

立法會
Legislative Council

LC Paper No. LS3/12-13

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 5 October 2012**

Date of tabling in LegCo : 10 October 2012

Amendment to be made by : 7 November 2012 (or 28 November 2012 if extended by resolution)

PART I LEGAL AID

Legal Aid Ordinance (Cap. 91)

**Legal Aid Ordinance – Resolution of the Legislative Council
(Commencement) Notice (L.N. 148)**

Legal Aid Regulations (Cap. 91 sub. leg. A)

Legal Aid (Amendment) Regulation 2012 (L.N. 145)

Legal Aid (Assessment of Resources and Contributions) Regulations (Cap. 91 sub. leg. B)

**Legal Aid (Assessment of Resources and Contributions) (Amendment)
Regulation 2012 (L.N. 146)**

L.N. 148

By L.N. 148, the Secretary for Home Affairs has appointed 30 November 2012 as the date of commencement of the resolution (the Resolution) made and passed by the Fourth Legislative Council (LegCo) on 17 July 2012 under section 7(b) of the Legal Aid Ordinance (Cap. 91) (the Ordinance).

2. The Resolution (L.N. 112 of 2012) amends Schedules 2 and 3 to the Ordinance to expand the scope of the Ordinary Legal Aid Scheme (OLAS) and the Supplementary Legal Aid Scheme (SLAS)¹ respectively. Schedule 2 is amended to expand the OLAS by including money claims in derivatives of securities, currency futures or other futures contracts induced by fraud, deception or misrepresentation. Schedule 3 is amended to expand the SLAS by:

¹ Under sections 5 of the Ordinance, the OLAS shall be available for any person whose financial resources do not exceed \$260,000. Under section 5A, the SLAS shall be available for any person whose financial resources exceed \$260,000 but do not exceed \$1,300,000.

- (a) adding the following categories of claims which are, in the opinion of the Director of Legal Aid (Director), likely to exceed \$60,000 -
 - (i) professional negligence claims against certified public accountants (practising), registered architects, registered professional engineers, registered professional surveyors, registered professional planners, authorized land surveyors, estate agents, and registered landscape architects (paragraph 5 of Part I of Schedule 3);
 - (ii) negligence claims against insurers, appointed insurance agents or authorized insurance brokers in respect of the taking out of personal insurance (paragraph 6 of Part I of Schedule 3);
 - (iii) claims for damages against the legal or beneficial owners of completed or uncompleted first-hand residential properties arising from a sale, or an agreement for sale and purchase, of such properties (paragraph 7 of Part I of Schedule 3); and
- (b) extending legal representation to employees in civil proceedings brought in respect of or related to an appeal under the Labour Tribunal Ordinance (Cap. 25) (paragraph 8 of Part I of Schedule 3).

3. A subcommittee (the Subcommittee) was formed to study the proposed Resolution. The Subcommittee noted that after passage of the Resolution, amendments would be made to the Legal Aid Regulations (Cap. 91 sub. leg. A) (LAR) and the Legal Aid (Assessment of Resources and Contributions) Regulations (Cap. 91 sub. leg. B) (LAARCR) to provide for the application fees and contributions payable for the new claims and proceedings referred to in paragraph 2 above. The Subcommittee was also provided with illustrations of the proposed amendments to the LAR and LAARCR and members raised no query on them. The Subcommittee agreed to recommend to the House Committee that it was not necessary to form a subcommittee to study the amendments when they were tabled for negative vetting by LegCo, subject to the amendments being materially the same as those in the illustrations provided to the Subcommittee, so that the proposed expansion of the SLAS could take effect as soon as possible. Members may refer to the Subcommittee's report (LC Paper No. CB(2)1730/11-12) for further information.

L.N. 145 and L.N. 146

4. Under section 28 of the Ordinance, the Chief Executive in Council has made the Legal Aid (Amendment) Regulation 2012 (L.N. 145) and the Legal Aid (Assessment of Resources and Contributions) (Amendment) Regulation 2012 (L.N. 146) following the passage of the Resolution.

5. L.N. 145 amends the LAR to adjust the application fees under the SLAS as follows:

- (a) \$1,000 for proceedings mentioned in paragraphs 1, 2, 3 and 8 of Part I of Schedule 3 to the Ordinance, i.e. personal injury claims, employees' claims under the Employees' Compensation Ordinance (Cap. 282) and appeals under the Labour Tribunal Ordinance (Cap. 25) (Type I proceedings); and
- (b) \$5,000 for proceedings mentioned in paragraphs 4 to 7 of Part I of Schedule 3 to the Ordinance, i.e. medical, dental or legal professional negligence claims and those referred to in paragraph 2(a) above which are, in the opinion of the Director, likely to exceed \$60,000 (Type II proceedings).

6. L.N. 146 amends the LAARCR to adjust the contributions payable by persons to whom legal aid is granted (aided persons) under the SLAS. The new amounts of contributions are as follows:

- (a) for Type I proceedings –
 - (i) an interim contribution in the sum of \$65,000 being the maximum contribution payable by an aided person under section 18(1) of the Ordinance as assessed in accordance with Part I of Schedule 3 to the LAARCR; and
 - (ii) a final contribution in an amount equivalent to the aggregate of the following:
 - (A) the sums paid or payable on the aided person's account out of the Supplementary Legal Aid Fund (the Fund);
 - (B) the costs incurred on behalf of that person; and
 - (C) 10% of the value of any property recovered or preserved for the aided person in the proceedings (or

6% thereof if the claim is settled before the trial or hearing commences or a brief for attendance is delivered to counsel), less any application fee paid;

(b) for Type II proceedings –

- (i) an interim contribution in an amount equivalent to 10% of the aided person's financial resources or \$65,000 (being the maximum contribution payable by an aided person under section 18(1) of the Ordinance), whichever is the higher; and
- (ii) a final contribution in an amount equivalent to the aggregate of the following:
 - (A) the sums paid or payable on the aided person's account out of the Fund;
 - (B) the costs incurred on behalf of that person; and
 - (C) 20% of the value of any property recovered or preserved for the aided person in the proceedings (or 15% thereof if the claim is settled before the commencement of the trial or delivery of a brief for attendance to counsel), less any application fee paid.

7. In relation to the calculation of percentages referred to in paragraph 6(a)(ii)(C) and (b)(ii)(C) above, we note that section 5(16) of L.N. 146 adopts a drafting approach which is different from that used in the illustrations previously provided to the Subcommittee. Despite the different approach, we consider that the amendments are materially the same as those set out in the illustrations.

8. Members may refer to the LegCo Brief (File Ref.: HAB HAB/CR 19/1/2) issued by the Home Affairs Bureau in October 2012 for further information.

9. Both L.N. 145 and L.N. 146 will come into operation at the same time as the Resolution on 30 November 2012. However, the new amounts of contributions referred to in paragraph 6 above will not apply to an aided person who has made an application for legal aid under the SLAS before 30 November 2012. The levels of interim and final contributions as in force before that date will continue to apply to that person.

PART II COMMENCEMENT NOTICES

Immigration (Amendment) Ordinance 2012 (23 of 2012)

Immigration (Amendment) Ordinance 2012 (Commencement) Notice (L.N. 147)

10. By L.N. 147, the Secretary for Security has appointed 3 December 2012 as the day on which the Immigration (Amendment) Ordinance 2012 (23 of 2012) (IAO) comes into operation.

11. The Immigration (Amendment) Bill 2011 was passed by LegCo on 13 July 2012 and gazetted as the IAO on 20 July 2012. The IAO amends the Immigration Ordinance (Cap. 115) to provide for a statutory framework for determining claims made by persons in Hong Kong for protection under Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment against expulsion, return or extradition to countries in which such persons would be in danger of being subjected to torture.

12. A Bills Committee had been formed to scrutinize the Immigration (Amendment) Bill 2011 before it was passed. Members may refer to the report of the Bills Committee (LC Paper No. CB(2)2192/11-12) for further information. The Panel on Security has not been consulted on the proposed commencement date under L.N. 147.

13. No LegCo Brief has been issued in respect of L.N. 147.

Construction Industry Legislation (Miscellaneous Amendments) Ordinance 2012 (17 of 2012)

Construction Industry Legislation (Miscellaneous Amendments) Ordinance 2012 (Commencement) Notice (L.N. 149)

14. By L.N. 149, the Secretary for Development has appointed 1 January 2013 as the day on which the Construction Industry Legislation (Miscellaneous Amendments) Ordinance 2012 (17 of 2012) (CILMAO) comes into operation.

15. The Construction Industry Legislation (Miscellaneous Amendments) Bill 2012 was passed by LegCo on 22 June 2012 and gazetted as the CILMAO on 29 June 2012. The CILMAO amends the Construction Workers Registration Ordinance (Cap. 583) and the Construction Industry Council Ordinance (Cap. 587) to dissolve the Construction Workers

Registration Authority (the Authority) and transfer its functions to the Construction Industry Council (the Council). It also provides for the establishment of a Construction Workers Registration Board under the Council to continue the work of the Authority.

16. A Bills Committee had been formed to scrutinize the Construction Industry Legislation (Miscellaneous Amendments) Bill 2012 before it was passed. Members may refer to the report of the Bills Committee (LC Paper No. CB(1)1955/11-12) and the LegCo Brief (File ref.: DEVB(CR)W1-10/31) issued by the Works Branch of the Development Bureau on 3 October 2012 for further information. The Panel on Development has not been consulted on the proposed commencement date under L.N. 149.

Concluding Observations

17. No difficulties have been identified in relation to the legal or drafting aspects of the above items of subsidiary legislation.

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