

**For discussion on  
30 April 2018**

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

**Proposed Legislative Amendments Pursuant to the  
Review of the Supplementary Legal Aid Scheme**

**PURPOSE**

This paper briefs Members on the proposed legislative amendments pursuant to the review of the Supplementary Legal Aid Scheme (“SLAS”).

**PROPOSAL**

2. Members are invited to note that the Government will –
  - (a) with the support of the Legislative Council (“LegCo”) Panel on Administration of Justice and Legal Services (“AJLS Panel”), introduce legislative amendments with a view to expanding the scope of SLAS to cover civil proceedings in respect of monetary claims –
    - (i) for professional negligence against financial intermediaries<sup>1</sup> licensed or registered for Type 1 (dealing in securities), Type 2 (dealing in futures contracts) or Type 8 (securities margin financing) regulated activities within the meaning of the Securities and Futures Ordinance (Cap. 571) (“SFO”); and
    - (ii) in respect of derivatives of securities, currency futures or other futures contracts on the basis that the person seeking legal aid was induced to deal in those derivatives, futures or contracts by fraud, deception or misrepresentation.

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<sup>1</sup> A financial intermediary refers to a licensed person or a registered institution as defined by section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571).

- (b) having regard to the Judiciary’s plan to revise the civil jurisdictional limits of the District Court (“DC”) and the Small Claims Tribunal (“SCT”), introduce legislative amendments in conjunction with the amendments set out in paragraph 2(a) to revise the minimum claim amount for certain types of SLAS cases<sup>2</sup> to tie in with the Judiciary’s proposed increase in the jurisdictional limit of the SCT to \$75,000.

## **JUSTIFICATIONS**

### ***Review Recommendations***

3. Subsequent to the substantial expansion of the scope of SLAS in November 2012 following the previous review, the Home Affairs Bureau (“HAB”) invited the Legal Aid Services Council (“LASC”)<sup>3</sup> to conduct a further review on SLAS. The LASC submitted its recommendations to the Chief Executive (“CE”) in July 2016.

4. HAB, the Legal Aid Department (“LAD”) and the LASC briefed the AJLS Panel on 24 April 2017 on the LASC’s recommendations and the Government’s position. After the Panel consultation, the Government is planning to expand the scope of SLAS to cover monetary claims against certain financial intermediaries and also derivatives claims, as recommended by the LASC in July 2016, in an upcoming legislative amendment exercise.

### ***Claims Against Financial Intermediaries***

5. SLAS currently covers, among others, professional negligence claims against certified public accountants (practising) and negligence claims against insurers or their intermediaries in respect of the taking out of the personal insurance products. With the support of the AJLS Panel, we will implement the LASC’s recommendation and amend the Legal Aid Ordinance (“LAO”) (Cap. 91) to cover under SLAS

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<sup>2</sup> Under SLAS, the minimum claim amount for certain types of civil proceedings brought in the District Court is currently set at \$60,000. There is no minimum amount for claims under the Employees’ Compensation Ordinance (Cap. 282) and legal representation for employees in appeals against awards made by the Labour Tribunal and this should remain unchanged.

<sup>3</sup> The LASC is a statutory body set up in 1996 under the Legal Aid Services Council Ordinance (Cap. 489) to oversee the administration of legal aid services provided by the Legal Aid Department and advise the Chief Executive on legal aid policy.

monetary claims for professional negligence against financial intermediaries licensed or registered for Type 1 (dealing in securities), Type 2 (dealing in futures contracts) or Type 8 (securities margin financing) regulated activities within the meaning of the SFO<sup>4</sup>. We will add civil proceedings for claims against the financial intermediaries licensed for these three types of regulated activities to Part 1 of Schedule 3 to the LAO, which sets out the proceedings for which legal aid may be given under section 5A of the LAO<sup>5</sup>.

### ***Derivatives Claims***

6. Moreover, we will implement the LASC's recommendation and amend the LAO to cover under SLAS civil proceedings for monetary claims in respect of derivatives of securities, currency futures or other futures contracts when fraud, deception or misrepresentation was involved. This is to align the treatment of these contracts under SLAS and the Ordinary Legal Aid Scheme ("OLAS"). Similar to paragraph 5 above, we will include derivatives claims in Part 1 of Schedule 3 to the LAO with reference to the existing provisions in the LAO in respect of derivatives claims currently covered under OLAS.

### ***Further Review by LASC***

7. At the AJLS Panel meeting on 24 April 2017, while members were generally supportive of the expansion of SLAS to cover monetary claims against financial intermediaries and derivatives claims, they requested the Government to consider further expanding the scope of SLAS to include, in particular, claims against the incorporated owners of multi-storey buildings and claims arising out of sale of goods and provision of services. The Government explained that while outstanding issues such as the legal issues and the principles of SLAS would need to be addressed, we were open to all possible options with a view to further expanding the scope of SLAS on an incremental basis. In this connection, the LASC would further study the issues involved and make recommendations to the Government when the law governing these areas has become available or well formulated.

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<sup>4</sup> One of the guiding principles of SLAS is that claims should have a high chance of recovery of damages. The LASC recommended that the scope of SLAS be expanded to include monetary claims for professional negligence against financial intermediaries licensed for these three types of regulated activities as they are required by law to maintain professional insurance.

<sup>5</sup> Section 5A of the LAO stipulates the financial eligibility limit and the scope of SLAS.

## ***Revising the Minimum Claim Amount for SLAS***

8. At the same AJLS Panel meeting in April 2017, the Judiciary briefed the AJLS Panel on its proposal to increase the civil jurisdictional limits of the DC and the SCT. The Government will take the opportunity of the current legislative amendment exercise for expanding the scope of SLAS to revise the minimum claim amount for proceedings to which SLAS applies in order to tie in with the Judiciary's proposed increase of the jurisdictional limit of the SCT to \$75,000. The minimum claim amount of SLAS is connected with the jurisdictional limit of the SCT because SLAS, as stipulated in the LAO, covers civil proceedings brought in the DC or in a higher court. We will link the relevant provisions in the LAO with the monetary limit specified in the Small Claims Tribunal Ordinance (Cap. 338)<sup>6</sup> to alleviate the need for consequential amendments to the LAO in any future adjustments to the jurisdictional limits.

## **FINANCIAL IMPLICATIONS**

9. The financial position of the Supplementary Legal Aid Fund ("SLAF") for the past three financial years is set out at **Annex**. At the end of the previous financial year for SLAF on 30 September 2017, the fund balance was \$192.0 million, with an income of \$8.6 million and an expenditure of \$9.6 million during the year. The financial position of SLAF is considered generally healthy.

10. With reference to the number of applications received for the new categories of cases covered under the expansion of SLAS in 2012<sup>7</sup> and derivatives claims under OLAS<sup>8</sup>, the proposed expansion of scope is not expected to have significant impact on SLAF and no further injection is needed for the time being. The financial implications and increase in

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<sup>6</sup> The jurisdictional limit of the SCT is specified in paragraph 1 of the Schedule to the Small Claims Tribunal Ordinance (Cap. 338).

<sup>7</sup> The details of the initial scope of SLAS and the expansion of scope in 2012 are set out in paragraph 13 of the paper. Since the expansion of SLAS in November 2012, seven applications were received and four certificates were granted for the new categories of cases covered under SLAS.

<sup>8</sup> For derivatives claims which have been covered under OLAS since November 2012, there were a total of ten applications and no certificate has ever been granted. Out of the ten applications, two were refused on means and the financial resources of both of the applicants were within the financial eligibility limit of SLAS, while seven were refused on merits grounds and one was withdrawn by the applicant.

workload for processing and monitoring new applications arising from the proposed expansion of scope will be absorbed by the existing resources of LAD.

## **WAY FORWARD**

11. We plan to introduce amendments to the LAO into LegCo by way of subsidiary legislation<sup>9</sup> in the 2018-19 legislative session, with a view to implementing the above proposals in the first half of 2019. Subject to the making of the subsidiary legislation, consequential amendments will be proposed to the Legal Aid Regulations (“LAR”) (Cap. 91 sub. leg. A) and the Legal Aid (Assessment of Resources and Contributions) Regulations (Cap. 91 sub. leg. B).<sup>10</sup>

## **BACKGROUND**

12. SLAS is a statutory self-financing legal aid scheme<sup>11</sup> which came into operation in 1984. It provides legal assistance to people whose financial resources exceed the statutory limit allowed under OLAS (currently at \$302,000), but are below the financial eligibility limit specified for SLAS (currently at \$1,509,980).

13. The scope of SLAS initially covered claims for damages for personal injuries or death. It was expanded to include employees’ compensation claims in 1992 and civil proceedings for medical, dental and legal professional negligence in 1995. In November 2012, the scope of SLAS was significantly 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

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<sup>9</sup> As section 7(b) of the LAO provides that LegCo may, by resolution, amend Schedules 2 and 3, the amendments to the LAO will be introduced into LegCo by way of subsidiary legislation subject to positive vetting.

<sup>10</sup> The proposed legislative amendments to the LAR and the Legal Aid (Assessment of Resources and Contributions) Regulations to be introduced into LegCo will be subject to negative vetting.

<sup>11</sup> The operation of SLAS is governed by the provisions prescribed under Part VI of the LAO. SLAF which finances SLAS was set up under section 29 of the LAO. SLAF is funded by an initial seed money of \$1 million from the Lotteries Fund and an injection of \$27 million and a further injection of \$100 million by the Government in 1995 and 2012 respectively to support the operation of the expanded SLAS. Its income sources also include 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. The balance of SLAF stood at \$192.0 million as at end September 2017. Some key statistics on SLAS is provided at **Annex**.

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. Subsequent to the substantial expansion of the scope of SLAS in November 2012 following the previous review, HAB invited the LASC to conduct a further review on SLAS. The LASC submitted its recommendations to the CE in July 2016.

14. To maintain its financial viability, SLAS has been targeting at cases that carry a high chance of success with good damages to costs ratio since inception. SLAS covers mainly cases where the defendants are insured or where the likelihood for payment of damages is high (e.g. claims for personal injuries or death and work-related accidents). The high chance of recovery of damages helps ensure, to a large extent, the financial sustainability of the scheme. When deliberating on new categories of cases to be covered by SLAS, we should bear in mind this principle and not seek to cover cases which do not involve monetary claims, or have a relatively low success rate or poor prospect of recovery.

#### **ADVICE SOUGHT**

15. Members are invited to note and comment on the proposed legislative amendments and way forward set out in the paper.

**Home Affairs Bureau  
Legal Aid Department  
April 2018**

### Key Statistics on Supplementary Legal Aid Scheme

#### A. Number of applications received and certificates granted under the Supplementary Legal Aid Scheme (“SLAS”)

| Year | Applications received | Certificates granted |
|------|-----------------------|----------------------|
| 2015 | 211                   | 169                  |
| 2016 | 225                   | 164                  |
| 2017 | 338                   | 223                  |

#### B. Average legal costs of assigned out SLAS cases with judgment after trial

| Year | Average Legal Costs |
|------|---------------------|
| 2015 | \$470,061           |
| 2016 | \$733,843           |
| 2017 | \$1,164,566         |

#### C. Financial position of the Supplementary Legal Aid Fund

| Financial year ending on | 30 Sep 2015<br>(\$ million) | 30 Sep 2016<br>(\$ million) | 30 Sep 2017<br>(\$ million)* |
|--------------------------|-----------------------------|-----------------------------|------------------------------|
| <b>Income</b>            | 7.9                         | 8.0                         | 8.6                          |
| Application fees         | 0.08                        | 0.06                        | 0.09                         |
| Contributions            | 5.13                        | 5.23                        | 4.73                         |
| Interest                 | 2.67                        | 2.70                        | 3.74                         |
| <b>Expenditure</b>       | 5.6                         | 4.1                         | 9.6                          |
| <b>Fund balance</b>      | 189.1                       | 193.0                       | 192.0                        |

\* Figures for the financial year ending on 30 September 2017 are unaudited and subject to change.