

**立法會**  
***Legislative Council***

LC Paper No. LS18/18-19

**Paper for the House Committee Meeting  
on 16 November 2018**

**Legal Service Division Report on  
Proposed Resolution under section 7(b) of  
the Legal Aid Ordinance (Cap. 91)**

The Chief Secretary for Administration has given notice to move a motion at the Legislative Council ("LegCo") meeting of 21 November 2018 under section 7(b) of the Legal Aid Ordinance (Cap. 91) to seek LegCo's approval to amend Schedules 2 and 3 to Cap. 91.

2. Cap. 91 provides for the granting of legal aid in civil actions to persons of limited means under two schemes, namely the Ordinary Legal Aid Scheme ("OLAS") and the Supplementary Legal Aid Scheme ("SLAS").<sup>1</sup> OLAS covers civil proceedings as set out in Part 1 of Schedule 2 to Cap. 91, and it also applies to criminal legal aid under the Legal Aid in Criminal Case Rules (Cap. 221D). SLAS covers civil proceedings as set out in Part 1 of Schedule 3 to Cap. 91.

3. The proposed resolution seeks to amend Part 1 of Schedule 3 to Cap. 91 to expand the scope of SLAS to cover:

- (a) civil proceedings brought for monetary claims 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, (which are currently covered under OLAS but not SLAS); and
- (b) civil proceedings brought for monetary claims in respect of the professional negligence of a licensed person or a registered institution for Type 1 (dealing in securities), Type 2 (dealing in futures contracts) or Type 8 (securities margin financing) regulated

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<sup>1</sup> The financial eligibility limits of legal aid applicants under OLAS and SLAS are specified in sections 5 and 5A of Cap. 91 respectively. The Chief Secretary for Administration has given notice to move a motion at the LegCo meeting of 21 November 2018 under section 7(a) of Cap. 91 to seek LegCo's approval to raise these limits by 1.7%.

activities within the meaning of the Securities and Futures Ordinance (Cap. 571).

4. Currently, in respect of certain civil proceedings brought in the Court of First Instance, Court of Appeal or District Court ("DC") covered under SLAS as set out in Part 1 of Schedule 3 to Cap. 91, it is a condition for the grant of legal aid that the claim concerned is, in the opinion of the Director of Legal Aid, likely to exceed \$60,000 ("minimum claim amount for specified SLAS proceedings"). The proposed resolution seeks to amend the minimum claim amount for specified SLAS proceedings from "\$60,000" to "the monetary limit specified in paragraph 1 of the Schedule to the Small Claims Tribunal Ordinance (Cap. 338)" to tie in with the increase in the jurisdictional limit of the Small Claims Tribunal ("SCT").<sup>2</sup>

5. Apart from the above proposed amendments, certain textual amendments are proposed to Schedules 2 and 3 to Cap. 91.

6. According to paragraph 2 of the LegCo Brief (File Ref: CSO/ADM CR 1/3230/82(18)) issued by the Chief Secretary for Administration's Office and the Legal Aid Department in November 2018 ("LegCo Brief"), the proposed expansion of the scope of SLAS has been prepared on the basis of the recommendations made by the Legal Aid Services Council ("LASC") in 2016 following a review of SLAS.<sup>3</sup> As regards the proposed revision mentioned in paragraph 4 above, according to paragraph 6 of the LegCo Brief, as SLAS covers civil proceedings brought in DC or in a higher court, the Administration considers that linking the minimum claim amount for specified SLAS proceedings with the monetary limit specified in paragraph 1 of the Schedule to Cap. 338 (which is the jurisdictional limit of SCT) will alleviate the need for consequential amendments to Cap. 91 in any future adjustments to the jurisdictional limit of SCT.

7. As advised by the Clerk to the Panel on Administration of Justice Legal Services, at its meetings on 24 April 2017 and 30 April 2018, the Panel was briefed on the Administration's legislative proposal for expanding the scope of SLAS. At its meeting on 30 April 2018, the Panel was also briefed on the proposed legislative amendments to revise the minimum claim amount for specified SLAS proceedings to tie in with the proposed increase in the jurisdictional limit of SCT. While some members were disappointed to note that LASC did not recommend the inclusion of a number of claims in SLAS,

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<sup>2</sup> The increase in the jurisdictional limit of SCT to \$75,000 will come into operation on 3 December 2018 (L.N. 139 of 2018).

<sup>3</sup> Subsequent to the previous substantial expansion of the scope of SLAS in November 2012, the Home Affairs Bureau (which oversaw the legal aid portfolio before 1 July 2018) invited LASC to conduct a further review on SLAS in 2014. LASC submitted its recommendations to the Chief Executive in July 2016.

some of which had been long-standing requests raised by members in the previous reviews of SLAS, the Panel generally supported the proposed expansion of SLAS and had raised no particular issues with the proposed legislative amendments.

8. The proposed resolution, if passed by LegCo, would come into operation on a day to be appointed by the Chief Secretary for Administration by notice published in the Gazette.

9. No difficulties relating to the legal and drafting aspects of the proposed resolution have been identified.

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