

立法會
Legislative Council

LC Paper No. LS25/19-20

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 29 November 2019**

Tabling in LegCo : Council meeting of 4 December 2019

Amendment to be made by : Council meeting of 18 December 2019 (or that of 12 February 2020 if extended by resolution)

PART I LEGAL AID

Legal Aid (Amendment) Regulation 2019 (L.N. 170)

Legal Aid (Assessment of Resources and Contributions) (Amendment) Regulation 2019 (L.N. 171)

Legal Aid Ordinance—Resolution of the Legislative Council (Commencement) Notice (L.N. 172)

L.N. 172

By L.N. 172, the Chief Secretary for Administration ("CS") appoints 1 April 2020 as the day on which the resolution made and passed by the Legislative Council ("LegCo") under section 7(b) of the Legal Aid Ordinance (Cap. 91) on 21 November 2018 and published in the Gazette as L.N. 231 of 2018 ("the Resolution") comes into operation.¹

2. The Resolution amends Part 1 of Schedule 3 to Cap. 91 to expand the scope of the Supplementary Legal Aid Scheme ("SLAS") to cover, among others, 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 ("derivatives claims").

3. In addition, the Resolution also amends Cap. 91 to revise 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 to \$75,000, which came into operation on 3 December 2018 (L.N. 139 of 2018).

¹ No subcommittee was formed to study the proposed Resolution before it was passed by LegCo on 21 November 2018.

L.N. 170 and L.N. 171

4. Following the passage of the Resolution, L.N. 170 and L.N. 171 are made by the Chief Executive ("CE") in Council under section 28 of Cap. 91 to amend the Legal Aid Regulations (Cap. 91A) and Legal Aid (Assessment of Resources and Contributions) Regulations (Cap. 91B) respectively to implement the expansion of the scope of SLAS.

5. L.N. 170 amends regulation 3 of Cap. 91A, which relates to the application for legal aid certificate, to cover the newly-added derivatives claims under SLAS referred to in paragraph 2 above.

6. L.N. 171 amends regulation 14 of, and Part 3 of Schedule 3 to, Cap. 91B, which relate to the contributions payable by legally-aided persons under SLAS, to cover the newly-added derivatives claims under SLAS referred to in paragraph 2 above.

7. Members may refer to the LegCo Brief (File Ref: CSO/ADM CR 1/3230/82(18)) issued by CS's Office and the Legal Aid Department in November 2019 for further information.

8. As advised by the Clerk to the Panel on Administration of Justice and Legal Services, at its meetings on 24 April 2017 and 30 April 2018, the Panel was briefed on the Administration's proposal for expanding the scope of SLAS to cover, among others, the derivatives claims referred to in paragraph 2 above and the proposed legislative amendments to implement such expansion. The Panel generally supported the proposals.

9. L.N. 170 and L.N. 171 come into operation on 1 April 2020.

PART II SUBSIDIARY LEGISLATION MADE UNDER THE MERCHANT SHIPPING (SEAFARERS) ORDINANCE (CAP. 478)

Merchant Shipping (Seafarers) (Working and Living Conditions) (Amendment) Regulation 2019 (L.N. 173)

Merchant Shipping (Seafarers) (Allotments) (Amendment) Regulation 2019 (L.N. 174)

10. The Maritime Labour Convention, 2006 ("MLC"), which regulates and protects the working and employment conditions and other entitlements of seafarers, came into force globally in 2013. The International Labour Organization ("ILO") amends MLC from time to time, with a view to enhancing protection of the rights of seafarers. In Hong Kong, the requirements under MLC are implemented via the Merchant Shipping (Seafarers) Ordinance (Cap. 478) and its subsidiary legislation. L.N. 173 and L.N. 174 are made by

the Secretary for Transport and Housing ("STH") under Cap. 478 to implement the latest requirements under MLC by amending the Merchant Shipping (Seafarers) (Working and Living Conditions) Regulation (Cap. 478AF) and the Merchant Shipping (Seafarers) (Allotments) Regulation (Cap. 478A) respectively. The amendments are summarized below.

L.N. 173

11. L.N. 173 amends Cap. 478AF to:

- (a) add new sections 16A and 55A to provide that a seafarer's employment agreement (and his or her wages and other entitlements under the agreement) must not be affected during any period when the seafarer is held captive as a result of an act of piracy or armed robbery against ships;
- (b) add a new section 72A to provide that the validity period of a ship's current maritime labour certificate may be extended temporarily for not more than five months from the date of expiry before the issue of a new maritime labour certificate in respect of the ship; and
- (c) consequentially amend the references to the "Merchant Shipping (Safety) (Minimum Safe Manning Certificate) Regulation (Cap. 369AS)" in section 25 and Schedule 4, section 1 to the "Merchant Shipping (Safety) (Ship's Manning) Regulation (Cap. 369AS)".²

L.N.174

12. Under section 4 of Cap. 478A, a seafarer may, subject to certain conditions, allot all or part of his wages to any person or persons by means of an allotment note issued in accordance with Cap. 478A at any time while he is employed under a crew agreement. Section 6 of Cap. 478A prescribes the times and intervals of payments under allotment notes.

13. L.N. 174 amends section 6 of Cap. 478A to make clear that, in relation to the times and intervals of payments under allotment notes, wages earned by a seafarer include wages required to be paid to the seafarer during any period of captivity as a result of an act of piracy or armed robbery against ships referred to in paragraph 11(a) above.

14. Members may refer to the LegCo Brief (File Ref: THB(T)PML CR 8/10/150/8) issued by the Transport and Housing Bureau and the Marine Department in November 2019 for further information.

² By L.N. 123 of 2016, Cap. 369AS was renamed as "Merchant Shipping (Safety) (Ship's Manning) Regulation" to reflect the extension of the scope of Cap. 369AS.

15. It is noted that the Administration has, pursuant to section 134(3A) of Cap. 478, adopted a "Direct Reference Approach" in incorporating the requirements of MLC into L.N. 173 and L.N. 174. According to paragraph 7 of the LegCo Brief, this approach is adopted to allow local legislation to be kept up-to-date as far as practicable.

16. According to paragraph 10 of the LegCo Brief, the Hong Kong Fleet Operation Advisory Committee and the Seafarers' Advisory Board of the Marine Department were consulted by the Administration in November 2017, July 2018 and January 2019 on the above amendments. Members of both advisory bodies supported the proposed amendments.

17. As advised by the Clerk to the Panel on Economic Development, the Administration consulted the Panel on 25 March 2019 on the legislative proposal. Members were generally supportive of the proposal.

18. L.N. 173 and L.N. 174 come into operation on a day to be appointed by STH by notice published in the Gazette.

PART III SUBSIDIARY LEGISLATION NOT REQUIRED TO BE TABLED AND NOT SUBJECT TO AMENDMENT

**United Nations Sanctions (Central African Republic)
Regulation 2019 (Amendment) Regulation 2019 (L.N. 175)**

United Nations Sanctions (Mali) Regulation 2019 (L.N. 176)

19. L.N. 175 and L.N. 176 are made by CE under section 3 of the United Nations Sanctions Ordinance (Cap. 537) on the instruction of the Ministry of Foreign Affairs of the People's Republic of China and after consultation with the Executive Council. They came into operation when they were published in the Gazette on 29 November 2019.

L.N. 175

20. Since 2013, the Security Council of the United Nations ("UNSC") has adopted several resolutions to impose or renew sanctions against the Central African Republic ("CAR"). These resolutions have been implemented by regulations made under Cap. 537, the last one being the United Nations Sanctions (Central African Republic) Regulation 2019 (Cap. 537CH) which will expire at midnight on 31 January 2020.

21. L.N. 175 amends Cap. 537CH to give effect to certain decisions in Resolution 2488 (2019) adopted by UNSC on 12 September 2019 in relation to the arms embargo measures imposed on CAR by updating:

- (a) the licensing conditions regarding the supply or carriage of arms or related materiel intended solely for use in certain circumstances; and
- (b) the requirements to notify the UNSC Committee established under paragraph 57 of Resolution 2127 (2013) of the proposed provision of assistance to certain persons.

22. Members may refer to the LegCo Brief (File Ref: CITB CR 75/53/8) issued by the Commerce and Economic Development Bureau ("CEDB") in November 2019 for further information. A marked-up version showing the changes made by L.N. 175 to Cap. 537CH is at Annex D to the LegCo Brief.

L.N. 176

23. The United Nations Sanctions (Mali) Regulation 2018 (Cap. 537CD) was enacted in 2018 to implement in Hong Kong certain sanctions against Mali in Resolution 2374 (2017) adopted by UNSC on 5 September 2017 and renewed for one year by UNSC in 2018. Cap. 537CD expired at midnight on 31 August 2019.

24. L.N. 176 implements certain decisions in Resolution 2484 (2019) adopted by UNSC on 29 August 2019 to renew the sanctions against Mali. It provides for, among other things, prohibitions against:

- (a) making available to, or for the benefit of, certain persons or entities any funds or other financial assets or economic resources;
- (b) dealing with funds or other financial assets or economic resources belonging to, or owned or controlled by, certain persons or entities; and
- (c) entry into or transit through the HKSAR by certain persons.

25. The above prohibitions will expire at midnight on 31 August 2020.

26. Members may refer to the LegCo Brief (File Ref: CITB CR 75/53/10) issued by CEDB in November 2019 for further information. A marked-up version showing the changes made by L.N. 176 when compared against Cap. 537CD is at Annex D to the LegCo Brief.

27. In relation to the duration of the provisions, it is noted that the Administration has adopted a new approach (as compared to Cap. 537CD) so that those provisions on prohibitions and licences will expire at the time when the sanction period ends in accordance with the resolution adopted by UNSC, while the remaining provisions on enforcement, evidence, disclosure of information or documents, and other offences and miscellaneous matters are to

remain in force. This is different from the previous approach which implemented the sanctions measures by making entirely new regulations under Cap. 537 and those regulations expired in their entirety after the period specified in the relevant UNSC Resolution.

28. In CEDB's reply to our recent enquiry about the change in the drafting approach in connection with L.N. 157 and L.N. 158 of 2019, CEDB explained that since there might still be a need after the expiry of a regulation made under Cap. 537 to take enforcement actions, gather evidence or disclose information on suspected offences committed before the regulation's expiry, it would be desirable from the perspective of legal certainty for the enforcement and other provisions to remain in force even after the expiry of the prohibition and licence provisions. According to CEDB, the new approach would simplify the drafting process in that when UNSC resolves to renew time-limited sanction measures against a country for another period of time, only the section on limited duration of certain provisions would be amended to specify the new effective period of the prohibition and licence provisions, instead of replacing the entire regulation by a new one.

29. Under section 3(5) of Cap. 537, sections 34 and 35 of the Interpretation and General Clauses Ordinance (Cap. 1) shall not apply to regulations made under section 3 of Cap. 537. Accordingly, L.N. 175 and L.N. 176 are not required to be tabled in LegCo and are not subject to amendment by LegCo. However, since they come within the terms of reference of the Subcommittee to Examine the Implementation in Hong Kong of Resolutions of the United Nations Security Council in relation to Sanctions ("the Subcommittee"), Members may consider referring L.N. 175 and L.N. 176 to the Subcommittee for its consideration.

30. As advised by the Clerk to the Subcommittee, the LegCo Briefs on L.N. 175 and L.N. 176 have been circulated to members of the Subcommittee and all other Members vide LC Paper No. CB(1)204/19-20 on 29 November 2019.

Concluding observations

31. LSD is scrutinizing L.N. 175 and L.N. 176, and will report further, if necessary. No difficulties have been identified in relation to the legal and drafting aspects of L.N. 170 to L.N. 174.

Prepared by

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