



THIRD PARTY FUNDING – REINFORCING SINGAPORE AS A PREMIER INTERNATIONAL DISPUTE RESOLUTION CENTRE

A note from Indranee Rajah S.C., Senior Minister of State for Law

In the recent January 2017 sitting of Parliament, we took two important steps towards reinforcing Singapore's position as a leading international dispute resolution hub. We:

- passed the Civil Law (Amendment) Bill to put in place a framework for third party funding; and
- enacted the Mediation Act to establish a framework for commercial mediation.

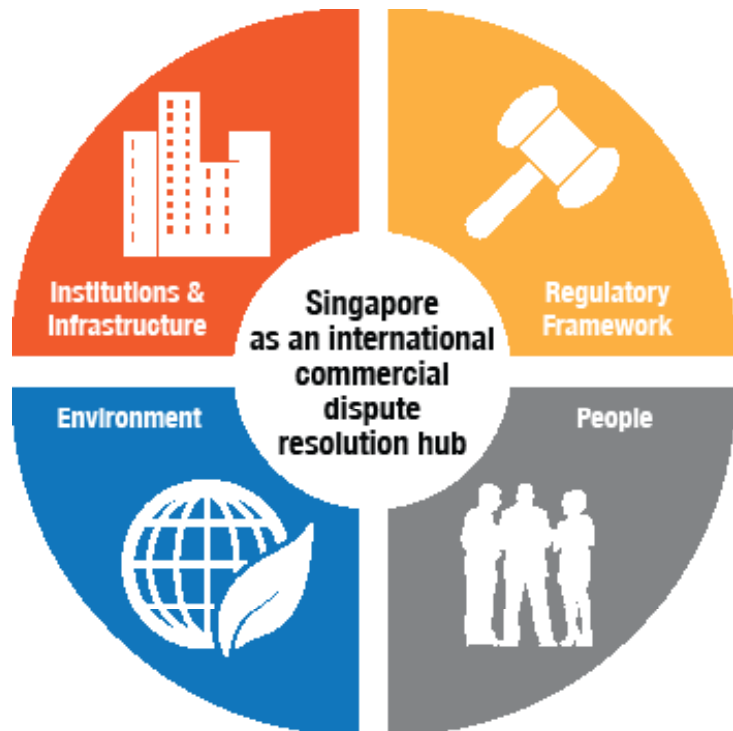
This Note summarises the third party funding framework under the amended Civil Law Act (CLA) and its objectives. The full text of my speech at the Second Reading of the Bill can be found at www.mlaw.gov.sg.

Singapore provides a full suite of international dispute resolution services - arbitration, litigation and mediation. Businesses can choose what best meets their needs.

The current economic environment notwithstanding, Asia's trade and business sectors are projected to continue to grow. There will be regional demand for legal services, including dispute resolution. We must ensure that Singapore is positioned to meet this demand and that we continue to be the premier international dispute resolution hub of choice.

Currently Singapore is one of the top five most preferred arbitration seats in the world, alongside London, Paris, Geneva and Hong Kong. To remain competitive, we must be in step with developments in the arbitration scene. Third party funding is growing in jurisdictions where it is allowed, such as England, Wales and Australia.

The CLA puts in place a framework for third party funding. We will start by allowing third party funding for international commercial arbitration. This provides an additional financing option for such arbitrations and will boost the international arbitration sector in Singapore. This in turn will generate work and growth in the legal sector.



WHAT IS THIRD PARTY FUNDING?

Third party funding in the context of the CLA refers to a situation where an entity unconnected to the dispute provides funds to a party to pursue a legal claim.

- The claimant uses the funds to cover its legal costs;
- In return for funding the claim, the funder receives a share of the amount(s) awarded to the claimant if the claimant is successful;
- If the claim fails, the funder goes without reimbursement. This is the risk assumed by the funder.

Third party funding is becoming an increasingly sophisticated industry.

Third party funders are essentially investment funds seeking a good return. Professional third party funders focus on high value claims with minimum claim sizes in the millions of dollars. They are highly selective in the claims they choose to fund, given the need to provide attractive returns to their investors.

Claimants who use third party funding often do so for financial management purposes, and are not typically impecunious.

FRAMEWORK FOR THIRD PARTY FUNDING

The Bill can be found at www.mlaw.gov.sg.

These are the key features of the framework under CLA:

Champerty and maintenance abolished as torts, but still illegal and contrary to public policy except for permitted categories.

- Maintenance is the provision of financial assistance to a party by a person who has no interest in the proceedings.
- Champerty is the maintenance of an action in return for a share in the proceeds of the action. As such, champerty is a sub-set of maintenance.
- There are two aspects of maintenance and champerty:
 - The common law tort; and
 - Under contract law, agreements affected by maintenance or champerty are void as being contrary to public policy.

The amended CLA clarifies that the common law torts of maintenance and champerty are abolished. However, contracts affected by maintenance and champerty continue to be contrary to public policy or are otherwise illegal, and hence are unenforceable unless they fall under permitted categories.

The permitted categories will be specified in subsidiary legislation. For starters, third party funding will only be permitted for international arbitration proceedings. This will serve as a test bed for third party funding. The categories may be broadened after a period of assessment.

Funders

Third party funding can only be provided by funders which meet certain qualifying criteria. The qualifying criteria will be specified in subsidiary legislation. The aim is to ensure that third party funding in Singapore is provided by reputable, professional funders.

Third parties which provide funding but do not comply with the qualifying criteria will not be able to enforce their rights under the third party funding agreement. However, they will still be required to perform their obligations.

Lawyers and Third Party Funding

The Bill made related amendments to the Legal Profession Act (LPA) to provide for the following:

- Lawyers may introduce or refer third party funders to their clients so long as the lawyers do not receive direct financial benefit from the introduction or referral.
- Fees, disbursements or expenses paid by the client for the lawyers' legal services do not constitute "direct financial benefit".
- Lawyers can act for their clients in relation to third party funding contracts.



The Legal Profession (Professional Conduct) Rules will also impose a duty on lawyers to disclose to the tribunal or court and every other party the existence of any third party funding their client is receiving. This includes the identity and address of the third party funder and ensures that there are no conflicts of interest.

Regulation of Third Party Funding

Drawing on the experience of other countries where third party funding is more developed, we will be taking a limited but targeted regulatory approach.

Industry-promulgated guidelines and best practices for third party funders, lawyers and arbitrators will be released in due course. They will address issues like confidentiality, conflicts of interest, control of proceedings and termination of the funding contract.

STRENGTHENING SINGAPORE AS AN ARBITRATION SEAT

The third party funding framework under the CLA will consolidate Singapore's position as a key seat for international commercial arbitration and attract more high value international arbitrations to Singapore. This will benefit the legal industry and the economy as a whole.

– *Indranee Rajah S.C., Senior Minister of State for Law*
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