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Conditional Fee Agreements in Singapore

— Legal Profession (Amendment) Bill

2 November 2021

LEGAL UPDATE



In this Update

The Legal Profession (Amendment) Bill, which was introduced in Parliament on 1 Nov 2021, proposes to introduce a framework for conditional fee agreements ("**CFAs**") to be entered into between lawyers and their clients in selected proceedings.

Our update discusses the proposed CFA framework.

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INTRODUCTION

On 1 November 2021, the Legal Profession (Amendment) Bill was introduced in Parliament. If passed, this piece of landmark legislation will introduce a new framework for conditional fee agreements ("**CFAs**") to be entered into between lawyers and their clients in selected proceedings. At present, the selected proceedings are expected to include arbitration proceedings (both international and domestic), certain proceedings in the Singapore International Commercial Court and related court and mediation proceedings.

WHAT ARE CFAS?

CFAs are agreements between lawyer and client whereby a lawyer will receive payment (whether in part or whole) of his solicitor-client fees where the client is successful in bringing his claim or where certain agreed outcomes have been achieved. It will be open to parties to discuss and agree on the outcomes which will enable a lawyer to receive payment of his fees from his client.

Apart from providing that legal fees are payable only in certain circumstances, CFAs may also provide for the lawyer to obtain an "uplift" or "success" fee from his client in certain situations. The details concerning uplift fees have yet to be released.

CFAs are to be distinguished from contingency fee agreements, where a lawyer obtains a direct, agreed percentage of the client's judgment sum or damages recovered by his client.

The Singapore Ministry of Law have proposed CFAs as they help to enhance access to justice by providing claimants with a funding avenue to pursue meritorious claims or defend unmeritorous claims.

PROPOSED FRAMEWORK FOR CFAS

The Legal Profession (Amendment) Bill, if passed by Parliament, will provide a statutory exception against the common law rule of champerty for which contingency fee represents and remains prohibited.

KEYPOINT

A lawyer will not be prevented from entering into a CFA that complies with prescribed requirements with a client

The requirements of a CFA and the nature and scope of information that a lawyer must provide to his client before entering into a CFA will be made known at a later date and will be implemented via subsidiary legislation.

Contingency fee agreements which attempt to masquerade as CFAs will continue to be prohibited.

COMMENTARY

The introduction of CFAs in Singapore is a welcome and long-anticipated step in the right direction. Three observations come to mind.

First, CFAs promote access to justice, particularly in this COVID-19 pandemic, as solicitor-client costs constitute a substantial portion of a potential litigant's legal expenses.

With CFAs in place for certain select proceedings, businesses or individuals may commence or defend proceedings with considerably lesser upfront legal costs and pay the significant portion of solicitor and client costs only if they succeed or where certain agreed outcomes are achieved in the proceedings. CFAs thus provide an avenue for potential litigants to pursue or defend claims, which they may otherwise not embark on.

Second, this proposed legislation follows on the heel of CFAs which have been allowed in other Commonwealth jurisdictions such as the United Kingdom and Australia for some years. With the introduction of CFAs in Singapore for certain proceedings, this move will strengthen Singapore's position as an international legal and dispute resolution hub.

Third, while the introduction of CFAs is a positive development in our ever evolving legal landscape, we look forward to the details of the scheme as there remain balancing factors to be taken into account in producing a scheme which will meet the twin objective of access to justice and the overall interest of the Bar. When the Ministry releases, we shall update our clients and readers.

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