

**LEGISLATIVE COUNCIL BRIEF**

Legal Aid Ordinance  
(Chapter 91)

**Legal Aid (Amendment) Regulation 2012**  
**Legal Aid (Assessment of Resources and Contributions) (Amendment)**  
**Regulation 2012**

**INTRODUCTION**

At the meeting of the Executive Council on 25 September 2012, the Council ADVISED and the Chief Executive ORDERED that the following amendment regulations should be made under section 28 of the Legal Aid Ordinance (LAO) (Cap. 91) –

- A (a) the Legal Aid (Amendment) Regulation 2012, at Annex A; and
- (b) the Legal Aid (Assessment of Resources and Contributions)
- B (Amendment) Regulation 2012, at Annex B.

**JUSTIFICATIONS**

***Expansion of the Ordinary Legal Aid Scheme and the Supplementary Legal Aid Scheme***

2. In the 2010-11 Policy Address, it was announced that to complement the Supplementary Legal Aid Scheme (SLAS) review to be completed by the Legal Aid Services Council (LASC), and to benefit more middle-class people, the Government would earmark \$100 million for injection into the Supplementary Legal Aid Fund (SLAF) when necessary to expand the scheme to cover more types of cases. On 17 July 2012, the Secretary for Home Affairs (SHA) moved, and the Legislative Council (LegCo) passed, the resolution under section 7(b) of
- C LAO (the Resolution) at Annex C to amend Schedules 2 and 3 to the LAO to –
- (a) expand the scope of the Ordinary Legal Aid Scheme (OLAS) to cover monetary claims in derivatives of securities, currency futures or other futures contracts when fraud, misrepresentation or deception is involved in respect of the sale;

- (b) expand the scope of SLAS to cover claims of the following categories with claim amounts exceeding \$60,000 –
  - (i) professional negligence claims against certified public accountants (practicing), registered architects, registered professional engineers, registered professional surveyors, registered professional planners, authorised land surveyors, estate agents, and registered landscape architects;
  - (ii) negligence claims against insurers or their intermediaries in respect of the taking out of personal insurance products; and
  - (iii) monetary claims against the vendors in the sale of completed or uncompleted first-hand residential properties; and
- (c) expand the scope of SLAS to cover representation for employees in appeals brought by either the employer or the employee against awards made by the Labour Tribunal, regardless of the amount in dispute.

3. In consequence of the expansion in scope of SLAS, we need to make legislative amendments to the existing Legal Aid Regulations (LAR) (Cap. 91A) and the Legal Aid (Assessment of Resources and Contributions) Regulations (LA(ARC)R) (Cap. 91B) to provide for the application fees and rates of contribution applicable to the newly added legal proceedings under the expanded SLAS.

### ***Raising Application Fee and Rates of Contribution under SLAS***

4. SLAS is a self-financing scheme, and is funded by the application fees payable by applicants, the interim contributions from aided persons, and the final contribution from a percentage deduction of the damages recovered in successful cases. At present, an applicant with financial resources above \$260,000 but not exceeding \$1.3 million is financially eligible for SLAS. An applicant has to pay an initial application fee of \$1,000. Upon acceptance of the offer of legal aid under the scheme, the applicant is required to pay an interim contribution of \$65,000 (which is equivalent to the highest contribution payable by an aided person under OLAS). If an aided person is successful in the proceedings, he or she has to pay a percentage of the award recovered to SLAF (the final contribution). Under the existing SLAS, the rate of final contribution is 10% of the amount of the award recovered. If the case is settled before counsel is briefed to attend trial, the rate of final contribution is reduced to 6%.

5. When considering the complexity and risk profile of the new types of civil proceedings mentioned in paragraph 2(b) above, LASC recommended that the application fees and rates of contribution for professional negligence claims against the existing and new professions and other new types of cases (except employees' claims on appeals from the Labour Tribunal) should be aligned and increased. Having regard to the self-financing design of SLAS and the need to maintain its financial viability, we agree with LASC's view and recommend that –

- (a) for the application fee and rates of contribution for any of the new types of civil proceedings mentioned in paragraph 2(b) above –
  - (i) the application fee be set at \$5,000;
  - (ii) the interim contribution rate be set at 10% of the assessed financial resources of the aided person or the current interim contribution payable by an aided person under SLAS as set out in regulation 14(a) of LA(ARC)R, whichever is the higher; and
  - (iii) where the claim is settled before the date of commencement of the trial, the rate of levy on value of property recovered in the final contribution be set at 15% of the value of property recovered (however, if the settlement is made before that date but after the delivery of a brief to counsel for attendance at trial, the rate would be 20%); and in any other case, the rate be set at 20%;
- (b) for any of the civil proceedings in relation to existing types of claim for medical, dental and legal professional negligence, the application fee and rates of contribution be set at the same level as proposed in paragraph 5(a) above; and
- (c) for representation for employees in respect of civil proceedings relating to appeals under the Labour Tribunal Ordinance (LTO) (Cap. 25) as mentioned in paragraph 2(c) above, the application fee and rates of contribution be set at the levels under the existing SLAS before the expansion of scope<sup>1</sup>.

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<sup>1</sup> For the calculation of final contribution for such proceedings, where the claim is settled before the date of commencement of the hearing of the appeal in the Court of First Instance, the rate of contribution is 6% of the value of property recovered (however, if the settlement is made before that date but after the delivery of a brief to counsel for attendance at the hearing, the rate would be 10%); and in any other case, the rate is 10%.

6. We note that the average administration fee for processing each SLAS case in the past few years up to 2010-11 was about \$7,700. As the application fee was intended as a notional charge when SLAS was first established to deter frivolous applications and was not set with reference to the principle of full-cost recovery, we consider LASC's proposed increase in application fee for the new types of proceedings under the expanded SLAS (except employees' claims on appeals from the Labour Tribunal) from \$1,000 to \$5,000 reasonable. In order to uphold the self-financing principle of SLAS, we need to make necessary adjustments to the rates of contribution to sustain SLAF whilst expanding its coverage.

## **OTHER OPTIONS**

7. As the levels of application fee and rates of contribution under SLAS are prescribed in LAR and LA(ARC)R, the proposed legislative amendments are necessary and administrative measures cannot achieve the purpose.

## **THE AMENDMENT REGULATIONS**

8. Under LAO as amended by the Resolution, the existing types of civil proceedings (except for those relating to professional negligence claims) and civil proceedings relating to appeals under LTO (Type I proceedings) are set out in paragraphs 1, 2, 3 and 8 of Part I of Schedule 3 to the amended LAO respectively; while paragraphs 4, 5, 6 and 7 of Part I of Schedule 3 to the amended LAO refer to the new types of civil proceedings apart from those relating to appeals under LTO, and existing types of civil proceedings for professional negligence claims (Type II proceedings). These paragraphs will be referred to in the amendment regulations to LAR and LA(ARC)R in relation to the types of civil proceedings for which the revised application fees and rates of contribution apply.

### ***The Legal Aid (Amendment) Regulation 2012***

9. The main provisions of the Legal Aid (Amendment) Regulation 2012 (LA Amendment Regulation) are –

- (a) **section 1**, which provides that the LA Amendment Regulation is to commence operation on 30 November 2012; and

- (b) **section 3(2)**, which amends regulation 3(3) of LAR to implement the proposal regarding the two application fee levels (i.e. \$1,000 and \$5,000) in relation to the respective civil proceedings under the amended LAO as set out in paragraphs 5(a) to 5(c) above.

D 10. The existing provisions being amended are at Annex D.

***The Legal Aid (Assessment of Resources and Contributions) (Amendment) Regulation 2012***

11. The main provisions of the Legal Aid (Assessment of Resources and Contributions) (Amendment) Regulation 2012 (ARC Amendment Regulation) are -

- (a) **section 1**, which provides that the ARC Amendment Regulation is to commence operation on 30 November 2012;
- (b) **section 3**, which amends regulation 14 of LA(ARC)R and provides for the rates of interim contribution for Type I and Type II proceedings;
- (c) **section 4**, which adds a transitional provision to LA(ARC)R to stipulate that, despite the revised rates of contribution, for cases where the legal aid is granted under SLAS on an application made before the date of commencement of the ARC Amendment Regulation, the rates of contribution (including interim and final contribution) as in force before that date will continue to apply for such cases; and
- (d) **section 5(16)**, which amends Part III of Schedule 3 to LA(ARC)R to provide for the rates of final contribution for Type I and Type II proceedings.

E 12. The existing provisions being amended are at Annex E.

**LEGISLATIVE TIMETABLE**

13. SHA will publish a notice in the Gazette to appoint 30 November 2012 as the commencement date of the Resolution, so that the Resolution and the amendment regulations will come into operation on the same date. The legislative timetable will be as follows –

Publication of the amendment regulations and the commencement notice of the Resolution in the Gazette	5 October 2012
Tabling of the amendment regulations and the commencement notice of the Resolution at LegCo for negative vetting	10 October 2012
Commencement of the amendment regulations and the Resolution	30 November 2012

## **IMPLICATIONS OF THE PROPOSAL**

### ***Financial and Civil Service Implications***

14. Subject to the tabling of the two sets of amendment regulations at LegCo for negative vetting, we will seek approval from the LegCo Finance Committee (FC) for the proposed injection of \$100 million into SLAF in November 2012. The Legal Aid Department will absorb the additional workload in handling applications and cases with its existing manpower resources.

15. It is estimated that SLAF would have a cash outflow of some \$16 million in the first three years after the injection as a result of expansion in the scope of SLAS as well as the increase of the financial eligibility limit (FEL) in May 2011<sup>2</sup>, but the exact financial implications are difficult to estimate. We will closely monitor the operation of SLAF to ensure that the self-financing principle is observed, and consider further increasing the application fees and the rates of contribution where necessary and appropriate if we detect signs of depletion of the Fund.

### ***Other Implications***

16. The legislative proposal is in conformity with the Basic Law, including the provisions concerning human rights. It will not affect the binding effect of LAO. It has no economic, productivity, environmental or sustainability implications.

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<sup>2</sup> With effect from May 2011, the FEL for SLAS has been increased from \$488,400 to \$1.3 million.

## **PUBLIC CONSULTATION**

17. At its meeting on 28 March 2011, we briefed the LegCo Panel on Administration of Justice and Legal Services (AJLS Panel) on the Administration's proposals for expanding the scope of SLAS, including the revised application fees and rates of contribution as set out in paragraph 5 above. On 20 December 2011, we further briefed the AJLS Panel on the proposed legislative amendments, and obtained the Panel's support.

18. We have also indicated to LegCo that subject to the passage of the Resolution, amendment regulations would be made to implement the revised application fees and rates of contribution under the expanded SLAS. During the scrutiny of the Resolution by the LegCo Subcommittee (the Subcommittee), we have briefed the Subcommittee on the provisions under LAR and LA(ARC)R that needed to be amended. The Subcommittee is generally content with the legislative proposals and considered that it may not be necessary to form a subcommittee to study the amendment regulations when they are tabled for negative vetting by LegCo, so that the proposed expansion of the scope of legal aid can take effect as soon as possible.

## **PUBLICITY**

19. A spokesperson will also be made available to handle media enquiries.

## **BACKGROUND**

20. SLAS came into operation in 1984. It aims at providing legal assistance to people whose financial resources exceed the upper limit allowed under OLAS<sup>3</sup>, but below a certain amount<sup>4</sup>. SLAS is a self-financing scheme<sup>5</sup> which draws its funds from the application fees payable by applicants, the interim contributions from aided persons, and the final contribution from a percentage deduction of the damages recovered in successful cases<sup>6</sup>. Because

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<sup>3</sup> With effect from May 2011, the FEL for OLAS has been increased from \$175,800 to \$260,000. OLAS ensures that no one will be denied access to justice because of the lack of means.

<sup>4</sup> With effect from May 2011, the FEL for SLAS has been increased from \$488,400 to \$1.3 million.

<sup>5</sup> The Lotteries Fund set aside a sum of \$1 million as a loan facility to be drawn upon for setting up the fund for SLAS.

<sup>6</sup> To maintain the financial viability of SLAF, the legally aided persons need to pay a contribution. The current contribution to SLAS is as follows –

- (a) the application fee of \$1,000 is a non-refundable fee charged to all applicants, regardless of whether legal aid is granted;
- (b) the interim contribution from the legally aided person is currently a flat rate of 25% of the FEL for OLAS (i.e. currently \$65,000); and
- (c) the contribution from the damages recovered by the legally aided person is 10% of the value of

of the need to enable SLAS to remain self-financing, the scope of the scheme is confined to only those proceedings involving monetary claims and which have a good chance of success. All along, the guiding principles governing the scope of proceedings covered by SLAS should be those which deserve priority for public funding in the sense that significant injury or injustice to the individual, as distinct from that to a commercial concern or a group of citizens, is involved; and which involve monetary claims and have a reasonably good chance of success.

21. At the time when SLAS was first introduced, it only covered claims arising from personal injuries or death. SLAS was expanded in 1991 to include employees' compensation claims and in 1995 to include civil proceedings for medical, dental and legal professional negligence claims<sup>7</sup>. To maintain its financial viability, SLAS covers mainly cases where the defendants are insured or where the likelihood for payment of damages is high (i.e. claims for personal injuries or death and work-related accidents). The high chance of recovery of damages helps ensure, to a large extent, the financial sustainability of the scheme.

22. As at 30 June 2012, SLAF had a balance of \$87.98 million and handled an average of 100 applications every year with about 68% of the applications being successful in obtaining assistance under the scheme. From the experience of the two legal aid schemes (i.e. OLAS and SLAS) in Hong Kong, the success rate of personal injuries, fatal accident and employees' compensation claims is high (about 90%), while that in respect of professional negligence cases is relatively lower (about 70%) presumably due to their complexity.

## **ENQUIRIES**

23. Any enquiry on this brief should be directed to Mr Michael Kwan, Acting Principal Assistant Secretary (Civic Affairs) 2 of the Home Affairs Bureau, at 3509 8042.

**Home Affairs Bureau**  
**October 2012**

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property recovered, or 6% where the claim is settled prior to the delivery of a brief to counsel for attendance at trial.

<sup>7</sup> In June 1995, FC approved a one-off grant of \$27 million to SLAS to enable it to extend its scope to cover claims for damages arising from medical, dental and legal professional negligence, and to increase the FEL from \$280,000 to \$400,000



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(b) for proceedings mentioned in paragraph 4, 5, 6 or 7 of that Part, a fee of \$5,000.”.

## **Legal Aid (Amendment) Regulation 2012**

(Made by the Chief Executive in Council under section 28 of the Legal Aid Ordinance (Cap. 91))

Manda CHAN  
Clerk to the Executive Council

### **1. Commencement**

This Regulation comes into operation on 30 November 2012.

COUNCIL CHAMBER

25 September 2012

### **2. Legal Aid Regulations amended**

The Legal Aid Regulations (Cap. 91 sub. leg. A) are amended as set out in section 3.

### **3. Regulation 3 amended (application for certificate)**

(1) Regulation 3(2)—

#### **Repeal**

“shall contain such information and shall be accompanied by such documents as may be requisite”

#### **Substitute**

“must contain any information and be accompanied by any documents that the Director may require”.

(2) Regulation 3(3)—

#### **Repeal**

“shall be accompanied by a fee of \$1,000.”

#### **Substitute**

“must be accompanied by the following fee—

- (a) for proceedings mentioned in paragraph 1, 2, 3 or 8 of Part I of Schedule 3 to the Ordinance, a fee of \$1,000; and

### **Explanatory Note**

The main purpose of this Regulation is to amend the Legal Aid Regulations (Cap. 91 sub. leg. A) (*principal Regulations*) to adjust or provide for the fees for applications for legal aid under the Supplementary Legal Aid Scheme.

2. Revisions are also made to regulation 3(2) of the principal Regulations to improve the comprehensibility of that provision.

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

(Made by the Chief Executive in Council under section 28 of the Legal Aid Ordinance (Cap. 91))

**1. Commencement**

This Regulation comes into operation on 30 November 2012.

**2. Legal Aid (Assessment of Resources and Contributions)  
Regulations amended**

The Legal Aid (Assessment of Resources and Contributions) Regulations (Cap. 91 sub. leg. B) are amended as set out in sections 3, 4 and 5.

**3. Regulation 14 amended (contributions under the Supplementary  
Legal Aid Scheme)**

(1) Regulation 14—

**Renumber the regulation as regulation 14(1).**

(2) Regulation 14(1), after “Supplementary Legal Aid Scheme”—

**Add**

“, for proceedings mentioned in paragraph 1, 2, 3 or 8 of Part I of Schedule 3 to the Ordinance”.

(3) Regulation 14(1)(a)—

**Repeal**

“an interim contribution shall be payable by an aided person to the Director for the benefit of the Fund in”

**Substitute**

“the amount of the interim contribution payable by the aided person is”.

(4) Regulation 14(1)(b)—

**Repeal**

“a final contribution shall be payable by an aided person to the Director for the benefit of the Fund in an amount equivalent to”

**Substitute**

“the amount of any final contribution payable by the aided person is an amount equivalent to the aggregate of the following”.

(5) Regulation 14(1)(b)(i), English text—

**Repeal**

“his”

**Substitute**

“that person’s”.

(6) Regulation 14(1)(b)(ii), English text—

**Repeal**

“on his behalf”

**Substitute**

“on behalf of that person”.

(7) Regulation 14(1)(b)(iii), English text—

**Repeal**

“(wherever situate) recovered or preserved for the aided person in such proceedings whether on his own behalf or on behalf of another”

**Substitute**

“, wherever situated, recovered or preserved for the aided person in the proceedings (whether on behalf of that person or on behalf of any other person)”.

- (8) After regulation 14(1)—

**Add**

“(2) For the purposes of section 32 of the Ordinance and a grant of legal aid to any person under the Supplementary Legal Aid Scheme, for proceedings mentioned in paragraph 4, 5, 6 or 7 of Part I of Schedule 3 to the Ordinance—

- (a) the amount of the interim contribution payable by the aided person is an amount equivalent to 10% of the financial resources of that person or an amount equivalent to the maximum contribution payable by an aided person under section 18(1) of the Ordinance whose financial resources are equal to the limit prescribed in section 5 of the Ordinance, whichever is the higher; and
- (b) the amount of any final contribution payable by the aided person is an amount equivalent to the aggregate of the following—
- (i) the sums paid or payable on that person’s account out of the Fund;
- (ii) the costs incurred on behalf of that person;
- (iii) the percentage calculated in accordance with Part III of Schedule 3 of the value of any property, wherever situated, recovered or preserved for the aided person in the proceedings (whether on behalf of that person or on behalf of any other person), less any application fee paid under regulation 3(3) of the Legal Aid Regulations (Cap. 91 sub. leg. A).”.

**4. Regulation 16 added**

Part III, after regulation 15—

**Add**

**“16. Transitional provisions relating to Legal Aid (Assessment of Resources and Contributions) (Amendment) Regulation 2012**

Despite sections 3 and 5(16) of the Legal Aid (Assessment of Resources and Contributions) (Amendment) Regulation 2012 (L.N. 146 of 2012) (*Amendment Regulation*), regulation 14 and Part III of Schedule 3 as in force before the date of commencement of the Amendment Regulation continue to apply to a person in relation to legal aid granted under the Supplementary Legal Aid Scheme on an application made before that date by that person.”.

**5. Schedule 3 amended (contributions)**

- (1) Schedule 3, Part I—

**Repeal**

“The maximum contribution of an aided person under section 18(1)(b) of the Ordinance shall”

**Substitute**

“For the purposes of regulation 13”.

- (2) Schedule 3, Part I—

**Repeal subparagraph (a)**

**Substitute**

“(a) if the financial resources of an aided person do not exceed \$20,000, the maximum contribution of the person is \$0;”.

- (3) Schedule 3, English text, Part I, subparagraph (b)—

**Repeal**

“if his financial resources”

Section 5

**Substitute**

“if the financial resources of an aided person”.

- (4) Schedule 3, Part I, subparagraph (b)—

**Repeal**

“in column B, be the amount”

**Substitute**

“that amount in column B, the maximum contribution of the person is the amount”.

- (5) Schedule 3, Part I, subparagraph (b)—

**Repeal**

“of his financial resources indicated opposite”

**Substitute**

“of the financial resources of the person, indicated opposite those amounts”.

- (6) Schedule 3, Part I, subparagraph (b), column A—

**Repeal**

“his financial resources”

**Substitute**

“the financial resources of the aided person”.

- (7) Schedule 3, Part I, subparagraph (b), column C—

**Repeal**

“in relation to his financial resources, his maximum contribution”

**Substitute**

“the person’s maximum contribution”.

- (8) Schedule 3, English text, Part I, subparagraph (c)—

**Repeal**

Section 5

“if his certificate”

**Substitute**

“if the certificate of an aided person”.

- (9) Schedule 3, English text, Part I, subparagraph (c)(i)—

**Repeal**

“if his financial resources”

**Substitute**

“if the financial resources of the person”.

- (10) Schedule 3, Part I, subparagraph (c)(i)—

**Repeal**

“in column B, be the amount”

**Substitute**

“that amount in column B, the maximum contribution of the person is the amount”.

- (11) Schedule 3, Part I, subparagraph (c)(i)—

**Repeal**

“of his financial resources indicated opposite”

**Substitute**

“of the financial resources of the person, indicated opposite those amounts”.

- (12) Schedule 3, Part I, subparagraph (c)(i), column A—

**Repeal**

“his financial resources”

**Substitute**

“the financial resources of the aided person”.

- (13) Schedule 3, Part I, subparagraph (c)(i), column C—

**Repeal**

“in relation to his financial resources, his maximum contribution”

**Substitute**

“the person’s maximum contribution”.

- (14) Schedule 3, English text, Part I, subparagraph (c)(ii)—

**Repeal**

“if his financial resources”

**Substitute**

“if the financial resources of the person”.

- (15) Schedule 3, Part I, subparagraph (c)(ii)—

**Repeal**

“be 67% of his”

**Substitute**

“the maximum contribution of the person is 67% of the person’s”.

- (16) Schedule 3—

**Repeal Part III**

**Substitute**

**“Part III**

**Percentage of Value of Recovered or Preserved  
Property**

3. For proceedings mentioned in paragraph 1, 2 or 3 of Part I of Schedule 3 to the Ordinance—
- (a) except as otherwise provided in subparagraph (b), if the claim is settled before the date of commencement of the trial, the rate of contribution is 6%;

- (b) if the claim is settled before the date of commencement of the trial but after a brief for attendance at trial is delivered to counsel, the rate of contribution is 10%; and

- (c) in any other case, the rate of contribution is 10%.

4. For proceedings mentioned in paragraph 4, 5, 6 or 7 of Part I of Schedule 3 to the Ordinance—

- (a) except as otherwise provided in subparagraph (b), if the claim is settled before the date of commencement of the trial, the rate of contribution is 15%;

- (b) if the claim is settled before the date of commencement of the trial but after a brief for attendance at trial is delivered to counsel, the rate of contribution is 20%; and

- (c) in any other case, the rate of contribution is 20%.

5. For proceedings mentioned in paragraph 8 of Part I of Schedule 3 to the Ordinance—

- (a) except as otherwise provided in subparagraph (b), if the claim is settled before the date of commencement of the hearing of the appeal in the Court of First Instance, the rate of contribution is 6%;

- (b) if the claim is settled before the date of commencement of the hearing of the appeal in the Court of First Instance but after a brief for attendance at the hearing is delivered to counsel, the rate of contribution is 10%; and

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Section 5

B6367

(c) in any other case, the rate of contribution is 10%.”.

Manda CHAN  
Clerk to the Executive Council

COUNCIL CHAMBER

25 September 2012

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Regulation 2012

Explanatory Note

L.N. 146 of 2012

Paragraph 1

B6369

**Explanatory Note**

The main purpose of this Regulation is to amend the Legal Aid (Assessment of Resources and Contributions) Regulations (Cap. 91 sub. leg. B) (*principal Regulations*) to adjust or provide for the contributions payable by persons to whom legal aid are granted under the Supplementary Legal Aid Scheme.

2. Revisions are also made to regulation 14 of, and Schedule 3 to, the principal Regulations to improve the comprehensibility of the provisions or to replace the gender-specific language by gender-neutral language.

L.N. 112 of 2012

**Legal Aid Ordinance****Resolution of the Legislative Council**

Resolution made and passed by the Legislative Council under section 7(b) of the Legal Aid Ordinance (Cap. 91) on 17 July 2012.

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 Secretary for Home Affairs by notice published in the Gazette.

**Schedule****Amendments to Legal Aid Ordinance (Cap. 91)**

1. Schedule 2 amended (proceedings for which legal aid may be given under section 5)
  - (1) Schedule 2, Part II, paragraph 11—  
**Repeal**  
 “Proceedings”  
**Substitute**  
 “Any of the following proceedings”.
  - (2) Schedule 2, English text, Part II, paragraph 11(a), before “involving”—  
**Add**  
 “proceedings”.
  - (3) Schedule 2, Part II, paragraph 11(a), after “futures contracts”—  
**Add**  
 “, unless the claims are made by the person seeking legal aid on the basis that the person was induced to deal in the derivatives of securities, currency futures or other futures contracts by fraud, deception or misrepresentation”.
  - (4) Schedule 2, English text, Part II, paragraph 11(b), before “for”—  
**Add**  
 “proceedings”.
  - (5) Schedule 2, English text, Part II, paragraph 11(c), before “involving”—  
**Add**  
 “proceedings”.



Resolution of the Legislative Council

Schedule L.N. 112 of 2012  
Section 2 B5921

- (6) Schedule 2, English text, Part II, paragraph 11(d), before “arising”—  
**Add**  
“proceedings”.
- (7) Schedule 2, English text, Part II, paragraph 11(e), before “for the taxation”—  
**Add**  
“proceedings”.
- (8) Schedule 2, English text, Part II, paragraph 11(e), after “the person”—  
**Add**  
“seeking legal aid”.

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

- (1) Schedule 3, Part I, paragraph 1—  
**Repeal**  
“by the aided person”  
**Substitute**  
“, by the person seeking legal aid (*claimant*),”.
- (2) Schedule 3, Part I, paragraph 1—  
**Repeal**  
everything after “any person”  
**Substitute**  
“(including proceedings for the defence to a counterclaim against the claimant and other proceedings incidental to the civil proceedings); and in a higher court, proceedings that are related to the claim.”.

Resolution of the Legislative Council

Schedule L.N. 112 of 2012  
Section 2 B5923

- (3) Schedule 3, Part I, paragraph 2—  
**Repeal**  
“by the aided person”  
**Substitute**  
“, by the person seeking legal aid (*claimant*),”.
- (4) Schedule 3, Part I, paragraph 2—  
**Repeal**  
“where the claim exceeds \$60,000 or”.
- (5) Schedule 3, Part I, paragraph 2—  
**Repeal**  
everything after “exceed \$60,000”  
**Substitute**  
“(including proceedings for the defence to a counterclaim against the claimant and other proceedings incidental to the civil proceedings); and in a higher court, proceedings that are related to the claim.”.
- (6) Schedule 3, English text, Part I, paragraph 3, before “proceedings”—  
**Add**  
“civil”.
- (7) Schedule 3, Part I, paragraph 3—  
**Repeal**  
“by the aided person”.
- (8) Schedule 3, Part I, paragraph 3—

Resolution of the Legislative Council

Schedule  
Section 2

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**Repeal**

“(Cap. 282).”

**Substitute**

“(Cap. 282) by the person seeking legal aid, in the capacity as an employee (including proceedings incidental to the civil proceedings); and in a higher court, proceedings that are related to the civil proceedings.”.

(9) Schedule 3, Part I, paragraph 4—

**Repeal**

“by the aided person”

**Substitute**

“, by the person seeking legal aid.”.

(10) Schedule 3, Part I, paragraph 4—

**Repeal**

everything after “exceed \$60,000”

**Substitute**

“(including proceedings for the defence to a counterclaim against the person and other proceedings incidental to the civil proceedings); and in a higher court, proceedings that are related to the claim.”.

(11) Schedule 3, Part I, after paragraph 4—

**Add**

“5. Civil proceedings in the Court of First Instance, Court of Appeal or District Court 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—

Resolution of the Legislative Council

Schedule  
Section 2

L.N. 112 of 2012  
B5927

(a) the claim is made by the person in respect of the professional negligence of any of the following persons—

(i) a certified public accountant (practising) as defined by section 2 of the Professional Accountants Ordinance (Cap. 50);

(ii) a person registered as a registered architect under the Architects Registration Ordinance (Cap. 408);

(iii) a registered professional engineer as defined by section 2 of the Engineers Registration Ordinance (Cap. 409);

(iv) a registered professional surveyor as defined by section 2 of the Surveyors Registration Ordinance (Cap. 417);

(v) a registered professional planner as defined by section 2 of the Planners Registration Ordinance (Cap. 418);

(vi) an authorized land surveyor as defined by section 2 of the Land Survey Ordinance (Cap. 473);

(vii) an estate agent as defined by section 2 of the Estate Agents Ordinance (Cap. 511);

(viii) a person registered as a registered landscape architect under the Landscape Architects Registration Ordinance (Cap. 516); and

(b) the claim is, in the opinion of the Director, likely to exceed \$60,000.

6. Civil proceedings in the Court of First Instance, Court of Appeal or District Court 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 the negligence of an insurer, appointed insurance agent or authorized insurance broker, as defined by section 2 of the Insurance Companies Ordinance (Cap. 41), in the performance of their functions for the taking out of the personal insurance that is the subject of the claim; and
  - (b) the claim is, in the opinion of the Director, likely to exceed \$60,000.
7. Civil proceedings in the Court of First Instance, Court of Appeal or District Court 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 against the legal or beneficial owner of a residential property that is a first-hand property;
  - (b) the claim arises from—
    - (i) an agreement for sale and purchase of the property, not being an agreement which, because of paragraph 5, 6 or 7 of Part III of this Schedule, is not regarded as having been entered into in respect of the property; or
    - (ii) a sale under the agreement described in subparagraph (i); and
  - (c) the claim is, in the opinion of the Director, likely to exceed \$60,000.

8. Civil proceedings in the Court of First Instance or Court of Appeal that are brought in respect of an appeal under the Labour Tribunal Ordinance (Cap. 25) relating to a claim to which the person seeking legal aid is a party in the capacity as an employee (including proceedings incidental to the civil proceedings), and proceedings in a higher court that are related to the appeal.”.

(12) Schedule 3, after Part II—

**Add**

### “Part III

#### Interpretation Provisions

1. In this Schedule—

*associate corporation* (有聯繫法團), in relation to a company or specified body, means—

- (a) a subsidiary of the company or specified body; or
- (b) a subsidiary of a holding company of the company or specified body;

*company* (公司) has the meaning given by section 2(1) of the Companies Ordinance (Cap. 32);

*holding company* (控股公司) means a holding company within the meaning of the Companies Ordinance (Cap. 32);

*personal insurance* (個人保險) means an insurance that is taken out by an individual and under which an individual is the insured person, but does not include any such insurance the sole or predominant purpose of which is for any one or more of the following—

- (a) business or commercial insurance;
- (b) industrial insurance;

(c) investment;

*residential property* (住宅物業) means an immovable property (whether completed or uncompleted) constituting a separate unit constructed or intended to be constructed for residential use;

*specified body* (指明團體) means a body corporate incorporated or established under an Ordinance;

*subsidiary* (附屬公司) means a subsidiary within the meaning of the Companies Ordinance (Cap. 32).

2. For the purposes of paragraph 7(a) of Part I of this Schedule, a residential property is a first-hand property if no agreement for sale and purchase has ever been entered into in respect of the property.
3. For the purposes of paragraph 2 of this Part, in determining whether an agreement for sale and purchase has been entered into in respect of a residential property, paragraphs 4, 5, 6 and 7 of this Part apply.
4. If an agreement for sale and purchase has been entered into in respect of a residential property and the agreement has been terminated or has been declared void by a court in relation to that property, the agreement is not to be regarded as having been entered into in respect of that property.
5. If an agreement for sale and purchase is entered into, in respect of a residential property, between—
  - (a) a company or specified body (whether or not together with any other person); and
  - (b) an associate corporation, or a holding company, of the company or specified body (whether or not together with any other person),

the agreement is not to be regarded as having been entered into in respect of that property.

6. If—

(a) a development, housing estate or phase of a development or housing estate has more than one residential property (whether or not the development, housing estate or phase is completed); and

(b) all the residential properties in that development, housing estate or phase are sold, or agreed to be sold, to any person under a single agreement for sale and purchase,

the agreement is not to be regarded as having been entered into in respect of any of those properties in that development, housing estate or phase (as the case requires).

7. If—

(a) a building has more than one residential property (whether or not the building is completed); and

(b) all the residential properties of the building are sold, or agreed to be sold, to any person under a single agreement for sale and purchase,

the agreement is not to be regarded as having been entered into in respect of any of those properties.

8. To avoid doubt, in determining whether a residential property is a first-hand property, the agreement for sale and purchase that is the subject of the claim or that relates to the sale giving rise to the claim is not to be taken into account.”.

Resolution of the Legislative Council

L.N. 112 of 2012

B5937

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Pauline NG Man-wah  
Clerk to the Legislative Council

17 July 2012

Chapter:	91A	LEGAL AID REGULATIONS	Gazette Number	Version Date
Regulation:	3	Application for certificate	L.N. 147 of 2000; L.N. 230 of 2000	03/07/2000

(1) Any person desiring legal aid in a civil action may apply for legal aid in the manner and form determined by the Director. (L.N. 326 of 1984; L.N. 194 of 1992)

(2) Every application for legal aid shall contain such information and shall be accompanied by such documents as may be requisite to enable the Director to determine-

- (a) the nature of the proceedings in relation to which legal aid is sought and the circumstances in which legal aid is required;
- (b) the question whether it is reasonable that a certificate should be granted; and
- (c) the financial resources of the applicant. (L.N. 147 of 2000)

(3) An application made under the Supplementary Legal Aid Scheme shall be accompanied by a fee of \$1000. (L.N. 326 of 1984; L.N. 235 of 1988; L.N. 194 of 1992)

Chapter:	91B	LEGAL AID (ASSESSMENT OF RESOURCES AND CONTRIBUTIONS) REGULATIONS	Gazette Number	Version Date
Regulation:	14	Contributions under the Supplementary Legal Aid Scheme	L.N. 148 of 2000; L.N. 230 of 2000	03/07/2000

For the purposes of section 32 of the Ordinance and a grant of legal aid to any person under the Supplementary Legal Aid Scheme-

- (a) an interim contribution shall be payable by an aided person to the Director for the benefit of the Fund in an amount equivalent to the maximum contribution payable by an aided person under section 18(1) of the Ordinance whose financial resources are equal to the limit prescribed in section 5 of the Ordinance; and
- (b) a final contribution shall be payable by an aided person to the Director for the benefit of the Fund in an amount equivalent to-
  - (i) the sums paid or payable on his account out of the Fund;
  - (ii) the costs incurred on his behalf;
  - (iii) the percentage calculated in accordance with Part III of Schedule 3 of the value of any property (wherever situate) recovered or preserved for the aided person in such proceedings whether on his own behalf or on behalf of another, less any application fee paid under regulation 3(3) of the Legal Aid Regulations (Cap 91 sub. leg. A)

(L.N. 148 of 2000)

Chapter:	91B	LEGAL AID (ASSESSMENT OF RESOURCES AND CONTRIBUTIONS) REGULATIONS	Gazette Number	Version Date
Schedule:	3	CONTRIBUTIONS	L.N. 114 of 2007	15/06/2007

[regulations 8A, 13 & 14]  
(L.N. 148 of 2000)

PART I

The maximum contribution of an aided person under section 18(1)(b) of the Ordinance shall-

- (a) if his financial resources do not exceed \$20000, be nil; (L.N. 148 of 2000)
- (b) except as provided in subparagraph (c), if his financial resources exceed the amount indicated in column A but do not exceed the amount indicated opposite

in column B, be the amount or, as the case may be, the percentage of his financial resources indicated opposite in column C as follows-

A	B	C
If his financial resources exceed	But do not exceed	Then, in relation to his financial resources, his maximum contribution is
\$20000	\$40000	\$1000
\$40000	\$60000	\$2000
\$60000	\$80000	5%
\$80000	\$100000	10%
\$100000	\$120000	15%
\$120000	\$144000	20%
\$144000	the amount of financial resources specified in section 5(1) of the Ordinance	25%;

and (L.N. 148 of 2000; L.N. 141 of 2006; L.N. 114 of 2007)

- (c) if his certificate is for proceedings in which a breach of the Hong Kong Bill of Rights Ordinance (Cap 383) or an inconsistency with the International Covenant on Civil and Political Rights as applied to Hong Kong is an issue and-

- (i) if his financial resources exceed the amount indicated in column A but do not exceed the amount indicated opposite in column B, be the amount or, as the case may be, the percentage of his financial resources indicated opposite in column C as follows-

A	B	C
If his financial resources exceed	But do not exceed	Then, in relation to his financial resources, his maximum contribution is
\$20000	\$40000	\$1000
\$40000	\$60000	\$2000
\$60000	\$80000	5%
\$80000	\$100000	10%
\$100000	\$120000	15%
\$120000	\$144000	20%

\$144000	the amount of financial resources specified in section 5(1) of the Ordinance	25%
the amount of financial resources specified in section 5(1) of the Ordinance	\$269700	30%
\$269700	\$369700	35%
\$369700	\$469700	40%
\$469700	\$569700	45%
\$569700	\$669700	50%
\$669700	\$769700	55%
\$769700	\$869700	60%
\$869700	\$1200000	65%;

or (L.N. 141 of 2006; L.N. 114 of 2007)

(ii) if his financial resources exceed \$1200000, be 67% of his financial resources. (L.N. 148 of 2000)

(L.N. 85 of 1997; L.N. 83 of 2004)

PART II

(Repealed L.N. 195 of 1992)

PART III

CONTRIBUTIONS UNDER THE SUPPLEMENTARY LEGAL AID SCHEME

3. Subject to paragraph 4, the rate of contribution is 10%. (L.N. 224 of 2005)
4. Where a claim is settled prior to delivery of a brief for attendance at trial to counsel, the rate of contribution is 6%. (L.N. 224 of 2005)

PART IV

(Repealed L.N. 489 of 1995)