Dispute Resolution

Conditional Fee Agreements: A New Avenue for Legal Funding

Introduction

Legal fees are often a major factor for parties considering pursuing legal proceedings. Even where their claim is meritorious, parties may find themselves unable to afford the costs required to vindicate their legal rights.

For some foreign jurisdictions, one method of addressing this gap and enhancing access to justice is conditional fee agreements ("**CFAs**"). CFAs are a type of lawyer-client arrangement whereby a lawyer receives payment of the whole or part of his or her legal fees only in specified circumstances, for example where the claim is successful. Prospective litigants with strong claims are therefore better able to pursue their claims in court without being hindered by a lack of funds.

Thus far, CFAs have been prohibited under Singapore law. However, following a favourably received public consultation on a proposed framework for CFAs held in August 2019, the Legal Profession (Amendment) Bill ("**Bill**") was tabled for First Reading in Parliament on 1 November 2021. If passed, the Bill will create a framework to allow a statutory exception for CFAs for specific contentious proceedings.

While the exact categories of proceedings will be set out in future regulations, they are expected to include:

1. international and domestic arbitration proceedings;
2. certain proceedings in the Singapore International Commercial Court ("**SICC**"); and
3. court and mediation proceedings related to the above.

In this Update, we look at features of the proposed CFA framework and its advantages to both prospective litigants and the legal landscape in Singapore.

What are CFAs?

Traditionally, lawyer-client fee agreements for dispute resolution were founded on an hourly rate for legal work done, and lawyers were prohibited from having fees contingent on the outcome of a contentious matter. In contrast, CFAs permit legal fees to be paid based on the outcome, usually where the claim is successful. If the claim fails, then a lower quantum – or even nothing – may be payable instead.

The exact terms of a CFA, particularly regarding what outcomes would result in what quantum of fees, would be determined between the lawyer and client subject to the statutory requirements covered below.

What are the Requirements?

It is important to note that the general prohibition against CFAs remain in place, and that the proposed framework merely carves out an exception to this prohibition. Failure to meet the statutory requirements will mean that the CFA does not qualify for the exception, and therefore may be held unenforceable and/or illegal.

These statutory requirements are:

1. The CFA must be in writing and signed by the client;
2. Renumeration or costs payable cannot be calculated as a percentage of the amount of damages awarded to the client (also known as contingency fees); and
3. Any other requirement set out in future relevant regulations the Minister of Law may make.

Apart from the above, a CFA may:

1. *Include uplift fees* – CFAs may stipulate that, if a certain outcome is achieved, legal fees charged will be higher than what would otherwise be payable if there were no CFA.

2. *Cover preliminary work* – Apart from work done during actual proceedings, CFAs may cover work done for the purposes of contemplated proceedings, even if the proceedings are eventually not commenced. This includes preliminary and preparatory advice, as well as negotiations or settlement of a claim.

3. *Not include certain exclusions* – Any term with the effect that (a) the lawyer or law practice will not be liable for negligence, or (b) relieves the lawyer or law practice from any responsibility they would otherwise be subject to, will be held void or unenforceable.

Concluding Remarks

While further details of the CFA framework remain to be confirmed, the legalising of CFAs will benefit prospective litigants by enabling them to pursue or defend claims that they might not otherwise be able to.

It is worth noting that Singapore had earlier introduced a third-party funding ("**TPF**") framework for certain categories of proceedings. The TPF framework permits the funding of legal proceedings by an entity unconnected to a dispute in return for financial gain, such as a share of the damages awarded or a share of the settlement sum.

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Altogether, these developments not only enhance access to justice, but also place Singapore law firms on equal footing with foreign law firms, overall strengthening Singapore's position as an international legal and dispute resolution hub.

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