

立法會
Legislative Council

LC Paper No. CB(2)1730/11-12

Ref. : CB2/SS/3/11

Paper for the House Committee meeting on 20 April 2012

**Report of the Subcommittee on Proposed Resolution under Section 7(b) of
the Legal Aid Ordinance (Cap. 91)**

Purpose

This paper reports on the deliberations of the Subcommittee on Proposed Resolution under Section 7(b) of the Legal Aid Ordinance (Cap. 91).

Background

2. The Government's policy objective on legal aid is to ensure that no one with reasonable grounds for taking legal action in the Hong Kong courts is prevented from doing so because of a lack of means. The Legal Aid Ordinance (Cap. 91) ("LAO") sets out the legal framework for the administration of legal aid. Legal aid is provided by the Legal Aid Department ("LAD") under the Ordinary Legal Aid Scheme ("OLAS") and the Supplementary Legal Aid Scheme ("SLAS"). Legal aid will be granted to applicants who satisfy the means test and the merits test.

3. As a result of the recent five-yearly review, the Administration proposed to raise the financial eligibility limit ("FEL") for OLAS and SLAS. With effect from 18 May 2011, OLAS is available to those whose financial resources do not exceed \$260,000 and SLAS is available to those whose financial resources exceed \$260,000 but do not exceed \$1.3 million. Schedules 2 and 3 to LAO stipulate the proceedings for which legal aid may be given under OLAS and SLAS respectively.

4. SLAS is a self-financing scheme introduced in 1984 aiming to provide legal aid for the middle class. The scheme was limited initially to cover claims for damages for personal and fatal injuries. It was subsequently

extended to cover employees' compensation claims in 1992 and medical, dental as well as legal professional negligence in 1995. Its current scope covers cases of personal injury or death, medical, dental and legal professional negligence where the claim is likely to exceed \$60,000. It also covers claims under the Employees' Compensation Ordinance (Cap. 282) irrespective of the amount of claim.

5. The costs of SLAS are met from the Supplementary Legal Aid Fund ("SLAS Fund"), which is financed by the contributions from aided persons on the basis of the damages awarded, the costs recovered in successful cases and the application fees payable by applicants. On application, an applicant has to pay an application fee of \$1,000. On approval of the application, the aided person is required to pay an interim contribution calculated at 25% of the FEL for OLAS (i.e. \$65,000). On successful conclusion of the case, the aided person is also required to pay a contribution from any damages recovered. The rates of contribution from damages recovered were reduced twice, in 2000 and 2005, to the present 6% for cases settled before delivery of brief to counsel and 10% for other cases.

6. In his 2010-2011 Policy Address, the Chief Executive announced that to complement the SLAS review conducted by the Legal Aid Services Council ("LASC") and to benefit more middle-class people, the Government would earmark \$100 million for injection into the SLAS Fund when necessary to expand the scheme to cover more types of cases.

The Proposed Resolution

7. The Secretary for Home Affairs ("SHA") gave notice to move a proposed resolution under section 7(b) of LAO ("the Proposed Resolution") at the Council meeting of 28 March 2012 to seek the approval of the Legislative Council ("LegCo") to amend Schedules 2 and 3 to LAO to –

- (a) expand the scope of OLAS to cover monetary claims in derivatives of securities, currency futures or other futures contracts when fraud, misrepresentation or deception is involved in respect of the sale;
- (b) expand the scope of SLAS to cover claims of the following categories with claim amounts exceeding \$60,000 –
 - (i) professional negligence claims against certified public

accountants (practicing), registered architects, registered professional engineers, registered professional surveyors, registered professional planners, authorised land surveyors, estate agents, and registered landscape architects;

- (ii) negligence claims against insurers or their intermediaries in respect of the taking out of personal insurance products; and
 - (iii) monetary claims against the vendors in the sale of first-hand completed or uncompleted residential properties; and
- (c) expand the scope of SLAS to cover representation for employees in appeals brought by either the employer or the employee against awards made by the Labour Tribunal ("LT"), regardless of the amount in dispute.

The Subcommittee

8. At the House Committee meeting on 23 March 2012, Members formed a subcommittee to study the Proposed Resolution. The membership list of the Subcommittee is in **Appendix I**. At the request of the House Committee, SHA withdrew his notice for moving the Proposed Resolution at the Council meeting of 28 March 2012 to allow time for the Subcommittee to study in detail the Proposed Resolution. Under the chairmanship of Dr Hon Margaret NG, the Subcommittee has held two meetings with the Administration.

Deliberations of the Subcommittee

Appeals against awards made by LT

9. Under the Proposed Resolution, representation for employees in appeals against awards made by LT, regardless of the amount in dispute, will be covered under the expanded SLAS. Given the relatively small amount of money involved in awards made by LT and the relatively larger amount of interim contribution (\$65,000) payable by an aided person under SLAS, members have expressed concern whether the proposed expansion of SLAS can assist employees in need. They have sought information on the calculation of contributions and costs payable by an aided person in an LT appeal.

10. According to the Administration, the majority of the applicants for legal aid in LT appeals are eligible for assistance under OLAS. The proposed expansion of SLAS to cover LT appeals aims to provide assistance to the middle-class employees whose means exceed the upper limit of the FEL for OLAS (i.e. \$260,000). For successful cases, the compensation recovered together with the initial application fee (\$1,000) and interim contribution (\$65,000) will be paid back to the aided person subject to the deduction of the Common Fund costs (i.e. the amount of costs the aided person has to pay to his assigned lawyer which are not recoverable from the employer) and a percentage of the award recovered to the SLAS Fund. The balance an aided person will recover at the conclusion of a successful case depends, to a large extent, on the amount of Common Fund costs payable to the assigned lawyer. The amount of Common Fund costs paid by an aided person is normally a few thousand dollars in most cases. For an aided person who is unsuccessful, the initial application fee and interim contribution are applied to the costs ordered to be paid to the opposite winning party. In the event that the initial application fee and interim contribution paid exceed the costs of the proceedings, the surplus will be refunded to the aided person. On the other hand, any shortfall will be borne by the SLAS Fund. In other words, the initial application fee and interim contribution paid represent the maximum liability of an aided person under SLAS for costs if the case is lost. At the request of the Subcommittee, the Administration has provided some examples on the amount of contributions and legal costs payable by an aided person in successful and unsuccessful LT appeal cases under OLAS and the proposed expanded SLAS.

11. Members are concerned that employees seeking to recover their wages may have difficulties in forking out the interim contribution of \$65,000, which is not an insignificant sum of money to many employees. They consider that the amount of interim contribution will deter employees from applying for legal aid under SLAS to pursue their claim particularly if the amount of the LT award is relatively small, given the risk in losing the interim contribution should the case be lost. Members also note that an aided person who has won the appeal may have no financial gain if the employer concerned has become insolvent and cannot pay up the legal costs ordered against him, as LAD will recover such costs from the interim contribution paid by the aided person. Given that legal representation is not allowed in LT and appeals against LT awards are made on a point of law, members consider it unfair that employees have to bear the litigation costs for such appeals. They have asked whether consideration could be given to relaxing the requirement for interim contribution for LT appeals under the proposed expanded SLAS.

12. The Administration has explained that it is important to preserve the financial viability of SLAS having regard to the self-financing nature of the

scheme. In consideration of the difficulties faced by employees in LT appeals, the Administration has accepted the LASC's recommendation to exempt this type of cases from the increased rates of application fee and contribution proposed to be applied to other new types of cases under the expanded SLAS. The Administration, however, does not agree to further relax the requirement for interim contribution as this violates the self-financing principle of SLAS and would have significant read-across implications on other types of SLAS claims. It is an important principle that a legally aided applicant should be required to contribute towards the amount of costs and expenses incurred on his behalf. Nevertheless, the Administration has agreed to consider members' suggestion that LAD should provide employees and labour organizations assisting them with relevant information, such as the applicable contributions and costs liability, to assist the applicants in making an informed decision as to whether it is in their best interest to apply for legal aid under SLAS for LT appeals.

13. Members have enquired whether the Director of Legal Aid ("DLA") has the discretion to waive all or part of the contributions or legal costs payable by an aided person in respect of an LT appeal case which has raised an important point of law involving significant public interest. The Administration has advised the Subcommittee that under the existing legislation, DLA has no discretion to waive contributions payable by an aided person including applications relating to LT appeals. Nonetheless, in respect of the legal costs payable by the aided person, DLA has the discretion to make a waiver of certain charges up to a certain amount due to LAD by an aided person who is in serious financial hardship. Members have requested the Administration to consider taking advantage of funds such as the Protection of Wages on Insolvency Fund and the Occupational Deafness Compensation Fund, or setting up a fund along those lines, to provide financial assistance to employees seeking representation in LT appeal cases. Members have suggested that the issue be followed-up by the relevant Panels as appropriate.

14. Members have also sought information on provision of legal aid in employees' recovery of wages and other entitlements owed by insolvent employers. The Administration has informed the Subcommittee that applications for legal aid by employees to take winding up or bankruptcy proceedings against an insolvent employer are covered under OLAS. The Labour Department will, if it considers necessary or advisable, refer employees of an insolvent employer to LAD for assistance in commencing the legal proceedings for a bankruptcy or winding up petition against their insolvent employer so that ex-gratia payment from the Protection of Wages on Insolvency Fund could be made to the employees concerned. In such cases, the employees will normally nominate among themselves a representative who

can pass the means test to apply for legal aid. In 2011, all legal aid applications relating to insolvency matters passed the means test of OLAS.

Definition of first-hand residential property

15. The Proposed Resolution proposes to expand the scope of SLAS to cover monetary claims against vendors in the sale of first-hand completed or uncompleted residential properties. Under the new Part III to Schedule 3, "residential property" is defined as "an immovable property (whether completed or uncompleted) constituting a separate unit constructed or intended to be constructed for residential use". In response to the enquiry of the legal adviser to the Subcommittee on the need for the description of "constructed or intended to be constructed" in the definition of "residential property", the Administration has advised that as its policy intent is to cover pre-sale of first-hand residential properties, the phrase "constructed or intended to be constructed" is to make it clear that sale of properties the construction of which has not yet commenced is also covered.

16. Under the new Part III, a residential property is a first-hand property if no agreement for sale and purchase has ever been entered into in respect of the property. Paragraphs 4, 5 and 6 under Part III set out agreements which are not to be regarded as having been entered into in respect of a residential property. The Administration has agreed to take on board the suggestion of the legal adviser to the Subcommittee to include additional provisions to the new Part III to the effect that agreements for sale and purchase of residential properties between a company and its associate corporations or holding companies are not regarded as an agreement that has been entered into in respect of the residential properties involved, so as to block this possible escape route for excluding monetary claims in the sale of first-hand residential properties from the purview of the expanded SLAS. The corresponding amendments to be made by the Administration to the new Part III of the Proposed Resolution highlighted in revision mode are in **Appendix II**.

"Civil proceedings brought by" in Chinese text

17. In response to members' enquiry about the rationale for replacing "提出" by "提起" as the Chinese rendition of "brought by" in the phrase "civil proceedings brought by" in the proposed amendments to Part I of Schedule 3, the Administration has advised the Subcommittee that it has proposed to use "提起" when referring to the institution or bringing of legal proceedings with a view to achieving consistency with other existing legislation. Examples of existing legislation where "提起" is used to match with "訴訟" or "法律程序"

can be found in section 50(7) of Patents Ordinance (Cap. 514), section 43BA(9) of Mandatory Provident Fund Schemes Ordinance (Cap. 485) and section 112(3) of Copyright Ordinance (Cap. 528). The Administration has also advised that examples of using "提起" instead of "提出" to match with "訴訟" can also be found in the Xian Dai Han Yu Ci Dian (revised edition) (《現代漢語詞典(修訂本)》) and in An English-Chinese Dictionary of Law (《英漢法律詞典》). However, members consider that the term "提出" is more generally accepted when referring to the institution or bringing of legal proceedings by a person. Members also note from the legal adviser to the Subcommittee examples of using "提出" to match with "訴訟" or "法律程序" in some existing legislation such as the Rules of the High Court (Cap. 4A) and the Rules of the District Court (Cap. 336H). Members suggest that the Law Drafting Division of the Department of Justice and the Legal Service Division of the LegCo Secretariat should study whether it is more appropriate to use "提起" or "提出" to match with "訴訟" or "法律程序" and report the outcome of the study to the Panel on Administration of Justice and Legal Services as appropriate.

Proposed legislative amendments consequent to the passage of the Proposed Resolution

18. Members note that subject to the passage of the Proposed Resolution, the Administration will amend the relevant subsidiary legislation to revise the application fees and rates of contribution under the expanded SLAS for negative vetting by LegCo. According to the Administration, amendments will be made to the Legal Aid Regulations (Cap. 91A) ("LAR") and the Legal Aid (Assessment of Resources and Contributions) Regulations (Cap. 91B) ("LA(ARC)R") ("amendment regulations") to provide for the application fee and the rates of contribution to be levied in relation to some of the new types of civil proceedings under the expanded SLAS, and to adjust the application fee and the rates of contribution for certain civil proceedings under the existing SLAS, as follows -

- (a) for the application fee and rates of contribution for any of the new types of civil proceedings mentioned in paragraph 7(b) above –
 - (i) the application fee be set at \$5,000;
 - (ii) the interim contribution rate be set at 10% of the assessed financial resources of the aided person or the current interim contribution (i.e. \$65,000) payable by an aided person under SLAS as set out in Regulation 14(a) of the LA(ARC)R, whichever is the higher; and

- (iii) the rate of levy on value of property recovered in the final contribution be set at 20% of the value of property recovered, and 15% where a claim is settled prior to delivery of a brief for attendance at trial to counsel or prior to the date of commencement of the trial if no counsel is involved;
- (b) for any of the civil proceedings in relation to existing type of claim for medical, dental and legal professional negligence, the application fee and rates of contribution be set at the same level as proposed in paragraph 18(a) above; and
- (c) for application for legal aid for representation for employees in respect of civil proceedings relating to appeals under the Labour Tribunal Ordinance (Cap. 25), the application fee and rates of contribution be set at the levels under the existing SLAS before the expansion of scope¹.

19. The Administration has provided Members with illustrations on how LAR and LA(ARC)R would need to be amended to effect the proposed adjustments to application fee and contribution rates as set out in the preceding paragraph and members have raised no query on them. Members agree that the Subcommittee should recommend to the House Committee that it is not necessary to form a subcommittee to study the amendment regulations when they are tabled for negative vetting by LegCo, subject to the amendments in the amendment regulations being materially the same as those in the illustrations provided to the Subcommittee, so that the proposed expansion of the scope of legal aid can take effect as soon as possible. Members have also requested the Administration to highlight any differences between the illustrations provided to the Subcommittee and the amendment regulations when they are tabled in LegCo.

Commencement arrangements

20. In response to members' enquiry about the commencement arrangements

¹ For the calculation of final contribution for such proceedings, the rate of contribution is 10% of the value of property recovered, and 6% where the claim is settled prior to delivery of a brief to counsel for attendance at the appeal proceeding in the Court of First Instance. If no counsel is involved, the reduced rate at 6% will apply if the claim is settled before the date of commencement of the appeal proceeding in the Court of First Instance.

of the proposals to expand the scope of the legal aid schemes, the Administration has advised that it intends to move the Proposed Resolution as revised in Appendix II at the Council meeting of 2 May 2012. Subject to the passage of the Proposed Resolution, the Chief-Executive-in-Council will be invited to amend the LAR and the LA(ARC)R by amendment regulations to provide the revised application fee and rates of contribution for SLAS cases. The amendment regulations will be submitted to LegCo for negative vetting in early June 2012 and approval of the Finance Committee will be sought in end June 2012 for the proposed injection of \$100 million into the SLAS Fund. It is the Administration's plan to effect the proposals in the Proposed Resolution and the amendment regulations within July 2012.

Recommendation

21. The Subcommittee supports the Administration giving notice to move the Proposed Resolution as revised in Appendix II at the Council meeting of 2 May 2012.

Advice sought

22. Members are invited to note the deliberations of the Subcommittee.

Council Business Division 2
Legislative Council Secretariat
19 April 2012

**Subcommittee on Proposed Resolution under
Section 7(b) of the Legal Aid Ordinance (Cap. 91)**

Membership list

Chairman Dr Hon Margaret NG

Members Hon Albert HO Chun-yan
 Hon TAM Yiu-chung, GBS, JP
 Hon Cyd HO Sau-lan
 Dr Hon Priscilla LEUNG Mei-fun, JP

(Total : 5 Members)

Clerk Ms Amy YU

Legal Adviser Ms Clara TAM

Legal Aid Ordinance**Resolution of the Legislative Council**

Resolution made and passed by the Legislative Council under section 7(b) of the Legal Aid Ordinance (Cap. 91) on 2012.

Resolved that—

- (a) the Legal Aid Ordinance (Cap. 91) be amended as set out in the Schedule; and
- (b) this Resolution is to come into operation on a day to be appointed by the Secretary for Home Affairs by notice published in the Gazette.

Schedule**Amendments to Legal Aid Ordinance (Cap. 91)**

1. **Schedule 2 amended (proceedings for which legal aid may be given under section 5)**
 - (1) Schedule 2, Part II, paragraph 11—
Repeal
 “Proceedings”
Substitute
 “Any of the following proceedings”.
 - (2) Schedule 2, English text, Part II, paragraph 11(a), before “involving”—
Add
 “proceedings”.
 - (3) Schedule 2, Part II, paragraph 11(a), after “futures contracts”—
Add
 “, unless the claims are made by the person seeking legal aid on the basis that the person was induced to deal in the derivatives of securities, currency futures or other futures contracts by fraud, deception or misrepresentation”.
 - (4) Schedule 2, English text, Part II, paragraph 11(b), before “for”—
Add
 “proceedings”.
 - (5) Schedule 2, English text, Part II, paragraph 11(c), before “involving”—
Add

“proceedings”.

- (6) Schedule 2, English text, Part II, paragraph 11(d), before “arising”—

Add

“proceedings”.

- (7) Schedule 2, English text, Part II, paragraph 11(e), before “for the taxation”—

Add

“proceedings”.

- (8) Schedule 2, English text, Part II, paragraph 11(e), after “the person”—

Add

“seeking legal aid”.

2. Schedule 3 amended (proceedings for which legal aid may be given under section 5A)

- (1) Schedule 3, Part I, paragraph 1—

Repeal

“by the aided person”

Substitute

“, by the person seeking legal aid (*claimant*)”.

- (2) Schedule 3, Part I, paragraph 1—

Repeal

everything after “any person”

Substitute

“(including proceedings for the defence to a counterclaim against the claimant and other proceedings incidental to the civil proceedings); and in a higher court, proceedings that are related to the claim.”.

- (3) Schedule 3, Part I, paragraph 2—

Repeal

“by the aided person”

Substitute

“, by the person seeking legal aid (*claimant*)”.

- (4) Schedule 3, Part I, paragraph 2—

Repeal

“where the claim exceeds \$60,000 or”.

- (5) Schedule 3, Part I, paragraph 2—

Repeal

everything after “exceed \$60,000”

Substitute

“(including proceedings for the defence to a counterclaim against the claimant and other proceedings incidental to the civil proceedings); and in a higher court, proceedings that are related to the claim.”.

- (6) Schedule 3, English text, Part I, paragraph 3, before “proceedings”—

Add

“civil”.

- (7) Schedule 3, Part I, paragraph 3—

Repeal

“by the aided person”.

- (8) Schedule 3, Part I, paragraph 3—

Repeal

“(Cap. 282).”

Substitute

“(Cap. 282) by the person seeking legal aid, in the capacity as an employee (including proceedings incidental to the civil

- proceedings); and in a higher court, proceedings that are related to the civil proceedings.”.
- (9) Schedule 3, Part I, paragraph 4—
Repeal
“by the aided person”
Substitute
“, by the person seeking legal aid.”.
- (10) Schedule 3, Part I, paragraph 4—
Repeal
everything after “exceed \$60,000”
Substitute
“(including proceedings for the defence to a counterclaim against the person and other proceedings incidental to the civil proceedings); and in a higher court, proceedings that are related to the claim.”.
- (11) Schedule 3, Part I, after paragraph 4—
Add
- “5. Civil proceedings in the Court of First Instance, Court of Appeal or District Court that are brought, by the person seeking legal aid, in respect of a claim for damages that falls within the following descriptions (including proceedings for the defence to a counterclaim against the person and other proceedings incidental to the civil proceedings), and proceedings in a higher court that are related to the claim—
- (a) the claim is made by the person in respect of the professional negligence of any of the following persons—
- (i) a certified public accountant (practising) as defined by section 2 of the Professional Accountants Ordinance (Cap. 50);

- (ii) a person registered as a registered architect under the Architects Registration Ordinance (Cap. 408);
- (iii) a registered professional engineer as defined by section 2 of the Engineers Registration Ordinance (Cap. 409);
- (iv) a registered professional surveyor as defined by section 2 of the Surveyors Registration Ordinance (Cap. 417);
- (v) a registered professional planner as defined by section 2 of the Planners Registration Ordinance (Cap. 418);
- (vi) an authorized land surveyor as defined by section 2 of the Land Survey Ordinance (Cap. 473);
- (vii) an estate agent as defined by section 2 of the Estate Agents Ordinance (Cap. 511);
- (viii) a person registered as a registered landscape architect under the Landscape Architects Registration Ordinance (Cap. 516); and
- (b) the claim is, in the opinion of the Director, likely to exceed \$60,000.
6. Civil proceedings in the Court of First Instance, Court of Appeal or District Court that are brought, by the person seeking legal aid, in respect of a claim for damages that falls within the following descriptions (including proceedings for the defence to a counterclaim against the person and other proceedings incidental to the civil proceedings), and proceedings in a higher court that are related to the claim—
- (a) the claim is made by the person in respect of the negligence of an insurer, appointed insurance agent or authorized insurance broker, as defined by section 2 of the Insurance Companies Ordinance

- (Cap. 41), in the performance of their functions for the taking out of the personal insurance that is the subject of the claim; and
- (b) the claim is, in the opinion of the Director, likely to exceed \$60,000.
7. Civil proceedings in the Court of First Instance, Court of Appeal or District Court that are brought, by the person seeking legal aid, in respect of a claim for damages that falls within the following descriptions (including proceedings for the defence to a counterclaim against the person and other proceedings incidental to the civil proceedings), and proceedings in a higher court that are related to the claim—
- (a) the claim is made by the person against the legal or beneficial owner of a residential property that is a first-hand property;
- (b) the claim arises from—
- (i) an agreement for sale and purchase of the property, not being an agreement which, because of paragraph 5, 6 or 67 of Part III of this Schedule, is not regarded as having been entered into in respect of the property; or
- (ii) a sale under the agreement described in sub-subparagraph (i); and
- (c) the claim is, in the opinion of the Director, likely to exceed \$60,000.
8. Civil proceedings in the Court of First Instance or Court of Appeal that are brought in respect of an appeal under the Labour Tribunal Ordinance (Cap. 25) relating to a claim to which the person seeking legal aid is a party in the capacity as an employee (including proceedings incidental to the civil proceedings), and proceedings in a higher court that are related to the appeal.”

- (12) Schedule 3, after Part II—
Add

“Part III

Interpretation Provisions

1. In this Schedule—
- associate corporation (有聯繫法團), in relation to a company or specified body, means—
- (a) a subsidiary of the company or specified body; or
- (b) a subsidiary of a holding company of the company or specified body;
- company (公司) has the meaning given by section 2(1) of the Companies Ordinance (Cap. 32);
- holding company (控權公司) means a holding company within the meaning of the Companies Ordinance (Cap. 32);
- personal insurance (個人保險) means an insurance that is taken out by an individual and under which an individual is the insured person, but does not include any such insurance the sole or predominant purpose of which is for any one or more of the following—
- (a) business or commercial insurance;
- (b) industrial insurance;
- (c) investment;
- residential property (住宅物業) means an immovable property (whether completed or uncompleted) constituting a separate unit constructed or intended to be constructed for residential use;.
- specified body (指明團體) means a body corporate incorporated or established under an Ordinance;

subsidiary (附屬公司) means a subsidiary within the meaning of the Companies Ordinance (Cap. 32).

2. For the purposes of paragraph 7(a) of Part I of this Schedule, a residential property is a first-hand property if no agreement for sale and purchase has ever been entered into in respect of the property.
3. For the purposes of paragraph 2 of this Part, in determining whether an agreement for sale and purchase has been entered into in respect of a residential property, paragraphs 4, 5, 6 and 7 of this Part apply.
4. If an agreement for sale and purchase has been entered into in respect of a residential property and the agreement has been terminated or has been declared void by a court in relation to that property, the agreement is not to be regarded as having been entered into in respect of that property.
5. If an agreement for sale and purchase is entered into, in respect of a residential property, between—
 - (a) a company or specified body (whether or not together with any other person); and
 - (b) an associate corporation, or a holding company, of the company or specified body (whether or not together with any other person),the agreement is not to be regarded as having been entered into in respect of that property.

56. If—

- (a) a development, housing estate or phase of a development or housing estate has more than one residential property (whether or not the development, housing estate or phase is completed); and

- (b) all the residential properties in that development, housing estate or phase are sold, or agreed to be sold, to any person under a single agreement for sale and purchase,

the agreement is not to be regarded as having been entered into in respect of any of those properties in that development, housing estate or phase (as the case requires).

67. If, in any case—

- (a) a building has more than one residential property (whether or not the building is completed); and
- (b) all the residential properties of the building are sold, or agreed to be sold, to any person under a single agreement for sale and purchase,

the agreement is not to be regarded as having been entered into in respect of any of those properties.

78. To avoid doubt, in determining whether a residential property is a first-hand property, the agreement for sale and purchase that is the subject of the claim or that relates to the sale giving rise to the claim is not to be taken into account.”

Clerk to the Legislative Council