

LEGISLATIVE COUNCIL BRIEF

**LEGAL AID ORDINANCE
(Chapter 91)**

**LEGAL AID (AMENDMENT) REGULATION 2019
AND
LEGAL AID (ASSESSMENT OF RESOURCES AND
CONTRIBUTIONS) (AMENDMENT) REGULATION 2019**

INTRODUCTION

At the meeting of the Executive Council on 19 November 2019, the Council ADVISED and the Chief Executive ORDERED that the Legal Aid (Amendment) Regulation 2019 at **Annex A** and the Legal Aid (Assessment of Resources and Contributions) (Amendment) Regulation 2019 at **Annex B** (collectively, “Amendment Regulations”) should be made.

JUSTIFICATIONS

2. The Legislative Council (“LegCo”) made and passed a resolution under section 7(b) of the Legal Aid Ordinance¹ (“LAO”) (Cap. 91) on 21 November 2018 (at **Annex C**) (“Resolution”) for amending the LAO, with a view to expanding the Supplementary Legal Aid Scheme (“SLAS”) to cover civil proceedings in respect of monetary claims for the professional negligence of certain financial intermediaries and proceedings described in paragraph 3 below. In order to implement the expansion, consequential and technical amendments should be made to the Legal Aid Regulations (“LAR”) (Cap. 91 sub. leg. A) and the Legal Aid (Assessment of Resources and Contributions) Regulations (“LA(ARC)R”) (Cap. 91 sub. leg. B).

¹ Section 7(b) of the LAO provides that LegCo may, by resolution, amend Schedules 2 and 3 to the LAO.

3. By the passage of the Resolution at **Annex C**, Part 1 of Schedule 3 to the LAO is amended by adding a new paragraph 9 for the purpose of expanding SLAS to cover civil proceedings for monetary claims in respect of derivatives of securities, currency futures or other futures contracts when fraud, deception or misrepresentation was involved (“derivative claims”).

4. To tie in with the amendment to the LAO explained in paragraph 3 above, the Legal Aid (Amendment) Regulation 2019 (**Annex A**) consequentially amends regulation 3 of the LAR to cover the newly-added derivatives claims under SLAS. Regulation 3 of the LAR sets out, among other things, the process for applying for a legal aid certificate and the application fees under SLAS.

5. Similarly, the Legal Aid (Assessment of Resources and Contributions) (Amendment) Regulation 2019 (**Annex B**) consequentially amends regulation 14 of and Part 3 of Schedule 3 to the LA(ARC)R, which relate to the contributions to be paid by a legally-aided person under SLAS.

6. The Resolution at **Annex C** also amends the LAO to expand SLAS to cover civil proceedings in respect of monetary claims for the professional negligence against financial intermediaries licensed or registered for certain types of regulated activities². Since claims against certain professionals (e.g. accountants, architects and engineers) are already covered by SLAS under the existing paragraph 5 of Part 1 of Schedule 3 to the LAO, the professional negligence claims against financial intermediaries to be covered by SLAS are added to paragraph 5 of that Part. There was no need for a new paragraph for claims against financial intermediaries in that Part. As the existing regulation 3 of the LAR and the existing regulation 14 of and Part 3 of Schedule 3 to the LA(ARC)R have made reference to the proceedings mentioned in paragraph 5 of Part 1 of Schedule 3 to the LAO, no consequential amendments to the LAR and the LA(ARC)R are necessary.

² The LAO has been amended to cover under SLAS monetary claims for professional negligence against financial intermediaries licensed or registered for Type 1 (dealing in securities), Type 2 (dealing in futures contracts) or Type 8 (securities margin financing) regulated activities within the meaning of the Securities and Futures Ordinance (Cap. 571).

In addition to the expansion of scope of SLAS, the LAO has also been amended to revise the minimum claim amount for certain types of SLAS cases to tie in with the increase in the jurisdictional limit of the Small Claims Tribunal to \$75,000.

OTHER OPTIONS

7. The consequential amendments to the LAR and the LA(ARC)R are necessary to implement the expansion of the scope of SLAS and there is no other alternative.

LEGISLATIVE TIMETABLE

8. The legislative timetable is as follows –

| | |
|---|------------------|
| Gazettal of the Amendment Regulations | 29 November 2019 |
| Tabling of the Amendment Regulations at LegCo for negative vetting | 4 December 2019 |
| Commencement of the Resolution ³ and the Amendment Regulations | 1 April 2020 |

IMPLICATIONS OF THE PROPOSAL

Financial and Civil Service Implications

9. The consequential and technical amendments to the LAR and the LA(ARC)R will not incur additional financial and civil service implications.

10. As for the expansion of the scope of SLAS per se, SLAS is a self-financing scheme funded by the Supplementary Legal Aid Fund⁴ (“SLAF”). The expansion of scope to cover monetary claims against

³ The Chief Secretary of Administration has made the commencement notice which serves to appoint 1 April 2020 as the date on which the Resolution comes into operation. The commencement notice is a piece of subsidiary legislation subject to negative vetting by LegCo. It will be gazetted and tabled at LegCo in conjunction with the Amendment Regulations.

⁴ The operation of SLAS is governed by the provisions prescribed under Part VI of the LAO. SLAF which finances SLAS was set up under section 29 of the LAO. SLAF is funded by an initial seed money of \$1 million from the Lotteries Fund and an injection of \$27 million and a further injection of \$100 million by the Government in 1995 and 2012 respectively to support the operation of the expanded SLAS. Its income sources also include the application fees payable by applicants, the interim contributions from aided persons and the final contributions from a percentage deduction of the damages recovered in successful cases. The balance of SLAF stood at \$205.9 million as at end September 2019. Some key statistics on SLAS are provided at **Annex D**.

certain financial intermediaries and derivatives claims is not expected to have significant impact on SLAF and no further injection is needed. The Legal Aid Department (“LAD”) will absorb the financial implications and increase in workload for processing and monitoring new applications arising from the expansion with its existing resources.

Other Implications

11. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It will not affect the current binding effect of the LAO and its subsidiary legislation. It has no economic, family, gender, productivity, environmental or sustainability implications.

PUBLIC CONSULTATION AND PUBLICITY

12. We briefed the LegCo Panel on Administration of Justice and Legal Services on the proposed expansion of SLAS pursuant to the review conducted by the Legal Aid Services Council⁵ (“LASC”) as well as the proposed legislative amendments to the LAO on 24 April 2017 and 30 April 2018 respectively. Members were supportive of the proposal though they also asked the Government to consider further expanding the scope of SLAS.

13. LAD will update the various publicity materials, including its website, information leaflets and booklets, to announce the implementation of the expanded scope of SLAS which will take effect on 1 April 2020.

BACKGROUND

14. SLAS is a statutory self-financing legal aid scheme which came into operation in 1984. It provides legal assistance to people whose financial resources exceed the statutory limit allowed under the Ordinary Legal Aid Scheme (currently at \$307,130), but are below the financial eligibility limit specified for SLAS (currently at \$ 1,535,650).

15. The scope of SLAS initially covered claims for damages for personal injuries or death. It was expanded to include employees’ compensation claims in 1992 and civil proceedings for medical, dental and

⁵ LASC is a statutory body set up in 1996 under the Legal Aid Services Council Ordinance (Cap. 489) to oversee the administration of legal aid services provided by the LAD and advise the Chief Executive on legal aid policy.

legal professional negligence in 1995. In November 2012, the scope of SLAS was significantly expanded to cover a wider range of professional negligence claims. Subsequent to the substantial expansion in November 2012, the Home Affairs Bureau (which oversaw the legal aid portfolio before 1 July 2018) invited LASC to conduct a further review. In its recommendations submitted to the Chief Executive in July 2016, LASC recommended, among other things, that the scope of SLAS be expanded to cover monetary claims against certain financial intermediaries and derivatives claims.

ENQUIRIES

16. For enquiries about this brief, please contact Mr Nicholas CHAN, Assistant Director of Administration 2, at 3509 8119.

**Chief Secretary for Administration's Office
Legal Aid Department
November 2019**

Legal Aid (Amendment) Regulation 2019

(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 1 April 2020.

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)

Regulation 3(3)(b)—

Repeal

“or 7”

Substitute

“, 7 or 9”.

Clerk to the Executive Council

COUNCIL CHAMBER

2019

Explanatory Note

By a Resolution of the Legislative Council (L.N. 231 of 2018) made and passed under section 7(b) of the Legal Aid Ordinance (Cap. 91), Part I of Schedule 3 to the Ordinance is amended to add a type of civil proceedings for which legal aid may be given under the Supplementary Legal Aid Scheme, namely, civil proceedings brought in respect of a monetary claim in respect of derivatives of securities, currency futures or other futures contracts on the basis that the claimant was induced to deal in those derivatives, futures or contracts by fraud, deception or misrepresentation.

2. This Regulation consequentially amends the Legal Aid Regulations (Cap. 91 sub. leg. A) to cover the new type of civil proceedings.

Legal Aid (Assessment of Resources and Contributions) (Amendment) Regulation
2019

Section 1

1

**Legal Aid (Assessment of Resources and Contributions)
(Amendment) Regulation 2019**

(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 1 April 2020.

**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 and 4.

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

(1) Regulation 14, Chinese text, heading—

Repeal

“根據法律援助輔助計劃受助所須繳付”

Substitute

“法律援助輔助計劃”。

(2) Regulation 14(2)—

Repeal

“or 7”

Substitute

“, 7 or 9”。

Legal Aid (Assessment of Resources and Contributions) (Amendment) Regulation
2019

Section 4

2

4. Schedule 3 amended (contributions)

Schedule 3, Part 3, paragraph 4—

Repeal

“or 7”

Substitute

“, 7 or 9”。

Clerk to the Executive Council

COUNCIL CHAMBER

2019

Explanatory Note

By a Resolution of the Legislative Council (L.N. 231 of 2018) made and passed under section 7(b) of the Legal Aid Ordinance (Cap. 91), Part 1 of Schedule 3 to the Ordinance is amended to add a type of civil proceedings for which legal aid may be given under the Supplementary Legal Aid Scheme, namely, civil proceedings brought in respect of a monetary claim in respect of derivatives of securities, currency futures or other futures contracts on the basis that the claimant was induced to deal in those derivatives, futures or contracts by fraud, deception or misrepresentation.

2. This Regulation consequentially amends the Legal Aid (Assessment of Resources and Contributions) Regulations (Cap. 91 sub. leg. B) to cover the new type of civil proceedings.

Resolution of the Legislative Council

L.N. 231 of 2018

B6161

L.N. 231 of 2018**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 21 November 2018.

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 Chief Secretary for Administration by notice published in the Gazette.
-

Schedule

Amendments to Legal Aid Ordinance

1. **Schedule 2 amended (proceedings for which legal aid may be given under section 5)**
 - (1) Schedule 2, Part 2, paragraph 5—
Repeal
“Court of First Instance or District Court”
Substitute
“District Court or Court of First Instance”.
 - (2) Schedule 2, Part 2, paragraph 11—
Repeal everything after subparagraph (e)
Substitute
“In this paragraph—
derivatives of securities (證券衍生工具) means—
 - (a) options to buy or sell interests in;
 - (b) certificates of interest or participation in;
 - (c) warrants to subscribe to; or
 - (d) rights (other than shares) in,
the capital of, or an instrument issued by, a company,
government authority or other body;
futures contract (期貨合約) has the meaning given by
section 1 of Part 1 of Schedule 1 to the Securities
and Futures Ordinance (Cap. 571).”.

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

(1) Schedule 3, Part 1—

Repeal paragraph 2

Substitute

“2. For a claim for damages arising from personal injuries to, or the death of, a person that, in the opinion of the Director, is likely to exceed the specified amount—

- (a) civil proceedings brought in the District Court for the claim by the person seeking legal aid (*claimant*), including proceedings for the defence to a counterclaim against the claimant and other proceedings incidental to the civil proceedings; and
- (b) proceedings in a higher court that are related to the claim.”.

(2) Schedule 3, Part 1—

Repeal paragraph 4

Substitute

“4. For a claim for damages for medical, dental or legal professional negligence that, in the opinion of the Director, is likely to exceed the specified amount—

- (a) civil proceedings brought in the District Court, Court of First Instance or Court of Appeal for the claim by the person seeking legal aid, including proceedings for the defence to a counterclaim against the person and other proceedings incidental to the civil proceedings; and

Resolution of the Legislative Council

Schedule
Section 2

L.N. 231 of 2018
B6167

(b) proceedings in a higher court that are related to the claim.”.

(3) Schedule 3, Part 1, paragraph 5—

Repeal

“Court of First Instance, Court of Appeal or District Court”

Substitute

“District Court, Court of First Instance or Court of Appeal”.

(4) Schedule 3, Part 1, paragraph 5(a)(viii)—

Repeal

“and”.

(5) Schedule 3, Part 1, after paragraph 5(a)(viii)—

Add

“(ix) a licensed person (as defined by section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571)) who is licensed for Type 1, Type 2 or Type 8 regulated activity within the meaning of that Ordinance;

(x) a registered institution (as defined by section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571)) that is registered for Type 1 or Type 2 regulated activity within the meaning of that Ordinance; and”.

(6) Schedule 3, Part 1, paragraph 5(b)—

Repeal

“\$60,000”

Substitute

“the specified amount”.

Resolution of the Legislative Council

Schedule
Section 2

L.N. 231 of 2018
B6169

- (7) Schedule 3, Part 1, paragraph 6—
Repeal
“Court of First Instance, Court of Appeal or District Court”
Substitute
“District Court, Court of First Instance or Court of Appeal”.
- (8) Schedule 3, Part 1, paragraph 6(b)—
Repeal
“\$60,000”
Substitute
“the specified amount”.
- (9) Schedule 3, Part 1, paragraph 7—
Repeal
“Court of First Instance, Court of Appeal or District Court”
Substitute
“District Court, Court of First Instance or Court of Appeal”.
- (10) Schedule 3, Part 1, paragraph 7(c)—
Repeal
“\$60,000”

Substitute

“the specified amount”.

- (11) Schedule 3, Part 1, after paragraph 8—

Add

- “9. Civil proceedings in the District Court, Court of First Instance or Court of Appeal 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 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; and

(b) the claim is, in the opinion of the Director, likely to exceed the specified amount.”.

- (12) Schedule 3, Part 2, paragraph 2—

Repeal

“Court of First Instance or District Court”

Substitute

“District Court or Court of First Instance”.

- (13) Schedule 3, Chinese text, Part 3, paragraph 1, definition of 控權公司—

Repeal the full stop

Substitute a semicolon.

(14) Schedule 3, Part 3, paragraph 1—

Add in alphabetical order

“derivatives of securities (證券衍生工具) means—

- (a) options to buy or sell interests in;
- (b) certificates of interest or participation in;
- (c) warrants to subscribe to; or
- (d) rights (other than shares) in,

the capital of, or an instrument issued by, a company, government authority or other body;

futures contract (期貨合約) has the meaning given by section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571);

specified amount (指明款額) means the monetary limit specified in paragraph 1 of the Schedule to the Small Claims Tribunal Ordinance (Cap. 338);”.

Kenneth CHEN Wei-on
Clerk to the Legislative Council

21 November 2018

Explanatory Note

Under section 5A of the Legal Aid Ordinance (Cap. 91) (*principal Ordinance*), legal aid under the Supplementary Legal Aid Scheme (*supplementary legal aid*) may be available for certain persons for the civil proceedings mentioned in Part 1 of Schedule 3 to the principal Ordinance. This Resolution amends that Schedule to achieve the objectives set out below.

2. Supplementary legal aid may be given for certain civil proceedings brought for a claim that, in the opinion of the Director of Legal Aid, is likely to exceed \$60,000. This Resolution replaces that amount with the monetary limit specified in paragraph 1 of the Schedule to the Small Claims Tribunal Ordinance (Cap. 338). The purpose is to tie the monetary threshold to the jurisdiction limit of the Small Claims Tribunal.
3. A claimant may be given supplementary legal aid for civil proceedings brought for a claim for damages in respect of the professional negligence of the persons mentioned in paragraph 5(a) of Part 1 of Schedule 3 to the principal Ordinance. This Resolution adds 2 types of persons to that paragraph.
4. The scope of the Supplementary Legal Aid Scheme is expanded by adding a type of civil proceedings for which supplementary legal aid may be given.
5. This Resolution also makes textual amendments to Schedules 2 and 3 to the principal Ordinance.

Key Statistics on the Supplementary Legal Aid Scheme

A. Number of applications received and certificates granted under the Supplementary Legal Aid Scheme (SLAS)

| Year | Applications received | Certificates granted |
|------|-----------------------|----------------------|
| 2016 | 225 | 164 |
| 2017 | 338 | 223 |
| 2018 | 235 | 150 |

B. Average legal costs of assigned out SLAS cases with judgment after trial

| Year | Average Legal Costs |
|------|---------------------|
| 2016 | \$733,843 |
| 2017 | \$1,164,566 |
| 2018 | \$547,125 |

C. Financial position of the Supplementary Legal Aid Fund

| Financial year ending on | 30 Sep 2017 (\$ million) | 30 Sep 2018 (\$ million) | 30 Sep 2019 (\$ million)* |
|--------------------------|-----------------------------|-----------------------------|------------------------------|
| Income | 8.6 | 9.1 | 16.4 |
| Application fees | 0.09 | 0.12 | 0.12 |
| Contributions | 4.73 | 3.97 | 9.79 |
| Interest | 3.74 | 5.01 | 6.49 |
| Expenditure | 9.2 | 4.2 | 7.8 |
| Fund balance | 192.4 | 197.3 | 205.9 |

* Figures for the financial year ending on 30 September 2019 are unaudited and subject to change.