of Professional Negligence: - accepted but too limited. No sound reason provided to exclude Independent Financial Advisors, especially since a new tribunal is being proposed for cases upto \$600,000. Accordingly, SLAS should be available for cases valued from \$60,000 upwards both in the Financial Services Tribunal, and District Court and High Court for higher value cases - but a welcome beginning to the expansion of scope;
- (g) Sale of insurance products- accepted - but should include Insurance Intermediaries, brokers and agents;
- (h) Claims against Developers in sale of first hand Residential properties- accepted - but too narrow. It should cover all New properties as often properties are presold or "flipped" before completion and should be wider since estate agents are being included for professional negligence; some defects in new buildings do not appear for years, so the claims could be for cases within 6 years to cover contract claims and subsequent purchasers within 6 years per Section 4 of the Limitation Ordinance Cap.347.
- (i) Employees claims on appeal from the Labour Tribunal- accepted, but should include Enforcement of awards;
- (j) Derivatives etc - HAB wished to defer and study any detailed proposal next legislative session, but this has been advocated since 2002, long before Lehman Brothers, and there is public need and strong LegCo and LASC support. The current position is to only remove the exception from OLAS but not to reform SLAS to include such cases. The 'sandwich class' have been the main victims of such products so excluding such cases from SLAS makes no sense. Limitation periods are running from 2007 so action is needed soon to avoid prejudice to the victims.
- (k) Claims against Incorporated Owners - HAB reject this but LegCo support;
- (l) Property Damage Claims from small marine accidents - HAB reject but provide no adequate reason;
- (m) Claims against Property Developers by minority owners in compulsory sales - HAB reject this LegCo proposal which LegCo strongly supported; and see SCMP Leader "Social justice is more than hollow words" dated 4th April 2011. The Bar believes this form of minority protection is required, given that mediation in many cases is a process of head bashing.
- (n) Claims in respect of Trusts - HAB reject but LegCo support; There is no reason not to support this initiative. now that the Trustees Association have

introduced a Code of Professional Conduct, and most if not all have Professional Indemnity Insurance Cover.

- (o) Claims involving disputes between Limited Companies and their minority shareholders – HAB reject this probably through lack of understanding. If they read the Re PCCW Case 2009 3 HKC 292 – the judgment of the Court of Appeal – This was a case of vote manipulation where there was an unaccountable drop in value of the shares, and privatisation was put forward, so as to deprive the shareholders of the true value of their shares. The Court refused to sanction the Scheme of Arrangement – this would have been a fraud on the minority. See Section 166 and the Court always has the power to award costs in favour of minority shareholders. This is similar to its powers under Section 168 A.;
- (p) Claims arising from Sale of Goods and provision of services – HAB reject for no valid reason, but LegCo support;
- (q) Class Actions which are an important adjunct to the above and part of future CJR reforms, were also omitted from the HAB Paper. The Bar had put forward class actions for disasters, environmental damage, consumer or product liability, claims by employees against employers where insolvency proceedings have been instituted or are being instituted and building management disputes; Class Actions are now being actively considered, public interest litigation must be covered by Legal Aid; and the Court does grant costs to persons who have been affected, as well as those who have a legitimate interest in pursuing say an application for judicial review, E.g. the Harbour Protection Litigation, where the court ordered costs against the Government.
- (r) A special discretion should be reposed in the Director of Legal Aid in appropriate class action cases to grant legal aid in appropriate cases.
- (s) Thus 7 out of about 16 reforms are under way in some form, but only 4 of the 14 SLAS reforms are partly accepted. There is much room for further reform.

4. HAB LC Paper No. CB (2)600/11-12(01) provided on 14th December 2011 for LegCo Panel, paragraphs 5-7. The refusal to consider 'Minority Owners' Compulsory Sale Order cases is based on illogical reasoning. Just because 26 out of 27 applications were approved by a tribunal where there is no Legal Aid does not prove that Legal Aid should not be granted to 1 out of 27 applications, one of which may have merits, and which merits could be detected on the merits testing done under normal Legal Aid processing, and which adjudicated result could be used as a fairer precedent. Just because an application is approved does not imply that the right sum was achieved, especially in cases where the developer is fully represented and the individual is not adequately represented. In such situations, the individuals lose

out and are aggrieved. An unsatisfactory result is almost forced onto the individuals. Mediation, without the sanction of legal action, in case the developer is not reasonable, is a toothless strategy with little or no credibility. Because there has been a mediated result, does not mean there has been a "successful mediation", as parties are often made "all or nothing offers" in these cases. Note there was no "exit poll" conducted to see how satisfied or dissatisfied the 26 were.

5. As noted before, "high chance" of success is not the correct criteria for expansion of Legal Aid. Hence, HAB decision making is based on erroneous criteria. This proposed reform, made by the LegCo Panel, has clear merits and should proceed.
6. Paper paragraph 8-11. The rejection of claims for Sale of Goods and Provision of Services is based on an error. Just because the Administration objects to Legal Aid for cases with small amounts of money, this is not a valid objection since Schedule 3 of SLAS classifies \$60,000 or above as being cases of significant injury or injustice. Small cases are thus excluded anyway from SLAS accordingly this is not a valid or justifiable objection.
7. The inference from paragraphs 10 and 11 is that "significant consumer interests or issues of a substantial impact on consumers" are responsibilities which are being ducked by the HAB. They are attempting to pass the buck to the Consumer Legal Action Fund which may not have the ability or resources to take on significant cases. The lack of resources has already hampered litigation in financial services cases. It is obvious that such significant cases of injury or injustice with substantial impact on the community or society ought rightly to be eligible so that once the individual case's merits are established, Legal Aid can be granted. The Government's reasoning is again not logical and contradicts the Legal Aid Department's own mission (and Schedule 3) which is to provide access to justice for significant cases or those with impacts on society.
8. This is linked to the reform proposal for Class actions so, for example, SLAS can be granted in the groups of cases of heart pacemakers which have broken down. These are not personal injury cases and so access to justice is being denied.
9. The Annex to the Paper containing the Administration's Proposals demonstrates lack of adequate action. This demonstrates the Administration is not responding to LegCo Panel's views. A year has passed and there is nothing except repetition mostly of what has been said before, save for the concession that Lehman Brothers type cases will now be covered. Where is the draft Bill? Where is the timetable? This lack of action/inaction by the HAB shows little effort to implement the Chief Executive's Policy Address of 2010.
10. The Panel Meeting of 20th December 2011 showed the consensus for more expansion of SLAS and concluded that after the implementation of the proposals by the Administration the Panel should further discuss other proposals not supported by the Administration with a view to mapping out the way forward for the next term of LegCo to follow up. Neither the Bar Association nor the Law Society, have been

shown any new "road map", or "plan" to consider the other amendments on a logical or rational basis. To date we have seen no proposals at all 7 months later.

11. The Bar puts forward the rest of the Package as summarized herein so unmet needs for relatively ordinary people, for access to justice are addressed as soon as possible and the decline in Legal Aid is halted. We urge the New Administration to expand the Proposals to bring them into line with the law and the views expressed by the LegCo Panel and the proposals of the Bar Association of July 2010 and thereafter.
12. The Bar states that the need for an Independent Legal Aid Authority is clear when viewed in the light of the lack of progress on needed reforms to meet the expanding needs of society for access to justice. The LASC Monitoring system is just not working, and any such progress is essentially dependent upon the free services provided by members of the Board of LASC, and no professional establishment to speak of. The Bar Association's Submission on the need to establish an Independent Legal Aid Authority of June 2012 is attached herewith.
13. Equality before the law provided by equal access to justice via Legal Aid is a key component of our justice system where the gulf between the powerful and the victim or complainant can be considerable. Access to dispute resolution systems, negotiations, mediation are helpful but are not a substitute for genuine access to justice unless the victim or complainant of limited means has legal representation so that there is equality in the access to justice. Pro bono systems are not a substitute for Legal Aid as it does not provide equality before the law in the access to justice. Negotiation and mediation systems are a toothless remedy unless Legally Aided litigation is available.
14. In summary, Legal Aid must be reformed by a process including reforms to provide for unmet needs, access to justice and equality before the law, SLAS expansion, and independence. An objective for a new statutory authority could be to provide access to justice and equality before the law to those of limited means. These four limbs provide a reasonable policy approach for the new Administration.

Hong Kong Bar Association

5th July 2012
[8290.rb]



法律援助服務局
LEGAL AID SERVICES COUNCIL

Our Ref: () in LM(1) to LASC/CR 2/2/1

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17 July 2015

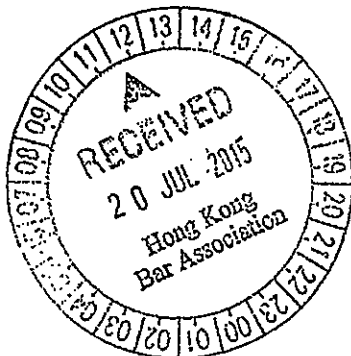
Mr Raymond Leung, SC
Honorary Secretary
Hong Kong Bar Association
LG2 Floor, High Court
38 Queensway, Hong Kong

Dear Mr Leung,

Expansion of Supplementary Legal Aid Scheme

I am pleased to inform you that the Working Group on Expansion of Supplementary Legal Aid Scheme (SLAS) formed under the Council has reported its preliminary findings on the review of the scope of SLAS. As the Bar Association is one of the important stakeholders of legal aid service, the Council would like to share with you the preliminary proposal of the Working Group at Annex. If the Bar Association has any further views on the matter, you are most welcomed to send the Council a copy of it for consideration.

Yours sincerely,



(Ms Helen Pang)
Secretary

Preliminary Proposal of the Working Group on Expansion of Supplementary Legal Aid Scheme (SLAS)

The Working Group supported further expansion of SLAS, on the basis that the scheme would continue to be self-financing and financially viable. It was also agreed that the expansion might be introduced on an incremental basis and the viability of the Supplementary Legal Aid Fund should be closely monitored. To facilitate future review of the scope of SLAS, the Working Group also considered that the statistics on the newly added types of cases should be maintained and analysis of their impact on the Fund should be made.

2. Recommendations in respect of the types of cases that have been considered by the Working Group for inclusion in the SLAS are given in the ensuing paragraphs. During discussion, the recoverability of legal costs spent and the damages to costs ratio of the case types have been taken into account.

Claims against the Incorporated Owners of a Multi-Storey Building

3. In the last review, the Administration did not propose to expand the scope of SLAS to cover property damage claims against incorporated owners. The reason given is that there is no requirement for incorporated owners to have insurance cover for damage to property. Individual owners will be the ones who are responsible for a share of the legal costs if proceedings involving property damage claims arise. While the Working Group appreciated the difficulties the incorporated owners may face, it considered the issue from a different angle. It viewed that if claims against incorporated owners were included in SLAS, it would help individual owners counter act against the improprieties of incorporated owners, for instance, the incorporated owners' failure to follow the established procedures or the act that is outside its authorities say not enough notice or members to make a quorum for a meeting to discuss matters that will adversely affect the benefit of individual owners. Therefore, the Working Group recommended that monetary claims exceeding \$60,000 based on the improprieties of incorporated owners of multi-storey buildings should be included in SLAS.

Independent Financial Consultants

4. According to the Securities and Futures Commission, if a corporation is licensed for Type 1 (dealing in securities), Type 2 (dealing in future contracts) or Type 8 (securities margin financing) regulated activities, it is required to take out and maintain insurance. The Working Group therefore considered that monetary claims exceeding \$60,000 against independent financial consultants registered under the Commission and required to have insurance cover should be included in SLAS.

Derivatives Claims

5. OLAS was expanded in November 2012 to cover monetary claims in derivatives of securities, currency futures or other futures when fraud, misrepresentation or deception was involved at the time of purchase. In view that the exception has been removed from OLAS, the Working Group considered that the same types and scope of coverage of derivatives claims exceeding \$60,000 should also be included in SLAS.

Small Marine Accidents

6. Same as last review, since small boat accidents resulting in personal injuries have already been covered under SLAS, the Working Group did not recommend extension of SLAS to claims for property damage from such accidents.

Claims against Property Developers by Minority Owners in Compulsory Sales

7. Noting that claims against property developers by minority owners in compulsory sales normally do not involve monetary claims, the Working Group considered that such claims should not be covered by SLAS.

Trusts

8. In view that claims in respect of trusts should be partly

covered under professional negligence claims, the Working Group did not recommend expanding the scope of SLAS to cover the said claims.

Disputes between Limited Companies and Their Minority Shareholders

9. Since claims involving disputes between limited companies and their shareholders regarding their respective rights are expressly excluded from OLAS and such claims may not necessarily be related to monetary claims, same as last review, the Working Group considered that SLAS should not be expanded to cover such claims.

Sale of Goods and Provision of Services

10. The Working Group did not recommend claims arising out of the sale of goods and the provision of services be included in SLAS for the time being because actions would be taken by the Customs and Excise Department under the Trade Descriptions Ordinance, and consumer class actions would be covered by the Consumer Legal Action Fund set up by the Consumer Council.

Class Action

11. There are different ways to structure a class action system. It could be a named plaintiff or a number of named plaintiffs to file a claim on behalf of a "class" of people or businesses who claimed to have suffered from a common injury or loss. The Working Group agreed that the inclusion of this item should be actively considered when the law governing class action was available. It also viewed that the Director of Legal Aid should have discretion to grant legal aid in appropriate class action cases to allow elasticity for evolving situation or circumstances.

Defamation Proceedings and Election Petitions

12. A research has been conducted by the Home Affairs Bureau and the Legal Aid Department on whether election petitions and defamation proceedings are covered by legal aid in overseas jurisdictions. Available information indicates that election petitions are generally not covered by legal aid in England & Wales, New South Wales, Victoria, New

Zealand, North Ireland, Ontario, Scotland and Singapore. As for defamation proceedings, they are not covered by legal aid in Ontario, Victoria and Singapore. It is generally not covered except under special or exceptional circumstances in England & Wales, New South Wales, Northern Ireland and Scotland. It is covered in New Zealand.

13. In Hong Kong, legal aid is not provided for election petitions and defamation proceedings under OLAS.

14. Having considered the above, the Working Group did not recommend extending SLAS to these two types of cases.

Conclusion

15. To summarise, the following types of cases where the claim is likely to exceed \$60,000 are recommended to be covered by SLAS:

- (a) Claims against incorporated owners of a multi-storey building;
- (b) Claims against independent financial consultants registered under the Securities and Futures Commission and required to have insurance cover; and
- (c) Claims in derivatives of securities, currency futures or other futures when fraud, misrepresentation or deception was involved at the time of purchase.

16. The Working Group also recommended that the inclusion of class action in SLAS should be actively considered when the law governing class action was available and the Director of Legal Aid should have discretion to grant legal aid in appropriate class action cases.

Other Recommendations

17. Following the recommendation of the Council in the last five-yearly review of the criteria used to assess the financial eligibility of legal aid applicants, the Administration adopted \$1.3 million as the level of FEL for SLAS. Such amount was based on the average legal costs (i.e. \$1.297 million) of a SLAS case that actually went to trial in 2008. The FEL for SLAS is currently set at \$1,348,100.

18. Using the same approach to review the FEL, the Working Group has studied the average legal costs in the past five years provided by LAD. The respective figures are:

<u>Year</u>	<u>Average Legal Costs</u>
2009	\$577,229
2010	\$308,026
2011	\$582,161
2012	\$766,618
2013	\$643,778

19. In view that the average legal costs appear to be roughly the same throughout the years, the Working Group did not propose any changes to the level of FEL for SLAS for the time being but recommended it be monitored and reviewed every year.

20. Regarding the age related exemption for assets test in assessing the financial resources of legal aid applicants, the Council has proposed in its letter to the Home Affairs Bureau dated 3 August 2011 the Administration to take age 55. The Working Group agreed to retain such proposal to protect the assets of the elderly from being "used up" in litigation as they are approaching the end of their working life and could not earn back those monies.

- End -



法律援助服務局
LEGAL AID SERVICES COUNCIL

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12 September 2016

Mr Ruy Barretto, SC
Chairman, Special Committee on Legal Aid Reform
Hong Kong Bar Association
LG2 Floor, High Court
38 Queensway, Hong Kong

Dear Mr Barretto,

Expansion of Supplementary Legal Aid Scheme

Thank you for your letter of 31 August 2016.

Further to our letter dated 22 December 2015, I am pleased to inform you that this Council has already deliberately considered the Bar Association's views provided in November 2015 on the further expansion of the Supplementary Legal Aid Scheme (SLAS). Taking into account the views of Bar Association and those of the Law Society, the Council has made a submission on the matter to the Chief Executive in July 2016. The submission has also been uploaded onto the Council's website. For your reference, a copy of the said submission is attached.

I sincerely thank you for the views of Bar Association on the further expansion of SLAS.



Yours sincerely,

Dr Eric Li Ka Cheung
Chairman
Legal Aid Services Council

c.c. Ms Juliana Chow, Chair of the Working Group on Expansion of SLAS, LASC



法律援助服務局

LEGAL AID SERVICES COUNCIL

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15 July 2016

The Honorable C Y LEUNG, GBM, GBS, JP
The Chief Executive
Hong Kong Special Administrative Region
People's Republic of China
Tamar, Hong Kong

Dear 

Further Review of the Supplementary Legal Aid Scheme

Thank you for your Home Affairs Bureau's invitation to the Legal Aid Services Council for conducting a further review of the Supplementary Legal Aid Scheme ("SLAS").

The Council is responsible for, inter alia, advising the Chief Executive on legal aid policy. It has been keen to uphold and enhance the rule of law by striving to ensure access to justice and equality before the law of people of limited means. In 2010, the Council has made a submission on the expansion of SLAS to the Chief Executive with a view to enhancing the coverage of legal aid and providing greater access to justice for the middle class.

For the further review of SLAS suggested by the Home Affairs Bureau, the working group set up by the Council has recently completed the study. I have the pleasure to report to you the findings of the Council.

Working Group on Expansion of SLAS

The Working Group on Expansion of SLAS ("WG") is composed of members of the Council. It is chaired by a barrister and supported by a solicitor and members of other professions. It is tasked to discuss and consider whether

it is necessary and feasible to further expand the scope of SLAS and, if so, which type(s) of cases should be included. In addition to the views expressed by members of the WG, the WG has considered written submissions and views, the Hong Kong Bar Association's position papers on this topic dated 20 July 2010 and 5 November 2012 in particular, examined relevant statistics and reviewed other materials. Recently the WG has also deliberated the written submissions of Hong Kong Bar Association and the Law Society of Hong Kong dated 18 and 24 November 2015 respectively in response to the preliminary proposal of WG.

Supplementary Legal Aid Scheme

SLAS came into operation in 1984. It was established on the basis of self-financing and financial viability. It aims at providing legal assistance to people whose financial resources exceed the upper limit allowed under the Ordinary Legal Aid Scheme (OLAS) but are below a ceiling amount. The financial eligibility limit (FEL) for SLAS is currently set at \$1,451,900.

SLAS is funded by the initial seed money of \$1 million from the Lotteries Fund, an injection of \$27 million from the general revenue in 1995, 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, costs awarded and receipts from first charge enforcement, etc.

All along, the types of proceedings covered by SLAS are those: (a) 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 (b) which involve monetary claims and have a high success rate and a good chance of recovering costs and damages.

SLAS was limited initially to cover claims for damages for personal injuries or death. It was expanded in 1992 to include employees' compensation claims and in 1995 civil proceedings for medical, dental and legal professional negligence.

In November 2012, the scope of SLAS was significantly expanded having considered the Council's recommendations and taken into account the views of relevant stakeholders. In addition to the pre-existing claims relating to personal injuries or death, employees' compensation and medical, dental and legal professional negligence, SLAS was expanded 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 awards made by the Labour Tribunal.

The LegCo Finance Committee's funding approval of \$100 million was obtained in December 2012 to support the operation of the expanded SLAS. As at the end of March 2016, the balance of the Supplementary Legal Aid Fund was \$191.5 million.

Since the expansion in 2012, the Legal Aid Department has been gaining experience on the newly added proceedings and assessing their impact on the Supplementary Legal Aid Fund.

Financial viability of the Supplementary Legal Aid Fund depends on the choice of claims covered, the merits test, the success rate in litigation, the recoverability of legal costs spent and the damages to costs ratio. At present, most of the SLAS claims are covered by insurance policies and the bulk of the SLAS cases are personal injuries claims which have a very high success rate and high compensation ratio.

The loss of any SLAS case impacts heavily on the Supplementary Legal Aid Fund as it has to bear the costs of both sides. In 2008, the loss of a SLAS funded personal injuries claim with estimated costs of \$17 million led to a drastic reduction of the Supplementary Legal Aid Fund from \$102 million to \$88 million. Without the gain from bank interest, there would be a net loss in most of the past 10 years.

Further Review of SLAS

In reviewing SLAS, the question of whether it is necessary and feasible to expand the scope of SLAS has been examined. The matters of: i) whether monetary claims are involved; ii) whether the claims have a high success rate; and iii) whether there is a good chance of recovering costs and damages have also been taken into account.

After deliberation, the Council supports the WG's recommendations that the scope of SLAS should be further expanded. Against the background above-mentioned, the Scheme should continue to be self-financing and

financially viable. It is also agreed that the expansion may be introduced on an incremental basis and the viability of the Supplementary Legal Aid Fund should be closely monitored. To facilitate future review of the scope of SLAS, it is considered necessary to create and maintain statistics on the newly added types of cases, and to conduct analysis of their impact on the Supplementary Legal Aid Fund.

Detailed recommendations in respect of the types of cases that have been considered for inclusion in the SLAS are given in the ensuing paragraphs.

Claims against the Incorporated Owners of a Multi-Storey Building

In the last review, the Administration did not propose to expand the scope of SLAS to cover property damage claims against the incorporated owners of a multi-storey building. It also revealed that it was not a mandatory requirement for the incorporated owners to procure insurance to cover damages to property of the third party, so individual owners would be the ones who were responsible for a share of the legal costs if proceedings involving property damage claims arose. Besides, it would be unfair if legal aid was made available only for claims against incorporated owners instead of all property damage cases. The Council took note of these points.

In the current review, since the issue of bid-rigging for building renovation and maintenance contract is a big concern of the community, the Council has focused on the study if legal aid should be provided under SLAS to help individual owners counter act against the improprieties of incorporated owners, for instance, the incorporated owners' failure to follow the established procedures or the act that is outside its authorities say not enough notice or members to make a quorum for a meeting to discuss matters that will adversely affect the benefit of individual owners, etc.

The Council recognizes that as in the case of property damage claims, the inclusion of claims solely against incorporated owners under SLAS may give an impression that SLAS is giving a special privilege to claims against body corporate and it will not be easy to explain the difference in treatment if legal aid will not be available under SLAS for claims where incorporated owners do not exist. Besides, monetary claims may not be involved in relation to the issue of bid-rigging. Any loss in the proceedings will adversely affect the Supplementary Legal Aid Fund which is limited in resources. In addition, the Competition Ordinance is in full force and the Competition Commission has

kicked off its "Fighting Bid-rigging Cartels" Campaign and committed to use the full extent of its power to end bid-rigging cartels. In view of the circumstances, the Council considers that claims against the incorporated owners of a multi-storey building should not be included in SLAS for the time being and the issue may be re-visited in due course.

Independent Financial Consultants

According to the Securities and Futures Commission, if a corporation is licensed for Type 1 (dealing in securities), Type 2 (dealing in future contracts) or Type 8 (securities margin financing) regulated activities, it is required to take out and maintain insurance. The Council therefore considers that monetary claims exceeding \$60,000 against independent financial consultants registered under the Commission and required to have insurance cover could be included in SLAS.

Derivatives Claims

The OLAS was expanded in November 2012 to cover monetary claims in derivatives of securities, currency futures or other futures when fraud, misrepresentation or deception was involved at the time of purchase. In view that the exception has been removed from OLAS, the Council considers that the same types and scope of coverage of derivatives claims exceeding \$60,000 should also be included in SLAS.

Small Marine Accidents

Small boat accidents resulting in personal injuries have already been covered under SLAS. The chance of claims purely for property damage is quite remote. Even if it occurs, the insurers of the boat owners will safeguard their insured clients' interest. Therefore, the Council does not recommend extension of SLAS to claims for property damage from small marine accidents.

Claims against Property Developers by Minority Owners in Compulsory Sales

Noting that claims against property developers by minority owners in compulsory sales are related to the Lands Tribunal's orders to sell and normally do not involve monetary claims, the Council considers that such claims should not be covered by SLAS.

Trusts

In general, any person could be appointed as trustee for a trust. He/she may not necessarily be a professional. Hence, it could not be sure whether costs and damages could be recovered if claims in respect of the trust occurs. Even if a professional say solicitor is assigned as trustee, the claims against such kind of professional are already covered by professional negligence claims. Therefore, the Council considers it not appropriate/necessary to expand SLAS to cover claims for breach of trust against trustees.

Disputes between Limited Companies and Their Minority Shareholders

Since claims involving disputes between limited companies and their shareholders regarding their respective rights are expressly excluded from OLAS and such claims may not necessarily be related to monetary claims, the Council considers that SLAS should not be expanded to cover this type of claims.

Sale of Goods and Provision of Services

The Council recommends not including claims arising out of the sale of goods and the provision of services in SLAS for the time being because actions will be taken by the Customs and Excise Department under the Trade Descriptions Ordinance, and consumer class actions will be covered by the Consumer Legal Action Fund set up by the Consumer Council.

Class Action

There are different ways to structure a class action system. It could be a named plaintiff or a number of named plaintiffs to file a claim on behalf of a "class" of people or businesses who claim to have suffered from a common injury or loss. The Council considers that the inclusion of this item should be actively considered when the law governing class action is available. It also views that the Director of Legal Aid should have discretion to grant legal aid in appropriate class action cases to allow elasticity for evolving situation or circumstances.

Defamation Proceedings and Election Petitions

The Home Affairs Bureau together with the Legal Aid Department have helped conduct a research on whether election petitions and defamation

proceedings are covered by legal aid in overseas jurisdictions. Available information indicates that election petitions are generally not covered by legal aid in England & Wales, New South Wales and Victoria of Australia, New Zealand, North Ireland, Ontario of Canada, Scotland and Singapore. As for defamation proceedings, it is not covered by legal aid in Ontario of Canada, Victoria of Australia and Singapore, and it is generally not covered except under special or exceptional circumstances in England & Wales, New South Wales of Australia, Northern Ireland and Scotland. In Hong Kong, legal aid is not provided for election petitions and defamation proceedings under OLAS. Having considered the above, the Council does not recommend extending SLAS to these two types of cases.

Financial Eligibility Limit

Following the recommendation of the Council in the five-yearly review of the criteria used to assess the financial eligibility of legal aid applicants in 2010, the Administration adopted \$1.3 million as the level of FEL for SLAS. Such amount was based on the average legal costs (i.e. \$1.297 million) of a SLAS case that actually went to trial in 2008. The FEL for SLAS is currently set at \$1,451,900. In view that the average legal costs provided by the Legal Aid Department appear to be roughly the same throughout the years, the Council does not propose any change to the level of FEL for SLAS for the time being but recommends it be monitored and reviewed every year.

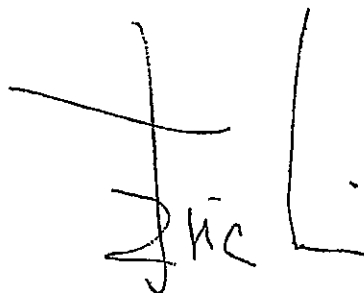
Age Related Exemption for Assets Test

Regarding the age related exemption for assets test in assessing the financial resources of legal aid applicants, the Council has proposed in its letter to the Home Affairs Bureau dated 3 August 2011 the Administration to take age 55. The Council maintains the view because it is considered necessary to protect the assets of the elderly from being "used up" in litigation as they are approaching the end of their working life and could not earn back those monies.

I trust the foregoing recommendations are fair and reasonable though the Council, with only limited manpower and resources, has exchanged views with the two legal bodies instead of collecting views from all relevant stakeholders when the proposals were discussed within the Council's working group. We consider that, if necessary, the related government bureau could initiate a consultation which should be wide enough to involve all the stakeholders before finalizing its position.

For the benefit of Hong Kong, I would urge the government to seriously consider an early implementation of the Council's recommendations without delay. Meanwhile, please feel free to contact me if you require any clarifications or additional information.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Eric L', with a stylized flourish extending from the top left.

Eric LI Ka Cheung
Chairman