



**REVIEW ON
EXPANSION OF SUPPLEMENTARY LEGAL AID SCHEME
SUBMISSIONS**

Introduction

1. Legal aid is provided by the Legal Aid Department under the Ordinary Legal Aid Scheme ("OLAS") and the Supplementary Legal Aid Scheme ("SLAS").
2. With the latest expansion of SLAS in November 2012, the current scope of SLAS covers:
 - (i) claims involving personal injuries or death, or medical, dental and legal professional negligence, where the claim is likely to exceed \$60,000;
 - (ii) claims brought under Employees' Compensation Ordinance irrespective of the amount of the claim;
 - (iii) professional negligence claims against certified public accountants (practising), registered architects, registered professional engineers, registered professional surveyors, registered professional planners, authorized land surveyors, registered landscape architects and estate agents, where the claim is likely to exceed \$60,000;
 - (iv) negligence claims against insurers or their intermediaries in respect of the taking out of the personal insurance products, where the claim is likely to exceed \$60,000;
 - (v) monetary claims against vendors in the sale of completed or uncompleted first-hand residential properties, where the claim is likely to exceed \$60,000; and

- (vi) representation for employees in appeals against awards made by the Labour Tribunal irrespective of the amount in dispute.
3. The Working Group on Expansion of Supplementary Legal Aid Scheme ("Working Group") under the Legal Aid Services Council ("LASC") has prepared a preliminary proposal on expansion of Supplementary Legal Aid Scheme ("Preliminary Proposal").
 4. The Preliminary Proposal lists out those recommendations on the types of cases that have been considered by the Working Group for inclusion in the SLAS.
 5. The Law Society has reviewed the Preliminary Proposal. We acknowledge that the Working Group has supported further expansion of SLAS and the expansion is on an incremental basis. In principle, we welcome this view.
 6. As for the individual items under the Preliminary Proposal, we set out our comments below. As a caveat in our comments below, we note that the proposals of the Working Group are expressed to be *preliminary*. We anticipate further details on these proposals in the course of discussion and await further consultations. Given the importance of the matter, we ask that if and when further consultation is launched, the stakeholders should be given adequate time to respond. Our comments are therefore necessarily brief.

Preliminary Proposals on Expansion of SLAS made by the Working Group

- (i) *Claims against the Incorporated Owners of a Multi-Storey Building*
7. We agree with the Working Group's recommendation that monetary claims exceeding \$60,000 based on improprieties of incorporated owners of multi-storey buildings should be included in SLAS.
- (ii) *Independent Financial Consultants*
8. We agree with the Working Group's recommendation that monetary claims exceeding \$60,000 against independent financial consultants registered under the Securities and Futures Commission and required to have insurance cover should be included in SLAS.

(iii) Derivative Claims

9. We agree with the Working Group's recommendation that derivative claims (i.e. claims in derivatives of securities, currency futures or other futures when fraud, misrepresentation or deception was involved at the time of purchase) exceeding \$60,000 should be included in SLAS.

(iv) Small Marine Accidents

10. We note the Working Group's view that small boat accidents resulting in personal injuries have already been covered under SLAS. We have no views on this item.

(v) Claims against Property Developers by Minority Owners in Compulsory Sales

11. We note the suggestion of the Working Group that claims against property developers by minority owners in compulsory sales normally do not involve monetary claims. On this basis but not otherwise, we have no objection to the Working Group's recommendation that claims against property developers by minority owners in compulsory sale are not to be covered by SLAS.

(vi) Trusts

12. The Working Group's view that claims in respect of trusts should be partly covered under professional negligence claims is noted. We have no views.

(vii) Disputes between Limited Companies and Their Minority Shareholders

13. Although we may have different views on this item, we note that this subject is currently not covered by OLAS. It is thus premature to discuss the suggested expansion of SLAS to cover this matter.

(viii) Sale of Goods and Provision of Services

14. The Working Group made reference to Trade Descriptions Ordinance, Cap 362, and the Consumer Legal Action Fund. Among other things, the Working Group averred that actions would be taken by the Customs and Excise Department under the Trade Descriptions Ordinance for offences

committed in the course of sale of goods and provision of service. Consumer class actions on the other hand could be instituted with the Consumer Legal Action Fund set up by the Consumer Council.

15. We note that the Trade Description Ordinance was amended only two years ago to enhance consumer protection. The efficacy of this regime should further be gauged. As for the Consumer Legal Action Fund, from the Annual Report of Consumer Council 2013-14, we note that the number of applications received and the assistance granted seem to be on the low side. We consider there should be further deliberations on how the transparency and the accessibility of the Consumer Legal Action Fund could be enhanced for the benefit of the public.
16. In any event, we suggest a thorough review of the regime on consumer protection. The review should cover both the abovementioned. At this stage, we have no views on this recommendation of the Working Group.

(ix) Class Action

17. We keenly await further consultations on class actions. We agree with the view that the inclusion of class action in SLAS should be seriously considered in tandem with the law reform on class action.

(x) Defamation Proceedings and Election Petitions

18. We at this stage have reservation on the Working Group's recommendation of not extending SLAS to defamation proceedings and election petitions, notwithstanding the research conducted by the Home Affairs Bureau and the Legal Aid Department on the experience in overseas jurisdictions on the defamation proceedings and election petitions.

Other recommendations of the Working Group

19. We note the revision of the Financial Eligibility Limit ("FEL") for SLAS, to \$1,451,900, as gazetted in July 2015. The revision of the FEL should be continual with a view to revising the FEL for SLAS on a more routine basis to ensure access to justice.
20. We also support the proposal that the age related exemption for assets test in assessing the financial resources of legal aid applicants be set at age 55.

Conclusion

21. Article 35 of the Basic Law provides that Hong Kong residents shall among other things have the right to access to the courts, choice of lawyers for timely protection of their lawful rights and interests or for representation in the courts and to judicial remedies. Legal aid plays a notably important role in this regard. It helps enhance access to justice and upholds the rule of law.
22. SLAS is a key element of the legal aid system in Hong Kong. It is a self-financing scheme that provides legal assistance to the middle class, who is poorly sandwiched between the needy stratum (who have easier access to legal aid) and the financially able echelon (who could more comfortably afford legal expenses). We welcome the review by the Working Group. We also support further and continual funding be allocated to the scheme.
23. We take note of the time taken up for the review. Given the process now needed for the legislative stages, which will become obligatorily slow, and also in the light of any further consultations and incidental study as may be required, the Administration should expedite the review process.
24. We also note from the latest proposals from the Judiciary to increase jurisdictional limits, inter alia, for Small Claims Tribunal from \$50,000 to \$75,000. If so approved, the existing base-line for monetary claims exceeding \$60,000 in SLAS would have to be adjusted upwards to exceed \$75,000 (as a minimum) correspondingly.
25. Therefore, we ask the Administration in its review to take into consideration the large number of litigants in persons, the perennial problem of unethical touting and the demands for litigation funding as well as access to justice. Discussion of this matrix of issues should be on-going with all stakeholders involved.

The Law Society of Hong Kong
24 November 2015