

Our ref: LAW 32/006/070

Your ref: LS/10/RLR/KM/CON(2)/2016/ADR2.CPC2./DLT/KG/ct

7 November 2016

Mr Thio Shen Yi SC  
President  
The Law Society of Singapore  
39 South Bridge Road  
Singapore 058673

Dear *Shen Yi*,

**PUBLIC CONSULTATION ON THE DRAFT CIVIL LAW (AMENDMENT) BILL 2016  
AND CIVIL LAW (THIRD PARTY FUNDING) REGULATIONS 2016**

1. Thank you for your letter of 29 July 2016 providing feedback on the draft Civil Law (Amendment) Bill 2016 (the "Bill") and Civil Law (Third Party Funding) Regulations 2016 (the "Regulations").
2. The Society had consulted its Alternative Dispute Resolution Committee ("ADR Committee") and the Civil Practice Committee ("CP Committee") which commented on various aspects of the Bill and Regulations, which we will address in this note.

**a. Categories of prescribed dispute resolution proceedings**

3. The ADR Committee has asked if we could consider expanding the prescribed classes of dispute resolution proceedings in the Regulations to include (a) mediation proceedings arising out of or in connection with the proceedings set out in draft regulations 3(b), (d) and (e); and (b) mediation proceedings conducted prior to the commencement of international arbitration proceedings.
4. We have noted the ADR Committee's feedback and have worked closely with the legislative draftsman to incorporate these suggestions on the "prescribed classes of dispute resolution proceedings" into the Regulations.

**b. Legal Profession (Professional Conduct) Rules 2015 ("PCR")**

5. The Society has indicated that it will be happy to provide its views and suggestions on the appropriate safeguards, including any amendments to the PCR.

6. Pursuant to section 71(2) of the Legal Profession Act, the PCR is made by the Professional Conduct Council (“PCC”) chaired by the Chief Justice, the members of which include representatives from the Society. The PCC Secretariat has consulted the PCC (including representatives of the Society) on the draft amendments to the PCR.

**c. Possibility of extension of the third-party funding framework to other categories of proceedings**

7. The Society has also shared feedback from the ADR Committee and CP Committee that they are largely in favour of permitting third party funding in Singapore in connection with litigation, and domestic arbitrations governed by the Arbitration Act, subject to regulatory safeguards. The Society has also indicated that a graduated approach should be taken in expanding the third-party funding framework to include the aforementioned categories of proceedings.
8. We agree with the Society that a graduated approach should be taken in respect of any extension of the categories of dispute resolution proceedings. Initially, the proposed third party funding framework will provide that third party funding contracts for international arbitration proceedings as well as court and mediation proceedings arising out of or in connection with international arbitration proceedings are not contrary to public policy or illegal. The current intention is to cover international commercial arbitration (and related) proceedings, where we believe the greatest utility is presently. Potential extensions to other categories of proceedings will be kept under review.

**d. Feedback on Contingency Fee arrangements**

9. The Society has asked if MinLaw can review the position on contingency fee arrangements in Singapore, specifically for: (a) matters that fall under the International Arbitration Act; (b) matters that are brought for mediation before the Singapore International Mediation Centre which result in a successful mediation settlement; and (c) access to justice cases and where consent from the Council of the Law Society is given.
10. The Ministry is undertaking a broad-based review of our civil justice system. To this end, event-triggered fee arrangements, including contingency fee arrangements, will be studied. More information will be released in due course.
11. Until such time, lawyers and law firms will continue to be prohibited from entering into contingency fee arrangements. A related amendment to section 107 of the Legal Profession Act will be made to clarify that lawyers may recommend funders

to their clients so long as they do not receive direct financial benefit from the recommendation and can act for their clients in relation to any third party funding contract. This excludes any fees received for the provision of legal services by the lawyer to the client in respect of acting in the funded matter. Legal practitioners and law practices are prohibited from directly or indirectly holding any share or other ownership interest in a funder. However for this reason, s107 (deletion of which was raised in a separate email from the Society dated 29 July 2016) is being retained.

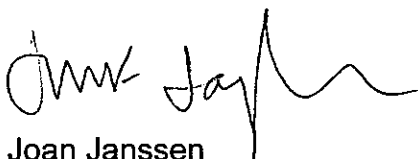
**e. Guidelines for legal practitioners**

12. By way of update, the Society may also wish to note that the proposed framework for third party funding will be supplemented by best practice guidelines for arbitrators and funders (promulgated by the Singapore International Arbitration Centre and the Singapore Institute of Arbitrators respectively) and these will give guidance on other issues that may arise from third party funding such as confidentiality, privilege, costs and withdrawal of third party funding. As part of a multi-pronged approach in enhancing the proposed framework for third party funding, we would like to invite the Society to consider whether it would be interested in working on guidelines for its members. These will help to further enhance the legislative framework for third party funding and promote Singapore's growth as a leading venue for international arbitration. If so, we will be pleased to explore this further with the Society.

**Conclusion**

13. We thank the Society for the feedback given and we look forward to working closely with the Society on the reforms.

Yours faithfully,



Joan Janssen  
2 Director-General  
Legal Group  
For Permanent Secretary  
Ministry of Law