

# Civil Law (Amendment) Bill

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**Bill No. 38/2016.**

*Read the first time on 7 November 2016.*

A BILL

*intituled*

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 for the purpose of funding all or part of 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, comply with and ensure that such requirements as may be prescribed under subsection (8) are complied with.

(4) Where a Third-Party Funder —

(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 5  
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.

(5) A Third-Party Funder may apply to the court or arbitral 10  
tribunal for relief against the disability imposed by  
subsection (4).

(6) The court or arbitral tribunal, on being satisfied —

(a) that the disqualification or non-compliance was 15  
accidental or due to inadvertence or some other  
sufficient cause; or

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

may grant such relief either generally, or as respects any 20  
third-party funding contract, on such conditions (if any) as the  
court or arbitral tribunal may impose, including (but not limited  
to) a condition that the costs of the application be paid by the  
Third-Party Funder.

(7) Subsection (4) does not prejudice the rights of any other 25  
party as against the Third-Party Funder in respect of a third-party  
funding contract.

(8) The Minister may make regulations necessary or 30  
convenient to be prescribed for carrying out or giving effect to  
this section, including —

(a) prescribing the qualifications and other requirements 30  
that a Third-Party Funder must satisfy or comply with  
to be a qualifying Third-Party Funder;

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

5 (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 qualifications and other requirements of a Third-Party Funder or the class or classes or description of dispute resolution 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 —

15 “arbitral tribunal” or “court” means any arbitral tribunal or 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;

20 “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;

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

30 “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 Funder” means a person who carries on the business of funding all or part of the costs of dispute resolution proceedings to which the person is not a party;

“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 all or part of the costs of the proceedings in return for a share or other interest in the proceeds or potential proceeds of the proceedings to which the party or potential party may become entitled.” 5

### **Related amendment to Legal Profession Act**

3. Section 107 of the Legal Profession Act (Cap. 161) is amended by inserting, immediately after subsection (3), the following subsections: 10

“(3A) To avoid doubt, this section does not prevent a solicitor from —

(a) introducing or referring a Third-Party Funder to the solicitor’s client, so long as the solicitor does not receive any direct financial benefit from the introduction or referral; 15

(b) advising on or drafting a third-party funding contract for the solicitor’s client or negotiating the contract on behalf of the client; and

(c) acting on behalf of the solicitor’s client in any dispute arising out of the third-party funding contract. 20

(3B) In subsection (3A) —

“direct financial benefit” does not include any fee, disbursement or expense payable by the solicitor’s client for the provision of legal services by the solicitor to the client; 25

“Third-Party Funder” and “third-party funding contract” have the same meanings as in section 5B of the Civil Law Act (Cap. 43).”

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## EXPLANATORY STATEMENT

This Bill seeks to amend the Civil Law Act (Cap. 43) to permit the funding of the costs of certain prescribed class or classes or description 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 any civil, mediation, conciliation, arbitration or insolvency proceedings.

The Bill seeks to achieve the following objectives:

- (a) to clarify that the common law tort of maintenance and champerty is abolished in Singapore;
- (b) to clarify that in certain prescribed categories of dispute resolution proceedings, third-party funding contracts are not contrary to public policy or illegal;
- (c) to provide for regulations to be made for the prescribed qualifications and other prescribed requirements that every Third-Party Funder has to comply with;
- (d) to provide that a Third-Party Funder that fails to comply with any prescribed qualification or other prescribed requirement cannot enforce its rights arising from or under the third-party funding contract;
- (e) to make a related amendment to the Legal Profession Act (Cap. 161) to clarify that section 107 of that Act does not prevent a solicitor from —
  - (i) introducing or referring a Third-Party Funder to the solicitor’s client, so long as the solicitor does not receive any direct financial benefit from the introduction or referral;
  - (ii) advising on or drafting a third-party funding contract for the solicitor’s client or negotiating the contract on behalf of the client; and
  - (iii) acting on behalf of the solicitor’s client in any dispute arising out of the third-party funding contract.

## EXPENDITURE OF PUBLIC MONEY

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

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