

## Introduction of the Civil Law (Amendment) Bill 2016

- In an effort to strengthen its position as a leading hub for international arbitration, Singapore's Ministry of Law recently submitted the Civil Law (Amendment) Bill 2016 along with the Civil Law (Third Party Funding) Regulations 2016 for consideration in Parliament.
- The bill introduces provisions for a third party to fund the arbitration proceedings of a dispute it is not connected to, and the regulations set out a framework for such third party funders.
- The third party will be able to fund international commercial arbitrations seated in Singapore.

## Purpose of Third Party Funding

- Third party funding is increasingly gaining recognition in other jurisdictions and is currently being considered in Hong Kong, Singapore's main Asian competitor.
- It increases a party's flexibility in relation to arbitration and enables entities to better manage their disputes.
- It will also enable economically disadvantaged entities with strong claims to be better positioned to pursue their proceedings.
- Even larger businesses stand to benefit as third party funding may be adopted as a cost and risk shifting strategy.

## What Does the Bill Do?

- Third party funding for dispute resolution processes is currently permitted in a number of jurisdictions, including the UK and US, but is prohibited in Singapore pursuant to common law principles of "maintenance" and "champerty" that are both considered to be tortious acts under Singapore law. "Maintenance" refers to assisting/encouraging a litigant by a person not connected to the proceedings, and having no motive recognized by law to interfere with the proceedings. "Champerty" is the act of maintenance in exchange for a promise to benefit from the outcome of the proceedings.

- The bill seeks to abolish the torts of "maintenance" and "champerty" in Singapore and clarify that third party funding of certain disputes, i.e. international commercial arbitrations, will not be considered as being contrary to public policy in Singapore.
- Scope of legitimate third party funding of proceedings will extend to court litigation and mediation arising out of international arbitration.
- The bill sets out certain conditions that an entity must satisfy in order to be recognized as a legitimate third party funder: including that funding of dispute resolution proceedings must be the 'principal business' of the entity; the third party funder must have access to funds sufficient to fund the relevant proceedings in Singapore immediately under its control; and that these funds should be invested to enable the funded party to meet the costs of the relevant proceedings.
- Lawyers may recommend third party funders to their clients or advise their clients on third party funding contracts as long as they do not receive direct financial benefit from such recommendations.
- Lawyers will also be under an obligation to promptly disclose the existence of a third party funding agreement and the identity of the third party funder to a court or arbitral tribunal and every other party to the proceedings.

## Contacts



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