

May 19, 2022

Introduction

1. “So how much will this cost?” This is a question that most (if not all) lawyers face. We reckon that it is arguably one of the trickiest question to answer as well.
2. However, quite apart from the usual answers like “time – cost basis” and “fixed fee arrangement”, the introduction of the Conditional Fee Agreements (CFAs) now provides practicing lawyers with yet another answer in their arsenal.
3. In brief, the Legal Profession (Amendment) Bill introduces the CFAs into Singapore’s dispute resolution scene. Our firm’s Senior Partner and Member of Parliament (Chua Chu Kang GRC), Mr Zhulkarnain Abdul Rahim, spoke in support of the introduction of CFAs at the Second Reading of the Legal Profession (Amendment) Bill on 12 January 2022.
4. We set out below what you can expect from this latest development and how it may affect you in the future.

What are CFAs?

5. Simply put, CFAs are arrangements where a lawyer receives payment of a part, or all of his / her legal fees, only in specified agreed circumstances. With the introduction of the CFAs, both clients and lawyers have greater flexibility in structuring how their legal fees will be paid.
6. A CFA can take on various permutations such as:
 - a. If a lawyer is successful in winning the case for the client, the lawyer can receive his fees plus an uplift / increased percentage;
 - b. If a lawyer is not successful in attaining the desired outcome, the lawyer receives only a portion of his fees; or
 - c. If a lawyer is not successful in attaining the desired outcome, the lawyer does not receive his fees.
7. Ultimately, this remains a contractual agreement between a client and his lawyer, just like the current fee models. Accordingly, it will be prudent for parties to specify what a “loss” and “win” is.
8. However, the CFAs must be distinguished from a Contingency Fee Arrangement. In a Contingency Fee Arrangement, the lawyer will receive a percentage of the amount that his/her client receives when the case is won or settled.
9. It must be noted the Legal Profession (Amendment) Bill still prohibits lawyers from offering Contingency Fee Arrangements.

Why CFAs?

10. The CFAs are expected to bring a slew of advantages to both clients and lawyers.
11. **First**, the CFAs help to enhance access to justice by providing parties with alternative means of funding litigation. There are cases where parties choose not to pursue meritorious claims because of cost concerns. This was most prominent during the Covid-19 pandemic.
12. With the CFAs, parties now have the option of following through with such claims as they are able to reach a fee structure with their lawyers that best suits parties' needs.
13. **Second**, the introduction of the CFAs level the playing field for Singapore lawyers in areas such as international arbitration or Singapore International Commercial Court (SICC) proceedings, vis-à-vis their counterparts in foreign jurisdictions who are already able to offer CFAs.
14. **Third**, the CFAs may discourage lawyers from pursuing weak cases and frivolous claims especially since it is now a financial disincentive to do so.

What Work Is Covered Under The CFA Fee Structure?

15. Presently, not all legal matters can fall within the CFA fee structure.
16. CFAs are only enforceable in prescribed proceedings, which are set out in subsidiary legislation. These proceedings include international and domestic arbitration, certain proceedings in the SICC and related court and mediation proceedings. Currently, CFAs are not allowed for domestic proceedings but that may change in time to come.
17. The CFAs will also cover work done for the purposes of, and before, contemplated proceedings such as preliminary advice, negotiations or the settlement of disputes. The CFAs will continue to apply even if parties eventually decide not to commence proceedings or if the proceedings are eventually settled.
18. If the matter satisfy these requirements, parties can then proceed to enter into a CFA which must be in writing and signed by a client to be valid and must not provide for the remuneration or costs to be payable as a proportion of the amount recovered by the client.

What Else Must I Take Note Of

19. Apart from the above, we wish to highlight a few points that a client should bear in mind before proceeding with a CFA:
 - a. Despite entering into a CFA, a client is still liable for costs ordered by the Court during such proceedings;
 - b. A client will also have to pay for all disbursements incurred, including but not limited to, Court fees, expert fees and internal charges such as photocopying fees;
 - c. If there is a dispute as to the Solicitor-and-Client costs charged under the CFA, these fees cannot be subject to a taxation and this position is similar to the existing one adopted for contentious business agreements under Section 112(4) of the Legal Profession Act.
20. Whilst the CFA provides an alternative fee structure for parties to consider, the CFA does not modify the existing

obligations of Singapore lawyers who continue to be subject to the Legal Profession (Professional Conduct) Rules.

The Way Forward

21. The introduction of CFAs is a positive change to the legal landscape in Singapore. Whilst CFAs are currently inapplicable to domestic proceedings, it may be a matter of time before this restriction is lifted.

22. Pertinently, this development is consistent with the approach taken to modernise Singapore's legal industry and to provide access to justice for all. In this regard, CFAs join other avenues like third party litigation funding or after-the-event insurance to assist clients in mitigating risks of financial exposure in litigation. Do contact us if you want to learn more on how to better prepare and protect yourself.

23. We will continue to monitor the progress keenly and we look forward to providing you with a further update.

24. If you have any queries / clarifications on the above, please do not hesitate to contact the following authors.

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