

## **CONDITIONAL FEE AGREEMENTS IN SINGAPORE: THE 'WHAT', 'WHY' AND 'HOW'**

Lawyers and their clients will now be permitted to enter into conditional fee agreements (**CFAs**) in certain types of proceedings, including international and domestic arbitration proceedings, certain proceedings in the Singapore International Commercial Court (**SICC**), and related court and mediation proceedings. These changes were introduced as part of the Legal Profession (Amendment) Bill (the **Bill**), introduced in Parliament for the first time on 1 November 2021 and passed on 12 January 2022.

### **WHAT ARE CFAS?**

A CFA is an arrangement where a lawyer receives all, or a part of, their legal fees only in specified, agreed circumstances, such as where the client's claim is successful. In this sense, CFAs allows lawyers to share in some or all of the risk of their client's disputes. For instance, this can take the form of 'no win, no fee' or 'no win, less fee' agreements. The newly introduced CFA framework in Singapore essentially carves out a statutory exception to the rule against champerty and maintenance inherited from English common law. The Bill also provides that a CFA may include an 'uplift' or 'success' fee if the claim is successful.

Importantly, CFAs should be distinguished from contingency fee agreements (or "damage-based agreements"), where a lawyer is paid an agreed percentage of the damages awarded with no direct correlation to the actual work done. Contingency fee agreements remain prohibited in Singapore, on account of risks to the administration of justice and potential abuse of court processes which such agreements may entail.

### **WHY HAVE CFAS BEEN ALLOWED?**

The introduction of CFAs in the context of Singapore's litigation landscape has the potential to bring about numerous benefits, which include the following:

#### **Strengthening Singapore's position as an international dispute resolution hub**

The amendments will allow Singapore to compete more effectively with other jurisdictions (and in particular, other major arbitral seats) where CFAs are already permitted such as England and Wales, Australia and the United

#### **Key issues**

- CFAs will be allowed in Singapore after the Legal Profession Act was amended in January 2022.
- CFAs are arrangements where a lawyer receives their legal fees only in contractually specified circumstances.
- CFAs have been introduced in order to reinforce Singapore's position as a regional dispute resolution hub, and to allow Singapore law practices (as well as certain foreign registered law practices) to compete with their foreign counterparts on a more level playing field.
- CFAs can also bring greater access to justice by providing businesses with a wider range of litigation funding options to pursue meritorious claims.
- Safeguards remain in place to guard against the risk of abuse, and to ensure that CFAs are not used to raise litigation costs or undermine access to justice.

States. This will enhance Singapore's competitiveness and vibrancy as a regional hub for dispute resolution, by creating a level playing field for Singaporean lawyers *vis-à-vis* their foreign counterparts.

### **Enhancing access to justice**

CFAs can help to enhance access to justice by providing businesses or individuals with alternative funding options to bring (or, in certain cases, defend) claims or to instruct the counsel of their choice, which they might otherwise not be able to do due to cash flow or liquidity issues. In the current climate, this may be particularly important in light of the disruptions brought about by the Covid-19 pandemic.

### **Discouraging weak cases and frivolous claims**

Finally, CFAs could arguably help to discourage lawyers from pursuing weak cases and frivolous claims, given that the quantum of fees is contingent on the outcome.

## **HOW WILL CFAS BE IMPLEMENTED?**

### **Applicability of the CFA framework**

As mentioned above, CFAs are not permitted in all types of proceedings – they can only be used in prescribed categories of proceedings, as set out in subsidiary legislation, which are currently limited to the following:

- International and domestic arbitration proceedings;
- Certain proceedings in the SICC; and
- Related court and mediation proceedings.

These categories of proceedings usually involve more commercially sophisticated clients, which therefore reduces the risk of abuse by lawyers.

However, the Ministry of Law has stated that it will continue to review the litigation funding landscape to determine whether the CFA framework should be extended to other categories of proceedings, including domestic proceedings. Similar to the way in which it has approached the introduction of third-party funding, the Ministry has emphasised that it will take an incremental approach in reviewing the possibility of such extensions and will only do so if it is satisfied that the interests of vulnerable litigants in those proceedings are sufficiently protected.

### **Safeguards and requirements for CFAs**

The proposed framework will be subject to further regulations which will contain important safeguards dealing with matters such as (i) the maximum limits on any uplift fee which may be charged under a CFA; (ii) the information a lawyer must provide to the client before entering into a CFA; and (iii) the terms and conditions such CFAs must contain. Moreover, the existing rules in the Legal Profession (Professional Conduct) Rules on overcharging will continue to apply.

The Bill also makes clear that a CFA will not affect the recovery of costs by another party (e.g. a winning party in contentious proceedings) from a client which has engaged lawyers under a CFA. It also provides that any uplift fee under a CFA is not recoverable as part of an adverse costs order against a losing party.

## **CONCLUSION**

The introduction of CFAs will further increase Singapore's status and competitiveness as a hub for dispute resolution as it enables Singapore law practices and certain registered foreign lawyers and foreign law practices to compete on a more even footing with their international counterparts. The development and implementation of the CFA framework should be monitored closely, as it continues to shape and influence the range and flexibility of fee mechanisms available to clients and the broader litigation funding landscape in Singapore and the region.

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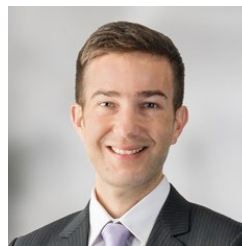
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