

**For information on
21 December 2010**

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

**Report on the study conducted by the Legal Aid Services Council's Interest
Group on Scope of Legal Aid on expansion of the Supplementary Legal Aid
Scheme**

PURPOSE

At the last Panel meeting on 22 November 2010, Members noted that the Legal Aid Services Council (LASC)'s Interest Group on Scope of Legal Aid had completed its study on expansion of the scope of the Supplementary Legal Aid Scheme (SLAS) at the end of October 2010.

2. Members may wish to note that the Administration received the recommendations from the LASC on 13 December 2010. This paper presents for Members' information the major recommendations of the LASC, and the Administration's time-table on processing the proposals.

EXPANSION OF SLAS

3. We note that the LASC recommends that the existing SLAS be extended by establishing a parallel scheme known as "SLAS Part II" which is proposed to cover a wider scope of types of cases, and with higher application fees and contributions payable by the applicants/persons who receive legal aid.

4. We also note that the LASC recommends expansion of SLAS on an "incremental" basis, and that expansion of SLAS should start with the less "risky" types of cases, to be reviewed for expansion to cover other types of cases in two years' time.

5. The LASC's views accord with the Administration's consideration which has previously been reported to this Panel in November 2010. In gist, to enable SLAS to be financially sustainable, the types of cases to be covered by SLAS should have a high chance of recovery and a high success rate. They should also have a good cost to damage ratio.

Existing SLAS

6. To improve the operation of the existing SLAS, the LASC has made the following recommendations:

(i) **Employees' Claims**

Employees' claims on appeal from the Labour Tribunal should be included without size limit because this is socially deserving;

(ii) **Alignment of Professional Negligence Claims**

To align the administration of legal aid available for claims against professional negligence and considering the complexity and risk profile of such cases, the LASC recommends that medical, dental and legal professional negligence claims currently covered under the existing SLAS Part I be "transferred" to SLAS Part II; and

(iii) **Fees and Contributions**

The LASC recommends that the administrative fee charged by the Legal Aid Department (LAD) for administering the scheme, the application fee and the contribution rates payable by aided persons and concluded that these should remain unchanged.

7. As regards the LASC's recommendation to remove the \$60,000 limit for employees' claims cases, we will consult relevant bureaux before formulating the Administration's position.

SLAS Part II

8. With regard to the "SLAS Part II", the LASC recommends that it should cover the following types of cases-

(i) **Professional Negligence**

The LASC recommends that a wider range of professional negligence

be included on an incremental basis taking into account whether the profession concerned is insured or required to be. Accountants, architects, engineers and surveyors are recommended to be included in the first batch.

(ii) Property Damage Claims

Personal injury claims against individual owners and Incorporated Owners (IOs) of a multi-storey building are already covered under the existing SLAS, whether they are insured or otherwise.

The LASC recommends that claims against IOs for property damage in a multi-storey building should be brought under SLAS Part II. Adequate publicity and public education are needed so that the IOs are fully aware of their potential liability and may be encouraged to effect adequate insurance cover.

As to claims against individual owners alone, the LASC considers that it is not appropriate to include them in the scheme.

(iii) Derivatives Claims

Currently, money claims in derivatives of securities, currency futures or other futures are specifically excluded from OLAS. The LASC recommends that the exception in OLAS should be suitably amended and SLAS Part II should likewise include such cases.

9. We will consult relevant bureaux and departments before formulating the Administration's position.

10. The LASC recommends that the following types of cases may worth consideration at a later stage -

- (i) Estate agents, independent financial consultants and insurance agents
- (ii) Claims against developers in the sale of new flats etc
- (iii) Small marine accidents

11. We note that the LASC will further conduct studies on the above in due course.

Contribution to SLAS

12. We note that the LASC recommends that in order to sustain the viability of the SLAS Fund, the application fee and contributions payable by the applicant/legally aided person for “SLAS Part II” claims should be higher than those for the existing SLAS, in order to reflect the complexity of such claims and the higher risks associated with such proceedings in order that the SLAS may be self-financing. The LASC recommends that -

- (a) the non-refundable application fee be set at \$5,000;
- (b) the interim contribution be set at 10% of the assessed financial resources of the legally-aided persons, but in any event not less than the maximum interim contribution under OLAS; and
- (c) on successful conclusion of the case, the contribution rate from the aided person be 20%, which can be lowered to 15% if the claim is settled before delivery of the brief to counsel.

13. From the analysis in the following table, Members will note that with reduction of the percentage contribution, the annual operating surplus of the SLAS Fund has been steadily declining. 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 from \$100 million to \$88 million. The following table summarizes the net gain/loss and fund balance for SLAS in the past ten years:

	Net gain/loss from cases under SLAS	Net gain from bank interest	Net gain/loss for the year	SLAS Fund balance
2000-01	\$6,937,550	\$3,760,703	\$10,698,253	\$70,016,697
2001-02	\$7,638,078	\$1,783,373	\$9,421,451	\$79,438,148
2002-03	\$6,392,372	\$1,338,979	\$7,731,351	\$87,169,499
2003-04	\$4,164,402	\$522,724	\$4,687,126	\$ 91,856,625
2004-05	(\$265,822)	\$1,675,852	\$1,410,030	\$93,266,655
2005-06	\$3,093,366	\$4,389,395	\$7,482,761	\$100,749,416
2006-07	(\$3,164,067)	\$4,226,936	\$1,062,869	\$101,812,285
2007-08	(\$17,409,800)	\$3,251,543	(\$14,158,257)	\$87,654,028
2008-09	(\$1,358,963)	\$1,554,781	\$195,818	\$87,849,846
2009-10 <i>(unaudited)</i>	(\$1,268,938)	\$557,201	(\$711,737)	\$87,138,109

14. The LASC has reviewed the above financial position and performance of the existing SLAS, and noted that the scheme would have incurred a net loss in recent years if it has not been supplemented by bank interest income earned on the unused fund.

15. Against the above background, the LASC notes that the Government has earmarked \$100 million for injection into the SLAS Fund to facilitate expanding the scheme to cover more types of cases. The LASC is of the view that this fund injection should be set aside for SLAS Part II, and that the entire sum of \$100 million should be handed over to the Director of Legal Aid as soon as possible so that interest income can start to accrue to support the launch of SLAS Part II.

16. The proportion of contribution from the property/damages recovered had been reduced from 15% to 12%, and from 7.5% to 6% if settlement occurred prior to delivery of a brief to counsel. We note the LASC's suggestion on new contribution rates to help sustain the long-term financial viability of SLAS. We will carefully examine the LASC's recommendation before formulating the Administration's position on the new contribution rates.

17. When SLAS was last expanded in scope, a capital injection of \$27 million was made in 1995 to the SLAS Fund in order to meet the net cash outflow in the first three years before SLAS would become self-financing again. It is for the same consideration that the Administration has set aside \$100 million to complement and facilitate the LASC's current review. We shall carefully examine the LASC's recommendations in formulating a submission to the Finance Committee.

WAY FORWARD

18. After carefully considering the LASC report and the views of stakeholders, we shall report the decision of the Administration on the proposed expansion of SLAS to the Legislative Council. In response to Members' suggestions at the last AJLS Panel meeting on 22 November 2010, we have critically reviewed our working time-table and come up with a revised time-table as follows for Members' reference-

Timing	Action
December 2010	The Administration to consider the LASC's recommendations taking into account views of stakeholders.
February/March 2011	The Administration to consult the AJLS Panel on its recommendations on the proposed expansion of SLAS.
March/April 2011	Drafting of legislative amendments to put in place the proposals for expansion of SLAS.
April/May 2011	The Administration to brief the AJLS Panel on the finalized legislative amendment rules.
May/June 2011	The Administration to submit the legislative amendment rules to LegCo for consideration and approval. A motion will be moved at LegCo for approval of the amendment rules.
June/July 2011	LegCo's Finance Committee's approval to be sought for the injection of funding into SLAS before the proposals for expanding the scope of SLAS could come into effect.
June/July 2011	Subject to discussions by the LegCo House Committee, and the resolution by the LegCo, the amendment rules are expected to be put into effect in June/July 2011.

**Home Affairs Bureau
Legal Aid Department
December 2010**