

Civil Law (Amendment) Bill

Bill No. /2016.

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A BILL

i n t i t u l e d

An Act to amend the Civil Law Act (Chapter 43 of the 1999 Revised Edition) and to make a related amendment to the Legal Profession Act (Chapter 161 of the 2009 Revised Edition).

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

Short title and commencement

1. This Act is the Civil Law (Amendment) Act 2016 and comes into operation on a date that the Minister appoints by notification in the *Gazette*.

5 New sections 5A and 5B

2. The Civil Law Act is amended by inserting, immediately after section 5, the following sections:

“Abolition of tort of maintenance and champerty

10 **5A.**—(1) It is declared that no person is, under the law of Singapore, liable in tort for any conduct on account of its being maintenance or champerty as known to the common law.

15 (2) Subject to section 5B, the abolition of civil liability under the law of Singapore for maintenance and champerty does not affect any rule of that law as to the cases in which a contract is to be treated as contrary to public policy or otherwise illegal.

Validity of certain contracts for funding of claims

5B.—(1) This section applies only in relation to prescribed dispute resolution proceedings.

20 (2) A contract under which a qualifying Third-Party Funder provides funds to any party to or for the purpose of funding the costs of that party in prescribed dispute resolution proceedings is not contrary to public policy or otherwise illegal by reason that it is a contract for maintenance or champerty.

25 (3) Every qualifying Third-Party Funder and funded party must, in relation to a third-party funding contract referred to in subsection (2), comply with and ensure that the prescribed requirements are complied with.

(4) Where a Third-Party Funder —

- 30 (a) ceases to be a qualifying Third-Party Funder; or
 (b) fails to comply with any prescribed requirement mentioned in subsection (3),

the rights of the Third-Party Funder under or arising out of the third-party funding contract affected by or connected with the disqualification or non-compliance are not enforceable by action or other legal proceedings including arbitration proceedings.

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(5) A Third-Party Funder may apply to the court for relief against the disability imposed by subsection (4).

(6) The court, on being satisfied —

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(a) that the disqualification or non-compliance was accidental or due to inadvertence or some other sufficient cause; or

(b) that on other grounds it is just and equitable to grant relief,

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may grant such relief either generally, or as respects any third-party funding contract, on such conditions (if any) as the court may impose including but not limited to the condition that the costs of the application must be paid by the Third-Party Funder.

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(7) Subsection (4) does not prejudice the rights of any other party as against the Third-Party Funder in respect of a third-party funding contract.

(8) The Minister may make regulations necessary or convenient to be prescribed for carrying out or giving effect to this section, including —

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(a) prescribing the qualifications and other requirements that a Third-Party Funder must comply with to be a qualifying Third-Party Funder;

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(b) prescribing the class or classes or description of dispute resolution proceedings to which this section applies; and

(c) governing the provision and manner of third-party funding including the requirements that the Third-Party Funder and the funded party must comply with.

(9) Any addition, deletion or other variation to the class or classes or description of dispute proceedings prescribed under subsection (8) does not affect any contract which was entered into before the date of commencement of that addition, deletion or variation.

(10) In this section, unless the context otherwise requires —

“court” means any court before which proceedings to enforce a right referred to in subsection (4) are commenced or before which an issue relating to subsection (4) arises;

“dispute resolution proceedings” means the entire process of resolving or attempting to resolve a dispute between 2 or more parties and includes any civil, mediation, conciliation, arbitration or insolvency proceedings;

“funded party” means a party, to dispute resolution proceedings, who enters into an agreement with a Third-Party Funder for the funding of the costs of the proceedings and includes a liquidator or judicial manager;

“qualifying Third-Party Funder” means a Third-Party Funder who satisfies and continues to satisfy such qualifications and other requirements as may be prescribed;

“third-party funding contract” means a contract or agreement by a party or potential party to dispute resolution proceedings with a Third-Party funder for the funding of the costs of the proceedings;

“Third-Party Funder” means a person who carries on the business of funding the costs of dispute resolution proceedings to which the person is not a party to.”.

Related amendment to the Legal Profession Act

3. Section 107 of the Legal Profession Act (Cap. 161) is amended by inserting, immediately after subsection (3), the following subsection:

5 “(3A) To avoid doubt, this section does not prevent a solicitor from recommending to his client a Third-Party Funder or facilitating a third-party funding contract between the solicitor’s client and a Third-Party Funder as defined in section 5B of the Civil Law Act (Cap. 43), so long as the solicitor does not receive any direct financial benefit from the recommendation or facilitation.”.

EXPLANATORY STATEMENT

This Bill seeks to amend the Civil Law Act (Cap. 43) to permit the funding of the costs of certain prescribed classes or descriptions of dispute resolution proceedings by qualifying Third-Party funders. The phrase “dispute resolution proceedings” is defined to mean the entire process of resolving or attempting to resolve a dispute between 2 or more parties and includes civil, mediation, conciliation, arbitration and insolvency proceedings.

The Bill seeks to achieve the following objectives:

- (a) clarify that the common law tort of maintenance and champerty is abolished in Singapore;
- (b) clarify that in certain prescribed categories of dispute resolution proceedings, third-party funding contracts are not contrary to public policy or illegal;
- (c) provide for regulations to be made for the prescribed requirements that every Third-Party Funder has to comply with;
- (d) provide that a Third-Party Funder that fails to comply with the prescribed requirements cannot enforce its rights arising from or under the third-party funding contract;
- (e) make a related amendment to the Legal Profession Act (Cap. 161) to clarify that section 107 does not prevent a solicitor from recommending to his client a Third-Party Funder or facilitating a third-party funding contract between the solicitor’s client and a Third-Party Funder so long as the solicitor does not receive any direct financial benefit from the recommendation or facilitation.

EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.