

立法會
Legislative Council

LC Paper No. CB(3) 109/18-19

Ref. : CB(3)/M/OR

Tel : 3919 3300

Date : 7 November 2018

From : Clerk to the Legislative Council

To : All Members of the Legislative Council

Council meeting of 21 November 2018

Two proposed resolutions under the Legal Aid Ordinance

The Chief Secretary for Administration will respectively move the attached two proposed resolutions under section 7(a) and (b) of the Legal Aid Ordinance (Cap. 91) at the above meeting (**Appendices 1 and 2**). The President has directed that the proposed resolutions be printed in the terms in which they were handed in on the Agenda of the Council.

2. The speeches, in both Chinese and English, which the Chief Secretary for Administration will deliver when moving the two proposed resolutions are in **Appendices 3 and 4** respectively.

(Dora WAI)
for Clerk to the Legislative Council

Encl.

Legal Aid Ordinance

Resolution

(Under section 7(a) of the Legal Aid Ordinance (Cap. 91))

Resolved that the Legal Aid Ordinance (Cap. 91) be amended as set out in the Schedule.

Schedule

Amendments to Legal Aid Ordinance

1. Section 5 amended (persons eligible for legal aid)
Section 5(1)—

Repeal

“\$302,000”

Substitute

“\$307,130”.

2. Section 5A amended (supplementary legal aid)

- (1) Section 5A(b)—

Repeal

“\$302,000”

Substitute

“\$307,130”.

- (2) Section 5A(b)—

Repeal

“\$1,509,980”

Substitute

“\$1,535,650”.

Legal Aid Ordinance

Resolution

(Under section 7(b) of the Legal Aid Ordinance (Cap. 91))

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 Chief Secretary for Administration by notice published in the Gazette.

Schedule

Amendments to Legal Aid Ordinance

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

- (1) Schedule 2, Part 2, paragraph 5—

Repeal

“Court of First Instance or District Court”

Substitute

“District Court or Court of First Instance”.

- (2) Schedule 2, Part 2, paragraph 11—

Repeal everything after subparagraph (e)

Substitute

“In this paragraph—

derivatives of securities (證券衍生工具) means—

- (a) options to buy or sell interests in;
- (b) certificates of interest or participation in;
- (c) warrants to subscribe to; or
- (d) rights (other than shares) in, the capital of, or an instrument issued by, a company, government authority or other body;

futures contract (期貨合約) has the meaning given by section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571).”.

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

(1) Schedule 3, Part 1—

Repeal paragraph 2

Substitute

“2. For a claim for damages arising from personal injuries to, or the death of, a person that, in the opinion of the Director, is likely to exceed the specified amount—

(a) civil proceedings brought in the District Court for the claim by the person seeking legal aid (*claimant*), including proceedings for the defence to a counterclaim against the claimant and other proceedings incidental to the civil proceedings; and

(b) proceedings in a higher court that are related to the claim.”.

(2) Schedule 3, Part 1—

Repeal paragraph 4

Substitute

“4. For a claim for damages for medical, dental or legal professional negligence that, in the opinion of the Director, is likely to exceed the specified amount—

(a) civil proceedings brought in the District Court, Court of First Instance or Court of Appeal for the claim by the person seeking legal aid, including proceedings for the defence to a counterclaim against the person and other proceedings incidental to the civil proceedings; and

(b) proceedings in a higher court that are related to the claim.”.

(3) Schedule 3, Part 1, paragraph 5—

Repeal

“Court of First Instance, Court of Appeal or District Court”

Substitute

“District Court, Court of First Instance or Court of Appeal”.

(4) Schedule 3, Part 1, paragraph 5(a)(viii)—

Repeal

“and”.

(5) Schedule 3, Part 1, after paragraph 5(a)(viii)—

Add

“(ix) a licensed person (as defined by section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571)) who is licensed for Type 1, Type 2 or Type 8 regulated activity within the meaning of that Ordinance;

(x) a registered institution (as defined by section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571)) that is registered for Type 1 or Type 2 regulated activity within the meaning of that Ordinance; and”.

(6) Schedule 3, Part 1, paragraph 5(b)—

Repeal

“\$60,000”

Substitute

“the specified amount”.

(7) Schedule 3, Part 1, paragraph 6—

Repeal

“Court of First Instance, Court of Appeal or District Court”

- Substitute**
“District Court, Court of First Instance or Court of Appeal”.
- (8) Schedule 3, Part 1, paragraph 6(b)—
Repeal
“\$60,000”
Substitute
“the specified amount”.
- (9) Schedule 3, Part 1, paragraph 7—
Repeal
“Court of First Instance, Court of Appeal or District Court”
Substitute
“District Court, Court of First Instance or Court of Appeal”.
- (10) Schedule 3, Part 1, paragraph 7(c)—
Repeal
“\$60,000”
Substitute
“the specified amount”.
- (11) Schedule 3, Part 1, after paragraph 8—
Add
“9. Civil proceedings in the District Court, Court of First Instance or Court of Appeal 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 derivatives of securities, currency futures or other futures contracts, on the basis that the person was induced to deal in those derivatives, futures or contracts by fraud, deception or misrepresentation; and
- (b) the claim is, in the opinion of the Director, likely to exceed the specified amount.”.
- (12) Schedule 3, Part 2, paragraph 2—
Repeal
“Court of First Instance or District Court”
Substitute
“District Court or Court of First Instance”.
- (13) Schedule 3, Chinese text, Part 3, paragraph 1, definition of 控權公司—
Repeal the full stop
Substitute a semicolon.
- (14) Schedule 3, Part 3, paragraph 1—
Add in alphabetical order
“*derivatives of securities* (證券衍生工具) means—
- (a) options to buy or sell interests in;
 - (b) certificates of interest or participation in;
 - (c) warrants to subscribe to; or
 - (d) rights (other than shares) in,
- the capital of, or an instrument issued by, a company, government authority or other body;

futures contract (期貨合約) has the meaning given by section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571);

specified amount (指明款額) means the monetary limit specified in paragraph 1 of the Schedule to the Small Claims Tribunal Ordinance (Cap. 338);”.

(Translation)

**Speech by the Chief Secretary for Administration
at the Legislative Council meeting on 21 November 2018**

Proposed Resolution under the Legal Aid Ordinance

President,

I move the Resolution standing in my name on the Agenda.

2. Legal aid services form an integral part of the legal system in Hong Kong. The policy objective of legal aid is to ensure that all those who comply with the regulations of the Legal Aid Ordinance (Cap. 91) (LAO) and have reasonable grounds for pursuing or defending a legal action in the courts of Hong Kong will not be denied access to justice due to a lack of means. To qualify for legal aid, a person is required to satisfy both the means test and merits test as provided by the LAO.

3. At present, a person whose disposable financial resources do not exceed \$302,000 is financially eligible for legal aid under the Ordinary Legal Aid Scheme (OLAS) as set out in section 5 of the LAO. The same limit is also applicable to criminal legal aid. The financial eligibility limit (FEL) for the Supplementary Legal Aid Scheme (SLAS) is \$1,509,980 as specified in section 5A of the LAO.

Review of financial eligibility limits

4. Pursuant to the Government's report to the Legislative Council (LegCo) in September 1999, the Government will review the relevant limits annually to take into account general price movement and biennially to take into account changes in private litigation costs and other relevant factors.

5. The previous adjustment to the FELs was implemented in February 2018, reflecting the 4.0% increase in Consumer Price Index (C) (CPI(C)) for the period between July 2014 and July 2016. For the

current review, we propose to increase the FELs under OLAS and SLAS by 1.7% to reflect the accumulated change in CPI(C) for the period of July 2016 to July 2017.

6. I now propose to move the Resolution to increase the FEL under OLAS from \$302,000 to \$307,130, and the FEL under SLAS from \$1,509,980 to \$1,535,650.

7. We have informed the Legal Aid Services Council, the Hong Kong Bar Association, the Law Society of Hong Kong and the Panel on Administration of Justice and Legal Services of the outcome of the current review.

Financial implications

8. The proposal to increase the FELs is estimated to incur an additional recurrent expenditure of around \$650,000 in a full year by the Legal Aid Department (LAD). The additional expenditure and workload in effecting the proposal will be absorbed by LAD with its existing resources.

9. Subject to LegCo's approval of the Resolution, the adjusted FELs will come into effect upon gazettal. May I invite Members to support the Resolution. Thank you, Mr President.

(Translation)

**Speech by the Chief Secretary for Administration
at the Legislative Council meeting on 21 November 2018**

**Proposed Resolution under Section 7(b) of the
Legal Aid Ordinance (Cap. 91) Pursuant to the Review of the
Supplementary Legal Aid Scheme**

President,

I move the Resolution standing in my name on the Agenda.

Expansion of the scope of the Supplementary Legal Aid Scheme

2. The Government briefed the Legislative Council (LegCo) Panel on Administration of Justice and Legal Services (AJLS Panel) in April 2017 and April 2018 respectively on the recommendations and proposed legislative amendments made upon completion of the review of the Supplementary Legal Aid Scheme (SLAS) by the Legal Aid Services Council (LASC). With the support of the AJLS Panel, I now propose to move the Resolution to amend the Legal Aid Ordinance (LAO) (Cap. 91) with a view to expanding the scope of the SLAS to cover certain types of monetary claims against financial intermediaries and derivatives.

Claims against financial intermediaries

3. 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 personal insurance products. The Government proposes to amend the LAO to cover under SLAS 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 Securities and Futures Ordinance (Cap. 571).

Derivatives claims

4. Moreover, regarding the derivatives claims, the Government proposes to amend the LAO to cover under SLAS civil proceedings for monetary claims in respect of derivatives of securities, currency futures or other futures contracts involving a legal aid applicant who was induced to deal in those derivatives, futures or contracts by fraud, deception or misrepresentation. This is to align the treatment of civil proceedings under SLAS and the Ordinary Legal Aid Scheme (OLAS).

5. According to my proposed Resolution, the above two types of claims will be added to Part 1 of Schedule 3 to the LAO, which sets out the proceedings for which legal aid may be given under the SLAS (including its scope)

Further Review by LASC on SLAS

6. The AJLS Panel not only expressed support to the proposal, but also 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.

7. We understand Members' concern. The Government is open to all possible options with a view to further expanding the scope of SLAS on an incremental basis. We will invite LASC to further study the scope of SLAS and make recommendations to the Government in due course.

Revising the minimum claim amount for SLAS

8. Taking this opportunity of enacting legislative amendments for revising the scope of the SLAS, the Government will also revise the minimum claim amount for SLAS (which stands at \$60,000 at present), to tie in with the Judiciary's increase in the jurisdictional limit of the Small Claims Tribunal to \$75,000. Moreover, we will link the relevant provisions in the LAO with the monetary limit specified in the Small Claims Tribunal Ordinance (Cap. 338) to relieve the need for consequential amendments to the LAO in any future adjustments to the

jurisdictional limits.

Financial implications of the proposal

9. The proposed expansion of scope is not expected to have significant impact on the Supplementary Legal Aid Fund and no further injection is needed for the time being. The financial implications and increase in workload for processing and monitoring new applications arising from the proposed expansion of scope will be absorbed by the existing resources of the Legal Aid Department.

10. Subject to LegCo's approval of the Resolution, we will make consequential amendments 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), and specify a commencement date for the relevant legislative amendments with a view to expanding the scope of the SLAS at an early date.

11. May I invite Members to support the Resolution. Thank you, Mr President.