

Client Alert

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Singapore Expected to Allow Third Party Funding for International Arbitration in Early 2017

Recent Developments

In mid-2016, the Singapore Ministry of Law conducted a public consultation on legislative amendments to introduce a legal framework for third party funding for international arbitration in Singapore. These legislative amendments were introduced in a first reading in Parliament on 7 November 2016. They are expected to be passed by Parliament shortly after the next available sitting, which is currently scheduled to take place on 9 January 2017.

This update looks at the impact of the proposed legislation on the international arbitration landscape in Singapore.

Summary of Proposed Amendments

- The proposed legislative amendments are as follows:

No.	Proposed Legislative Amendments
1.	Clarify that the common law tort of champerty and maintenance is abolished in Singapore.
2.	Provide that third party funding contracts are not contrary to public policy or illegal in certain prescribed types of dispute resolution proceedings.
3.	Impose qualifying criteria and conditions on third party funders through subsidiary legislation. Failure to comply with these criteria and conditions will preclude the third party funder from enforcing its rights under the third party funding contract.
4.	Provide that lawyers and law firms may recommend third party funders to clients or advise clients on third party funding contract, provided that the lawyers and law firms do not receive any direct financial benefit.
5.	Impose a duty on lawyers and law firms to disclose the existence of a third party funding contract and the third party funder's identity to the Singapore courts, the arbitral tribunal and to all other parties to the proceedings as soon as practicable.



No.	Proposed Legislative Amendments
6.	Provide that lawyers and law firms are prohibited from having interests in the third party funders and from receiving referral fees and commissions.

- It is proposed that third party funding would be available in the following types of dispute resolution proceedings:

No.	Dispute Resolution Proceedings where third party funding is available
1.	International arbitration proceedings.
2.	Court proceedings arising from international arbitration proceedings.
3.	Mediation proceedings arising out of international arbitration proceedings.
4.	Court application for stay of proceedings in favour of international arbitration under section 6 of the International Arbitration Act (“IAA”).
5.	Court proceedings for or in connection with the enforcement of awards under the IAA.

- The criteria and conditions proposed to be imposed on third party funders are as follows:

No.	Proposed Criteria and Conditions on Third Party Funders
1.	The third party funder carries on the principal business (in Singapore or elsewhere) of the funding of the costs of dispute resolution proceedings to which the third party funder is not a party.
2.	The third party funder has access to funds immediately within its control (including through a parent company or a subsidiary) sufficient to fund the dispute resolution proceedings in Singapore.
3.	The funds must be invested pursuant to a third party funding contract, to enable a funded party to meet the costs of the prescribed dispute resolution proceedings, including pre-action costs.



- Further, it is expected that Codes of Conduct for those involved in arbitrations funded by third parties will be promulgated to supplement the third party funding legislative framework.

Impact of Proposed Legislation

- As the business operating environment becomes increasingly challenging, the proposed legislation will enable businesses to pursue their claims in arbitration that they may otherwise not be willing to pursue if they have limited operating funds.
- Allowing third party funding for international arbitration in Singapore allows Singapore to stay competitive as a leading international arbitration hub, given that such funding is already available in other major arbitration centres around the world, including London, Paris and Geneva.
- Some of these third party funders have already begun to set up bases in Singapore in anticipation of the new legislation.

Conclusion

- We anticipate that businesses would welcome the imminent introduction of third party funding in international arbitration in Singapore as it provides them with an external source of funding of legal costs.
- We will provide further updates on the progress of the proposed legislation.
- Should you wish to discuss the impact of this development and how to manage the arbitration process favourably in a cost-efficient way, please do contact the team at Baker McKenzie Wong & Leow.

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