

**For discussion  
On 28 March 2011**

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

**Review of the Supplementary Legal Aid Scheme**

**PURPOSE**

This paper seeks comments from Members on the Administration's proposals for expanding the scope of the Supplementary Legal Aid Scheme (SLAS).

**PROGRESS**

2. As set out in the paper submitted to this Panel for the post-Policy Address briefing on 22 October 2010 (LC Paper No. CB(2)36/10-11(02) refers) and for the Panel meeting on 22 November 2010 (LC Paper No. CB(2)315/10-11(05) refers), the Administration has been carefully examining the recommendations of the Legal Aid Services Council (LASC) on the SLAS review, and will report to this Panel the Government's specific proposals on the expansion of SLAS.

3. Having studied the recommendations of the LASC and taken into account the views of this Panel and relevant stakeholders, including the legal profession, we have finalized the Administration's position and our proposals are set out in the ensuing paragraphs.

**GUIDING PRINCIPLES**

4. SLAS operates on a self-financing basis. When SLAS was first introduced in 1984, it only covered claims arising from personal injuries or death. The scope was extended subsequently to include employees' compensation claims and medical, dental and legal professional negligence claims. To maintain its financial viability, SLAS was by design aimed at cases that carry a high chance of success with good damages to costs ratio. SLAS covers mainly cases where the defendants are

insured or where the likelihood for payment of damages is high (i.e. claims for personal injuries or death and work-related accidents). The high chance of recovery of damages helps ensure, to a large extent, the financial sustainability of the scheme. These principles have served us well so far and when deliberating on new categories of cases to be covered by SLAS, we should maintain this principle and not seek to cover cases which do not involve monetary claims or those which have a relatively low success rate or poor prospect of recovery.

5. In considering the proposed scope for further expansion of SLAS, we have adhered to the principles which help sustain the financial viability of the SLAS Fund. In sum, the types of cases to be covered by SLAS should –

- (a) deserve priority for public funding in the sense that significant injury or injustice to the individual is involved; i.e. socially deserving;
- (b) involve monetary claims and have a reasonably good chance of recovering damages; and
- (c) have a good cost to damage ratio.

## **THE ADMINISTRATION'S PROPOSALS**

6. The Administration proposes that –

- (a) Claims of the following categories, with claim amounts exceeding \$60,000, be covered under the expanded SLAS using an enhanced rate of application fee and contribution:
  - (i) Professional negligence claims against Certified Public Accountants, Architects, Registered Professional Engineers, Registered Professional Surveyors, Authorized Land Surveyors, Registered Professional Planners, Landscape Architects and Estate Agents;
  - (ii) Claims arising from sale of insurance products; and
  - (iii) Claims against developers in the sale of first-hand residential properties;
- (b) The application fee and rates of contribution for the new types of cases in sub-paragraph (a) above be revised as follows:

- (i) the application fee be increased to \$5,000;
  - (ii) the interim contribution rate be set at 10% of the assessed financial resources of the aided person, but in any event not less than the current interim contribution payable by the aided persons under SLAS as set out in Regulation 14(a) of the Legal Aid (Assessment of Resources and Contributions) Regulations (Cap. 91B); and
  - (iii) the final contribution rate be increased to 20% of the value of property recovered, and to 15% where a claim is settled prior to delivery of a brief for attendance at trial to counsel;
- (c) The enhanced application fee and rates of contribution as set out in sub-paragraph (b) above shall also apply to the existing three types of professional negligence claims against the medical, dental or legal professions;
- (d) Employees' claims on appeals from the Labour Tribunal, regardless of claim amounts, be covered under the expanded SLAS using the existing rates of application fee and contribution;
- (e) While we would not seek to expand SLAS to cover derivative claims in the current exercise, a study will be conducted on amending the Legal Aid Ordinance ("LAO") (Cap.91) with a view to enabling money claims in derivatives of securities, currency futures or other futures contracts be covered under the Ordinary Legal Aid Scheme ("OLAS") when fraud, misrepresentation/deception is involved at the time of purchase. We intend to conclude the study and consult the LASC and this Panel on the detailed proposal in the next legislative session; and
- (f) The approval of the Finance Committee be sought to inject \$100 million into the SLAS Fund to facilitate the expansion of the scope of SLAS.

7. Subject to the Panel's comments, we will proceed to draft legislative amendments to put in place the above proposals for expansion of SLAS, with a view to submitting the legislative proposals to the Legislative Council ("LegCo") for consideration and approval later this year.

## **CONSIDERATIONS**

### **Raising Application Fees and Contributions**

8. When considering the complexity and risk profile of the professional negligence claims, the LASC recommends to charge higher application fees and set higher contribution rates for claims against new type of cases and existing professional negligence claims, whilst the rates for claims under the existing SLAS should remain unchanged. The LASC recommends that the application fees, interim contributions and contribution rates payable for professional negligence claims against the existing and new professions and other new types of cases should be aligned and increased : the non-refundable application fee be set at \$5,000; the interim contribution be set at 10% of the assessed financial resources of the aided person, but in any event not less than the current interim contribution payable by aided persons under SLAS as set out in Regulation 14(a) of Cap. 91B (i.e. the highest amount of contributions payable by persons aided under OLAS); and on successful conclusion of the case, the percentage deduction out of the damages recovered for the aided persons towards the SLAS Fund should be 20%, which can be lowered to 15% if the claim is settled before delivery of brief to counsel.

9. We consider it an important principle that the legally aided applicants who are successful in litigations should be required to contribute towards the amount of costs and expenses not recovered from the opposite party, and also a proportion of the damages awarded, which would be ploughed back into the SLAS Fund to assist future litigants. The Legal Aid Department (“LAD”)’s experience is that despite the same risk assessment carried out for each individual application, statistics collected since 2006 show that generally, personal injuries and related types of cases which were legally aided under OLAS have the highest average success rates at 90% whereas the success rates for medical/dental/legal professional negligence cases stand at 69% and for miscellaneous cases at 67%. Therefore, the riskier the cases we cover in the expanded SLAS, the more the average litigants would have to suffer and “cross-subsidize” such cases. Moreover, we notice that since 2000, the amount of contribution received from cases has dropped significantly from about \$10.3M in 2000-01 to about \$3.3M in 2009-10, and the income of the SLAS Fund has been relying heavily on bank interest. In 2004-05, contributions recovered from successful cases were not enough to cover the administration cost for the scheme.

10. We note that the average cost for processing applications for SLAS in the past three years up to 2009-10 is about \$7,850. As the application fee was intended

as a notional charge when SLAS was first established to deter frivolous applications and was not set with reference to the principle of full-cost recovery, we therefore consider that the LASC's proposed increased application fees for new SLAS cases from \$1,000 to \$5,000 to cover the processing cost is very reasonable. In order to uphold the self-financing principle of SLAS, we need to make necessary adjustments to the contribution rates in order to sustain the SLAS Fund whilst extending coverage to additional types of cases.

11. We share the view of the LASC that the application fee and the contributions payable by the applicant/aided person for SLAS claims for the professional negligence cases and other new types of cases (with exception of employees' claims on appeals from the Labour Tribunal) should be higher than those for the existing types of personal injuries/death cases and employees' compensation claim cases, to reflect the complexity of such claims and the higher risks associated with the proceedings, having regard to the self-financing design of SLAS and the need to maintain its financial viability by a high success rate in litigation of cases under SLAS.

### **Scope of expansion**

#### **(i) Professional negligence claims against Certified Public Accountants, Architects, Registered Professional Engineers, Registered Professional Surveyors, Authorized Land Surveyors, Registered Professional Planners, Landscape Architects and Estate Agents**

12. The LASC recommends that a wider range of professional negligence should be included on an incremental basis taking into account whether the profession concerned is insured or required to be. The LASC has drawn reference to the ten leading professions which form the Joint Professional Centre in Hong Kong<sup>1</sup>, and recommends that additional professions (namely, accountants, architects, engineers and surveyors) be included under the expanded scope of SLAS in the first phase of implementation. The LASC recommends that claims against other professions such as landscape architects, planners, estate agents, independent

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<sup>1</sup> The Joint Professional Centre is established with the support from the HKSAR Government as the first regional technology management and business centre for professionals in Hong Kong. It is founded by ten leading professional associations in Hong Kong and under the management of the International Businesslink Limited. The ten leading professional members are : HK Institute of Certified Public Accountants; HK Institute of Architects; HK Bar Association; HK Dental Association; HK Institution of Engineers; HK Institute of Landscape Architects; Law Society of HK; HK Medical Association; HK Institute of Planners and HK Institute of Surveyors.

financial consultants and insurance agents be considered at a later stage pending review of the recoverability implications and their respective insurance positions. On the other hand, it is noted that the Bar Association and some other stakeholders suggest expanding SLAS to cover as many types of professions as possible for negligence claims.

13. We note that whilst there may not be compulsory insurance coverage requirement, the professional qualification requirements of the captioned eight professions proposed by stakeholders for inclusion are governed by local legislation and/or are required to meet certain professional standards or pass professional examinations stipulated by the relevant governing / licensing / disciplinary bodies<sup>2</sup>. On top of the additional professions as recommended by the LASC, we **propose** to include registered professional planners, landscape architects and estate agents under the expanded scope of SLAS.

14. Nonetheless, we do not consider that claims against independent financial consultants should be covered in the expanded SLAS as there is no legislative regime governing professional qualifications/recognition of financial consultants.

## **(ii) Claims arising from the sale of insurance products**

15. The LASC recommends that the coverage of negligence claims against insurance agents and brokers in the expanded SLAS is worth consideration at a later stage. We note that the legal profession suggests immediate extension of SLAS to cover this category of cases.

16. We consider that insurance agents are actually acting on behalf of their insurance companies when they sell insurance products to clients. Given that an insurance contract is between the insurance company and the policy holder, should there be a negligence claim against an insurance agent, the insurance company which he is representing could well be held fully responsible for his acts and is therefore liable for the claim. For brokers, although they are not acting on behalf of any particular insurance companies, all brokers are required to procure professional indemnity insurance. The recoverability of negligence claims arising

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<sup>2</sup> The captioned eight professions are governed respectively by the Professional Accountants Ordinance (Cap. 50); the Architects Registration Ordinance (Cap. 408); the Engineers Registration Ordinance (Cap. 409); the Surveyors Registration Ordinance (Cap. 417); the Land Survey Ordinance (Cap. 473); the Planners Registration Ordinance (Cap. 418); the Landscape Architects Registration Ordinance (Cap. 516); and the Estate Agents Ordinance (Cap. 511).

from sale of insurance products is therefore considered reasonable. Also, both insurance agents and brokers are required by law to meet certain professional requirements in order to be registered.

17. We **propose** to expand the scope of SLAS to cover negligence claims arising from sale of insurance products.

### **(iii) Claims against developers in sale of first-hand residential properties**

18. The LASC recommends that claims against developers in the sale of first-hand residential properties may be considered at a later stage. On the other hand, we note that Panel members and the Bar Association have suggested inclusion of such claims in the expanded SLAS as this can help deter unfair or unscrupulous trade practices by large corporations.

19. We share the latter's view. We **propose** to expand the scope of SLAS to cover claims against developers in the sale of first-hand residential properties with a view to providing more protection for flat buyers.

20. The Government is committed to maintaining the healthy development of the private residential property market and safeguarding the reasonable rights of consumers. To further strengthen the regulation of the sale of first-hand private residential properties, the Administration has established a Steering Committee on the Regulation of the Sale of First-hand Residential Properties by Legislation to discuss specific issues pertaining to the regulation of the sale of first-hand properties by legislation.

### **(iv) Employees' claims on appeals from the Labour Tribunal**

21. The LASC recommends to put employees' claims on appeals from the Labour Tribunal on par with the employees' compensation claims and that in future, the requirement of the minimum claim amount of \$60,000 would be removed. It is also noted that some Panel members and the Hong Kong Federation of Trade Unions have suggested waiving the interim contributions as well.

22. We **propose** to cover employees' claims on appeals from the Labour Tribunal, regardless of claim amounts, under the expanded SLAS using the existing

rates of application fee and contribution. We are of the view that LASC has already given sympathetic consideration to employees since all types of claims under SLAS, except employees' compensation claims, have to satisfy the requirement that the claim amount exceeds \$60,000. The execution of Labour Tribunal awards, as a judgment debt arising from civil law suits, is part of the remedies of the civil justice system. We agree with the LASC's recommendation to exempt this type of cases from the raised rates of application fee and contribution. Nonetheless, we cannot agree to further waive the requirement for interim contributions as this violates the self-financing principle of SLAS and would have significant read-across implications on other types of SLAS claims.

**(v) Money claims in derivatives of securities, currency futures or other futures contracts when fraud, misrepresentation/deception is involved at the time of purchase**

23. The LASC is of the view that structured financial products are now common place, and that some of which may be derivatives of securities but are not speculative in nature. To fight against unscrupulous practices but at the same time not to encourage speculative activities, the LASC recommends removing the stipulation in the Legal Aid Ordinance that legal aid shall not be provided for claims in derivatives of securities, currency futures or other futures contracts, so that SLAS can be expanded to cover such cases. On the other hand, it is noted that the Panel and the Bar Association suggest providing legal aid to cover claims in derivatives under both OLAS and SLAS.

24. In view of the legislative provisions<sup>3</sup> which were enacted on the ground that it was considered inappropriate to expend public fund to aid persons who incurred losses when engaging in speculative activities, legal aid is not made available for derivatives claims under OLAS which serves legal aid applicants with a much lower financial eligibility limit than SLAS applicants. It may not be acceptable as a matter of principle to the public if SLAS is expanded to cover such claims which are not entertained under OLAS.

25. We will not seek to expand SLAS to cover derivative claims in the current exercise; but we **propose** to review the LAO with a view to removing the exception and to making legal aid available under the OLAS to cover money claims in

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<sup>3</sup> It is stipulated in schedule 2 of the Legal Aid Ordinance that proceedings involving money claims in derivatives of securities, currency futures or other futures contracts are excluded from the purview of the ordinance.



derivatives of securities, currency futures or other futures contracts when fraud, misrepresentation or deception is involved at the time of purchase. We intend to conclude the study and consult the Panel on a detailed proposal in the next legislative session.

26. We have reservation about including this type of cases under SLAS. To illustrate, using the Lehman Brothers incident as an example, we note that about 30 000 customers were involved in the purchase of mini-bonds and the average amount for each claim was less than \$200,000. If such cases are included in SLAS and for a successful claim case, the SLAS Fund would get a maximum contribution of 20% of the award which in this case would be \$40,000. For the unsuccessful cases, the SLAS Fund may easily incur processing and legal fees up to \$200,000 to \$300,000 in each case. Assuming that 500 applications are received from the aggrieved customers and that out of these applications, 60% are granted legal aid and 210 of which are successful in their claims (i.e. 70% success rate). The total contributions received from these 210 cases would be \$8,400,000 ( $\$200,000 \times 20\% \times 210$ ). The contributions received would be significantly lower than the legal costs likely to be incurred for the remaining 90 unsuccessful cases at \$45,000,000 (i.e.  $\$500,000$  [average costs for both parties]  $\times 90$ ). With credit given for the application fees and interim contributions received from the 90 unsuccessful cases, the Fund would still suffer a loss of \$27,375,000. Taking into account the self-financing principle of the SLAS Fund, SLAS should not be expanded to cover derivative claims at this stage.

### **Other proposals not supported**

#### **(i) Claims against incorporated owners of multi-storey buildings for property damages**

27. The LASC recommends that claims against the incorporated owners of multi-storey buildings for property damage should be brought under the expanded scope of SLAS. The Association for Protection of Building Owners and some district representatives do not support the proposal to expand SLAS to cover these types of claims. We note that it is not a mandatory requirement for the incorporated owners to procure insurance to cover property damages. Besides, it would be grossly unfair if legal aid was made available only for claims against incorporated owners but not other property damage cases. We **propose not to** expand the scope of SLAS to cover property damage claims against incorporated owners.

**(ii) Claims against small marine boat accidents**

28. LASC does not consider that property claims against marine boat accidents should be covered under SLAS at this stage but recommends that the issue be revisited at a later stage. As SLAS does not cover property damage involving cars/vehicles, it is not appropriate that SLAS be expanded to cover only cases involving marine boats. In any case, as cars/vehicles or marine boats are insured, in case of accidents, the car/boat owners may seek compensation directly from their insurers whilst the insurers will issue proceedings against the other party for indemnity. Hence we **do not propose** to expand SLAS to cover marine boats accidents.

**(iii) Claims against property developers by minority owners in respect of compulsory sales of building units**

29. The LASC has not made any recommendation to expand SLAS to cover claims against persons who have applied under the Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545) to the Lands Tribunal for compulsory sales of land for redevelopment.

30. We note that ever since the coming into operation of Cap. 545 in 1999, there has been concern amongst the stakeholders over the support available to minority owners of compulsory sale cases. The lowering of the compulsory sale threshold at which an application can be put before the Lands Tribunal to 80% for three classes of land lots with effect from April 2010 has put the concern under some LegCo Members' spotlight again. One of their concerns is the unavailability of legal support to the minority owners of Cap.545 cases at the proceedings at the Lands Tribunal, and that the minority owners may not have the financial means to hire legal representatives to assist them at the Lands Tribunal. They support making available legal aid support to these minority owners so as to help them present their position to the Lands Tribunal on a more balanced footing.

31. We **do not propose** expanding SLAS to cover cases of minority owners in respect of compulsory sale of building units as legal aid is at present not available for tribunal cases except cases in Lands Tribunal under Part II of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) and application to the Mental Health

Review Tribunal. Expanding it to cover claims by minority owners of Cap. 545 cases would have extensive read-across implications and open the floodgate for further demands from other pressure groups to extend legal aid to cover other types of cases in other tribunals, such as Immigration Tribunal and Registration of Persons Tribunal.

32. Cap.545 serves to protect the interests of both the majority owner (i.e. the applicant) and the minority owner. Expanding SLAS to the minority owner only appears to run counter to the objective of the Cap.545 mechanism. Besides, while in many compulsory sale applications put before the Lands Tribunal, the applicants are property developers and some or all of the minority owners are people who do not have much financial means, there could also be cases where the majority owner (the applicant) is made up of small owners who come together to organize joint sale against a minority owner who is a speculator (釘子戶) asking for a sky-high price. Extending the SLAS to cover claims submitted by such speculators would run the risk of doing these speculators, who are holding up the redevelopment of a building against community good, a favour.

33. It is noted that Cap. 545 cases may not fit in with the legal aid regime. Unlike most of the cases of claims, a minority owner appearing before the Lands Tribunal seeks to resist the majority owner's application for compulsory sale or, if the application is to be granted, the terms and conditions for the sale. In most of the circumstances, the factors argued are more relating to valuation matters, than legal. Even if legal aid was granted, the aided minority owner had to shoulder financial cost. Under the proposal summarised in para.2 (c), the aided minority owner would have to pay for the non-refundable application fee of \$5,000 as well as the interim contribution at 10% of his assessed financial resources even if he loses his case (i.e. if the Lands Tribunal grants the compulsory sale order). If he wins (i.e. if the Lands Tribunal rejects the application of the majority owner) and even with costs awarded in his favour, he would also have to pay for the final contribution of up to 20% of his property plus the out-of-pocket expenses all by himself as there are no claims awarded to mitigate such costs.

34. Moreover, the extension would be inconsistent with the design of SLAS, as stated above, for cases that carry a high chance of success. Looking at past results of the Lands Tribunal, the chance of it granting a compulsory sale order is very high (between 1999 and 5 March 2011, the Lands Tribunal received 94 applications, of which 37 were discontinued/adjourned and 30 are in progress. It has processed 27 applications of which 26 have been approved) and, assuming

continuation of this trend, the chance of the minority owner granted with legal aid losing the case and having to bear all the costs is very high. Under the foregoing, however well the intention is and even with the minority owners seeking legal aid with full awareness of the cost implications, expanding SLAS to cover them could be to their detriment in terms of financial interests in most of the Cap. 545 cases.

35. While we do not recommend expanding SLAS to cover “claims” by minority owners against Cap.545 applicants, the Administration has introduced a series of measures to provide assistance to owners of old buildings who may be involved in compulsory sale for redevelopment cases. The Administration will keep in view the developments on this issue and consider introducing other improvements as necessary.

#### **(iv) Claims in respect of trusts**

36. The LASC notes that claims in respect of trusts would probably be covered under professional negligence. The LASC does not recommend this type of cases be covered under SLAS. The Bar Association supports the expansion as it considers that most trust management companies cover insurance for directors’ liability insurance and for professional indemnity insurance. We consider that professional negligence is one of the grounds to take legal action against lawyers and accountants for claims in respect of trusts. Other grounds for claims include breach of trust and breach of fiduciary duty. Furthermore, trusts are usually set up by the financially better-off and are often aggressively litigated thus incurring high costs. Result of litigation is often unpredictable and as a result, not much contribution might be received from successful cases to cover the cost of unsuccessful cases. In view of a possible high cost-to-damages ratio, we **propose not to** expand the scope of SLAS to cover these cases.

#### **(v) Claims involving disputes between limited companies and their minority shareholders**

37. The LASC does not recommend that claims involving disputes between limited companies and their minority shareholders be included under SLAS. Claims involving disputes between limited companies and their shareholders regarding the respective rights of the company and the shareholders are disputes which in general include complaints by minority shareholders for low or no dividend payments,

dilution of shareholding, exclusion from directorship or refusal by the company to provide financial statements, convene general meetings etc. and do not involve monetary claims which allow the Fund to levy a contribution from the damages recovered. We **propose not to include** such cases in SLAS.

**(vi) Claims against sale of goods and provision of services**

38. The LASC has reservations over the inclusion of claims arising out of sale of goods and provision of services under the expanded scope of SLAS, because such claims generally involve small amount of claims and the litigation costs involved usually far exceed the values of the damages. Owing to the small amounts involved in such claims, not much contribution was expected to be generated from successful cases, and on the other hand, one lost case could impact heavily on the SLAS Fund which has to bear the costs of both sides. Also, the LASC opines that the Consumer Legal Action Fund (of which the Consumer Council is the trustee) may provide assistance in selected cases where significant consumer interests or issues of a substantial impact on consumers are involved.

39. The AJLS Panel and the Bar Association however advocate expanding SLAS to cover these cases, because it can be stipulated as a pre-requisite that only claims exceeding a threshold, say \$60,000 (which is the current threshold for claims under SLAS), would be considered.

40. The Administration is currently preparing legislative amendments to create offences under the Trade Descriptions Ordinance (Cap.362) to prohibit the practices of false trade descriptions of services, misleading omissions, aggressive practices, bait advertising, bait-and-switch and the practices of accepting payment without the intention or ability to supply the goods or services contracted for. One of the proposals is to create express rights for consumers (in addition to any existing rights) to take out actions for loss or damages that they suffer by conduct that breaches the amended Ordinance. This proposal seeks to facilitate aggrieved consumers to seek redress.

41. While making SLAS available to consumer actions with regard to sale of goods and provision of services may further enhance consumers' protection and access to justice, we see great difficulties to include them under SLAS as the scope of "sale of goods" and "provision of services" could be very broad, virtually covering all types of goods and every service provided by any profession (including

services provided by non-professionals). Claims arising out of the sale of goods and provision of services may be construed to cover product liability claims, actions for breaches of contract and applications for remedies on the grounds of misrepresentation, coercion and duress, etc. Coupled with consideration over the high cost-to-damages ratio, we **will not expand** the scope of SLAS to cover these cases.

### **Injection into SLAS Fund**

42. Although there is a current balance of \$88.26M in the SLAS Fund, we estimate that a capital injection of \$100 million is necessary in order to expand the SLAS to cover more types of cases, for the following reasons-

- (a) The \$100 million will serve as a “cushion” to safeguard the SLAS Fund against the higher levels of risk (in terms of success rates and recoverability) involved in the proposed types of claims to be covered in the expanded SLAS;
- (b) As the average administration fee for processing SLAS cases is about \$7,850, the proposed increased application fees for new SLAS cases at \$5,000 are not adequate to cover the processing cost. Without the \$100 million capital injection and the interest so generated to supplement the SLAS Fund, we may need to drastically increase the level of application fees in order to uphold the self-financing principle of the SLAS Fund;
- (c) Moreover, we need to have a buffer to cater for exceptionally expensive loss cases. For example, in 2008, the loss of a SLAS funded personal injuries case with estimated cost of \$17 million for both the aided plaintiff and the opposite party has resulted in a drastic reduction of the SLAS Fund; and
- (d) The capital of \$100 million is meant to be largely retained under the strict adherence to the self-financing principle for SLAS: the injection is only meant to provide the necessary cash flow and a buffer for untoward and exceptional circumstances.

43. It is estimated that there could be a cash outflow of some \$30 million of the

SLAS Fund in the first three years if the scheme is expanded to cover the types of cases as proposed above. It is however difficult to estimate the exact financial implications of expanding the scope of the SLAS. We will closely monitor the operation of the SLAS Fund to ensure that the self-financing principle is observed, and if signs of depletion of the Fund are detected, we will consider further increasing the application fees and the contributions where appropriate. In the unlikely event that the SLAS Fund becomes unsustainable, further injection into the SLAS Fund will be sought where there is a justifiable and demonstrable case.

## **WAY FORWARD**

44. Subject to the Panel's comments on our proposals, we will proceed with the drafting of legislative amendments to put in place the proposals for expansion of SLAS, with a view to implementing the proposals before end 2011.

45. As regards the proposal concerning the derivative claims, we intend to conclude the study and consult the LASC and the Panel in the next legislative session on a detailed proposal to making legal aid available under OLAS to cover money claims in derivatives of securities, currency futures or other futures contracts.

## **ADVICE SOUGHT**

46. Members are invited to note and comment on the Administration's proposals.

**Home Affairs Bureau  
Legal Aid Department  
March 2011**