

Singapore Extends Scope of Permissible Third-Party Funding

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Introduction

The advancement of third-party funding as an option in commercial disputes has been a closely watched development in Singapore. While Singapore's legislation was previously amended in 2017 to allow third-party funding for international arbitration and related court and mediation proceedings, the Ministry of Law ("**MinLaw**") is set to extend its application to a wider scope of proceedings.

In a press release on 22 June 2021 (available [here](#)), MinLaw announced that third-party funding will be permitted for categories such as domestic arbitration, Singapore International Commercial Court ("**SICC**") proceedings, and related court and mediation proceedings. This will take effect from 28 June 2021.

Third-party funding is where a funder finances certain legal proceedings in exchange for a financial benefit such as a share of the damages awarded. This allows a disputant to undertake a claim it otherwise might not have had the resources to pursue. It is also relevant for pecunious disputants, in that it provides a financing option for the purpose of risk allocation or financial management. Such an option is particularly relevant in the current economic climate, where businesses are facing financial challenges and the effective balancing of finances is crucial, and where contractual disputes are increasingly common.

Disputants should be aware of third-party funding and consider its applicability or suitability in their potential claims. Rajah & Tann Singapore, with its experience with third-party funders, is well placed to advise parties on third-party funding as an option.

In this Update, we look at the new categories of proceedings in which third-party funding is allowed, as well as the related regulatory amendments.

Third-Party Funding in Singapore

In third-party funding, a third-party funder who is not involved in the proceedings will provide funds to a disputant. The funds generally cover the disputant's legal fees and expenses, and may also cover cost orders if incurred. In exchange, the funder will receive an agreed return, which is typically a share of the sums which may be recovered through the proceedings.

Third-party funding was previously regarded as prohibited pursuant to the principles of maintenance and champerty under the Civil Law Act. However, in 2015, in the case of *Re Vanguard Energy Pte Ltd* [2015] 4 SLR 597, the court allowed a funding arrangement in the context of an insolvent company seeking to pursue claims against counterparties. In 2017, Singapore's legislative framework was amended to abolish the torts of champerty and maintenance under the Civil Law Act, and to explicitly allow third-party funding for international arbitration proceedings. This also covered court and mediation proceedings arising from or in connection with international arbitration proceedings, such as enforcement proceedings and applications for stays of proceedings.

Extension of Categories

From 28 June 2021, the categories of proceedings in which third-party funding is allowed will be extended to include:

- (a) Domestic arbitration proceedings;
- (b) Court proceedings arising from or connected with domestic arbitration proceedings, such as enforcement proceedings or applications for stay of proceedings;
- (c) Proceedings commenced in the SICC;
- (d) Appeal proceedings arising from SICC decisions; and
- (e) Mediation proceedings relating to any of the proceedings above.

The extension of the permitted categories opens the doors for third-party funding in a much wider range of proceedings. The focus is still on arbitration, with domestic arbitration being included as a permitted category. However, the inclusion of SICC proceedings indicates that international commercial disputes (which is the purview of the SICC) are also deemed to be suitable for third-party funding.

Controls on Third-Party Funding

In order to regulate third-party funding and prevent any abuse of the system, restrictions and controls are imposed on third-party funding in Singapore.

For example, under the Civil Law Act and the Civil Law (Third-Party Funding) Regulations 2017, such funding can only be provided by qualified third-party funders, which are then subject to requirements on capital adequacy and access to funds. These controls will continue to apply to the new categories of proceedings.

To protect disputants in third-party funding, Singapore lawyers and regulated foreign lawyers acting in matters involving third-party funding are subject to certain restrictions in the Legal Profession (Professional Conduct)

Rules 2015. This includes restrictions on conflicts of interest and disclosure of third-party funding arrangements. These restrictions will also continue to apply to the new categories of proceedings.

In addition, since third-party funding will be permitted in certain SICC proceedings, the Legal Profession (Representation in Singapore International Commercial Court) Rules 2014 will be amended to impose similar restrictions on foreign lawyers involved in SICC proceedings.

Concluding Words

MinLaw has stated in its press release that, in light of the COVID-19 pandemic, there may be a rise in disputes and companies facing the risk of insolvency. Such financial constraints may cause disputants to forgo pursuing their legal rights. As such, third-party funding provides a solution to enable disputants to pursue meritorious claims in the above categories of proceedings.

Even for disputants who are not facing such financial constraints, third-party funding can be considered as a form of financial management. Legal proceedings can potentially entail considerable costs, with no assurance as to a successful outcome in the dispute. An arrangement with a third-party funder may thus provide a mechanism to allocate the risks involved in a dispute in exchange for a portion of the proceeds in the event of an award in favour of the disputant.

Parties may thus wish to explore third-party funding as an option for pursuing commercial claims. Disputants with queries on whether their claims fall within the permitted scope of third-party funding, whether third-party funding is suitable for their claims, and the practicalities and implications of third-party funding, may feel free to contact our team.

For further queries, please feel free to contact our team below.

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