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**BY EMAIL AND BY POST**

8 February 2018

Ms Anita SIT  
Clerk to Finance Committee  
Legislative Council Complex  
1 Legislative Council Road  
Central, Hong Kong

Dear Ms Sit,

**Finance Committee  
Follow-up to the Meeting on 25 November 2017**

The Finance Committee (FC) discussed the write-off of an irrecoverable judgment debt (FCR(2017-18)28) at its meeting held on 25 November 2017. At the meeting, Hon Steven HO Chun-yin asked how the Government would review the measures for handling similar incidents, while Hon LAM Cheuk-ting inquired whether the Civil Service Bureau (CSB) and the Home Affairs Bureau (HAB) would take disciplinary action against the management of the Legal Aid Department (LAD) in the light of the decision made at that time by the LAD management for not having taken disciplinary action against the case officer concerned. Having consulted CSB, the Financial Services and the Treasury Bureau (FSTB) and LAD, our reply is set out below.

## **Review of the measures for handling similar incidents**

To prevent the recurrence of similar incidents, LAD has taken a series of preventive and improvement measures, including reminding staff about appropriate work procedures through various channels, as well as implementing and enhancing the computerised Case Management and Case Accounting System. The preventive and improvement measures taken by LAD, which are detailed in paragraph 8 of the FC paper, are set out in **Annex** for Members' reference.

As reported at the meeting, there is no record of similar incidents of negligence in LAD. If there is a recurrence of omission in recovering overpayment in future, LAD will carry out timely investigation and follow up with the recovery of overpayment. If there is evidence that staff negligence is involved in an incident, LAD will consider taking administrative and/or disciplinary action against the relevant staff member(s) in accordance with the guidelines, and will seek advice from CSB and HAB when necessary.

## **Whether disciplinary action would be taken against the management of LAD**

LAD agreed that the overpayment involved negligence on the part of the case officer. However, no disciplinary or surcharge action had been taken against him before he retired from service in December 2004. At that time, LAD considered that, at law, the debt to be recovered from the legally-aided person remained recoverable prior to the expiry of the limitation period in May 2011. As the recovery action was still ongoing by that time, the amount of loss had yet to be ascertained. As such, a conclusive view on the gravity of the incident and hence the appropriate type of administrative and/or disciplinary action to be taken against the case officer could not be formed.

With regard to the administrative decision made at that time by LAD for not having taken disciplinary action against the case officer, it did not involve the question of negligence or discipline in relation to any officers. Nevertheless, we agree that there is room for improvement in the approach to the incident and the decision made by LAD. If there is a recurrence of similar incidents in the future, the LAD will exercise vigilance and will seek advice on the required follow-up action as appropriate from CSB and HAB when necessary.

We would be grateful if you would help distribute the information above to Members for reference.

Yours sincerely,



(Karyn CHAN)  
for Secretary for Home Affairs

c.c.

Secretary for the Civil Service (Attn.: Miss SZE Sin-yu, Cecilia)

Secretary for Financial Services and the Treasury (Attn.: Ms TSANG Yuen-pui, Emily)

Director of Legal Aid (Attn.: Mr CHONG Yan-tung, Chris)

**Preventive and Improvement Measures Taken by  
the Legal Aid Department (LAD)**

**A. Reminding staff about appropriate work procedures through various channels**

- (i) a Departmental Circular was issued to all professional officers of the Application and Processing Division (Headquarters)(A&PD) drawing their attention to the provision in relation to the Director of Legal Aid (DLA)'s first charge (i.e. section 18A of the Legal Aid Ordinance (LAO)). The Circular has been uploaded to the departmental intranet for staff's reference and is re-circulated regularly;
- (ii) the Office Support Unit of the A&PD has taken up the responsibility of finalising accounts of all cases (including all employee's compensation (EC) cases and the related common law (CL) claims) handled at the Headquarters office since June 2011. It was tasked to ensure that all final payments to legally aided persons (APs) during finalisation of accounts would take into account the outstanding costs in the related EC claims<sup>1</sup>;
- (iii) since 2004, in-house talks on subject matters such as DLA's first charge and EC claims have been arranged by the LAD to remind staff about the need to retain a sufficient amount from damages recovered by APs in CL claims to pay for the costs incurred and not yet recovered from the opposite parties in the related EC claims; and
- (iv) the LAD has compiled internal lists of matters requiring attention and uploaded them to the departmental intranet for staff's reference. The lists are updated regularly to remind staff to take into account any outstanding costs in the related EC claim when calculating the amount of CL damages payable to APs. All staff members (especially newcomers) are frequently reminded at internal meetings about the need to familiarise themselves with the contents of the lists. The lists are also re-circulated regularly.

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<sup>1</sup> Under the relevant provisions of the Employees' Compensation Ordinance (Cap. 282) and the LAO, no deduction is allowed to be made from the employees' compensation except for the costs incurred in the EC claim itself. Therefore, when finalising accounts and making payments to the AP of an EC claim, it does not need to take into account the outstanding costs and disbursements incurred in the related CL claim.

**B. Implementing and enhancing the computerised Case Management and Case Accounting System (CMCAS)**

- (i) the CMCAS will automatically prevent the case officer from releasing an interim payment or the remaining balance in excess of the amount of the DLA's first charge computed in accordance with the provisions set out in the LAO and its subsidiary legislation;
- (ii) in special cases where any proposed payments may result in inadequate balance to cover the DLA's first charge, the proposal must be submitted through electronic means by the case officer (who should normally be a Legal Aid Counsel or a Senior Legal Aid Counsel) and approved by a division/section head at the directorate level; and
- (iii) when payments are made to APs out of damages recovered in cases relating to EC and CL claims, the CMCAS will automatically check if any outstanding costs and disbursements in the related EC claim need to be taken into account in the calculation of the amount payable to the APs. If so, the CMCAS will generate a prompting message to the case officer to prevent overpayment.