

CONDITIONAL FEE ARRANGEMENTS ARE NOW ALLOWED IN SINGAPORE

Introduction

Traditionally, Conditional Fee Agreements (“CFA”) have been prohibited and unenforceable in Singapore, under common law rules against maintenance and champerty. Maintenance is the provision of financial assistance to a party, by a person who has no interest in the proceedings. Champerty is a sub-set of maintenance, whereby financial assistance is provided to fund proceedings, in return for a share in the proceeds.

On 4 May 2022, the Legal Profession (Conditional Fee Agreement) Regulations 2022 (“CFA Regulations”) came into operation, introducing the CFA framework. Doing so has brought Singapore in line with the practice of other jurisdictions such as England and Wales, the United States, Australia and Canada, in which lawyers are permitted to enter into conditional fee arrangements with their clients, under stipulated circumstances.

What are CFAs?

CFAs are arrangements where a lawyer receives payment of the whole or part of his/her remuneration and costs in respect of contentious proceedings in certain specified circumstances.

Different types of CFAs may include:

- Win, more fee
- No win, no fee
- No win, less fee
- Uplift fees, whereby a CFA can stipulate that if a particular claim succeeds on the merits, an uplift fee would be paid to the lawyer, which may be higher than what would otherwise be payable if there was no CFA.

However, it is important to note that CFAs are distinct from “contingency fee” agreements, which are arrangements where the lawyer receives a percentage or proportion of the amount of damages or other amounts awarded to or recovered by the client in any contentious proceedings. Such arrangements still remain prohibited under Singapore law.



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When are CFAs permitted?

The CFA framework applies to Singapore lawyers and law practices, as well as certain registered foreign lawyers and foreign law practices.

CFAs are now allowed in:

- International and Domestic Arbitrations;
- Singapore International Commercial Court proceedings; and
- Related Court and Mediation proceedings arising from the above.

What should I take note of before entering into a CFA?

Section 115B of the Legal Profession Act and Section 4 of the CFA Regulations sets out a number of requirements.

First, the CFA must be in writing and signed by the client.

Second, the lawyer must provide the client with certain prescribed information on the CFA in plain language, and the client must sign and date an acknowledgement that they have received and understood such information.

The prescribed information includes the nature and operation of the CFA, particulars of the uplift fee (if any), and the client's right to seek independent legal advice. The cooling-off period of five days from when the CFA is entered into, and three days for any variation to the CFA relating to costs, must also be complied with.

What are the benefits of a CFA?

CFAs enhance access to justice by providing potential litigants with an alternative funding option to pursue meritorious claims, which they may otherwise not be able to purely due to financial constraints. The introduction of the CFA framework at this juncture is a timely move for practitioners and litigants alike; having the flexibility to enter into a CFA is particularly relevant given the rise in disputes with an international element, as a result of global disruptions caused by the COVID-19 pandemic.

Singapore's new CFA framework will level the playing field for Singapore lawyers in areas such as international arbitration or Singapore International Commercial Court proceedings, vis-à-vis their counterparts in foreign jurisdictions, who are already able to offer such agreements.

As fees under a CFA are dependent on the outcome, such CFAs may also help to deter lawyers from taking on cases that are based on unmeritorious and frivolous claims.

Conclusion

If you are contemplating commencing or defending a claim by way of Arbitration, or in the Singapore International Commercial Court, do contact our lawyers for a discussion on how we may be able to structure a fee arrangement best suited to your needs.

Tito Isaac & Co is a Singapore-based, full-service law firm established in 1999. We serve private clients, SMEs, MNCs and government entities across a range of sectors. Our team of lawyers provides high-quality legal services and personalized client care aimed at achieving the best available outcomes.

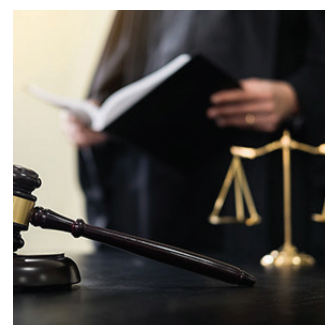
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References

Ministry of Law Press Release: Framework for Conditional Fee Agreements in Singapore to Commence on 4 May 2022

Legal Profession (Conditional Fee Agreement) Regulations 2022

Legal Profession Act 1966