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From : Clerk to the Legislative Council

To : All Members of the Legislative Council

Council meeting of 21 November 2018

**Debate and voting arrangements for
two proposed resolutions under the Legal Aid Ordinance**

Members have been informed vide LC Paper No. CB(3) 109/18-19 that the Chief Secretary for Administration (“CS”) will move the following two proposed resolutions at the above meeting:

- (a) the proposed resolution under section 7(a) of the Legal Aid Ordinance (Cap. 91), which seeks to increase the financial eligibility limits of legal aid applicants (“the first proposed resolution”); and
- (b) the proposed resolution under section 7(b) of Cap. 91, which seeks to expand the scope of the Supplementary Legal Aid Scheme (“SLAS”) (“the second proposed resolution”).

The speech which CS will deliver when moving the above proposed resolutions is in the **Appendix**.

2. As the two proposed resolutions are the proposed legislative amendments pursuant to the review of SLAS conducted by the Legal Aid Services Council, the President has decided that **a joint debate** be held on the proposed resolutions and then they be **voted upon one by one**.

3. To assist Members in considering the proposed resolutions, I set out the relevant proceedings under which the President will:

- (a) first call upon CS to speak and move the first proposed resolution, and then propose the question on it;

- (b) invite other Members to speak;
- (c) call upon CS to reply and order that the debate will come to a close;
- (d) put to vote the question on the first proposed resolution; and
- (e) irrespective of whether the first proposed resolution is passed, invite CS to move the second proposed resolution and put to vote the question on it.

4. Members are invited to note that each Member may only speak once in the above joint debate and the speaking time limit for each Member is 15 minutes. The public officer will not be subject to any speaking time limit.

(Dora WAI)
for Clerk to the Legislative Council

Encl.

(Translation)

(Refer to the final speech to be delivered at the Legislative Council)

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

Proposed Resolutions under the Legal Aid Ordinance

President,

I move that the first motion under my name as printed on the Agenda be passed to adjust the financial eligibility limits (FELs) of legal aid applicants. I will also shortly be moving the second motion under my name as printed on the Agenda be passed to expand the scope of the Supplementary Legal Aid Scheme (SLAS).

I. Proposed Resolution under section 7(a) of the Legal Aid Ordinance (Cap. 91) pursuant to the annual review of FELs

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 FEL for 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. This Resolution proposes 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 (LASC), 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. I invite Members to support this motion to increase the FELs.

II. Proposed Resolution under section 7(b) of the LAO pursuant to the review of SLAS

Expansion of the scope of SLAS

10. Mr President, I will now address the expansion of the scope of SLAS. The Government briefed the 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 SLAS by LASC. With the support of the AJLS Panel, the Resolution I will move later proposes to amend the LAO 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

11. 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

12. 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 OLAS.

13. 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

14. 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.

15. 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 have invited LASC to further study the scope of SLAS and make recommendations to the Government in due course.

Revising the minimum claim amount for SLAS

16. 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

17. 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.

18. Subject to LegCo's approval of the Resolution, we will make consequential amendments to the Legal Aid Regulations (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.

19. May I invite Members to support the two Resolutions. Thank you, Mr President.