

THE LAW SOCIETY OF SINGAPORE
COUNCIL’S GUIDANCE NOTE 5.6.1 OF 2022
CONDITIONAL FEE AGREEMENTS

1. This Guidance Note takes effect on 1 August 2022 and is issued to assist law practices and practitioners with the preparation and use of Conditional Fee Agreements for the scope of proceedings prescribed under the Legal Profession Act 1966 (“**LPA**”).
2. This Guidance Note is not intended to be the authoritative guide on Conditional Fee Agreements. Its primary aims are to facilitate the introduction of Conditional Fee Agreements to our legal landscape and proffer best practices for practitioners who elect to enter into Conditional Fee Agreements with their clients.
3. This Guidance Note does not in any way detract from a practitioner’s existing professional and ethical obligations under the Legal Profession Act 1966 and the Legal Profession (Professional Conduct) Rules 2015 (“**PCR**”).

I. INTRODUCTION

4. To strengthen Singapore’s position as an international legal and dispute resolution hub, the LPA was amended with effect from 4 May 2022 to establish a framework for Conditional Fee Agreements to be entered into between practitioners and clients in selected proceedings.

Definition of Conditional Fee Agreements

5. Section 115A(1) of the LPA defines a Conditional Fee Agreement (hereinafter “**CFA**”) as:

“An agreement relating to the whole or any part of the remuneration and costs in respect of contentious proceedings (whether relating to proceedings in Singapore or any state or territory outside Singapore) conducted by a solicitor, a foreign lawyer, or a law practice entity, which provides for the remuneration and costs or any part of them to be payable only in specified circumstances, and may provide for an uplift fee.”

6. CFAs are not Contingency Fee Agreements, which are agreements where practitioners agree to accept an agreed percentage of the sum or damages recovered by a client. The practitioner’s fee has no direct correlation to the work done, and comes out of the money awarded to the client. For the avoidance of doubt, **Contingency Fee Agreements continue to be prohibited under Singapore law** and should not be entered into.

Illustrations

Proposed Fee Structure	Nature of Agreement
Partner X’s usual hourly rate is \$500. They agree to grant the client a 30% discount and charge an hourly fee of \$350, on condition that 50% of the sum or damages awarded to the client is paid to Partner X in the event of a successful outcome (“ Success Fee ”).	Payment of the Success Fee is contingent on the outcome of the case and is calculated as a percentage of the sum or damages awarded to the client. This is a form of a Contingency Fee Agreement which remains prohibited under existing Singapore law.
Partner X’s usual hourly rate is \$500. They agree to grant the client a 30% discount and charge an hourly fee of \$350, on condition that in the event of a successful outcome, the client will pay an “Uplift Fee” amounting to 150% of	The Uplift Fee is calculated based on the practitioner’s hourly rate of remuneration and is unrelated to the sum or quantum of damages awarded to the client. This would be considered a Conditional Fee

the usual hourly rate (i.e. \$750).	Agreement which is now permitted under Singapore law for a prescribed scope of proceedings.
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7. For Non-Refundable Deposits or Retainers, practitioners may refer to The Law Society of Singapore Practice Direction 5.2.2 (Non-Refundable Deposit or Retainer). As of the date of this Guidance Note, there is no impediment to usual payment practices, such as the collection of deposits for fees. However, practitioners should note that **no deposit should be collected for the uplifted portion**, which depends on the triggering of a condition which will take place on a future occasion.¹

Use of Conditional Fee Agreements

8. Section 115A(1) of the LPA limits the use of CFAs to specified categories of “prescribed proceedings”. In broad terms, these include:

- (a) International and domestic arbitration proceedings;
- (b) Certain proceedings in the Singapore International Commercial Court (“**SICC**”); and
- (c) Court and mediation proceedings related to the above.²

9. Regulation 3 of the Legal Profession (Conditional Fee Agreement) Regulations 2022 (“**CFA Regulations**”) sets out the list of “prescribed proceedings” in which a CFA may be used. We recommend that practitioners familiarise themselves with this provision, as well as Section 115B(6) of the LPA which further clarifies the scope of work that a CFA can cover.

10. As CFAs are not intended to replace traditional fee structures, practitioners and clients may agree on a traditional fee structure to apply for one area of work, and a CFA to apply for another. This means that practitioners and clients are at liberty to agree on a combination of both fee structures, subject to the requirements set out in the LPA.³

Types of Conditional Fee Agreements

11. A CFA can take different forms, which include:

- (i) “No win, no fee”; and
- (ii) “No win, less fee.

12. In a “no win, no fee” CFA, professional fees and the agreed uplift fee (if applicable) are only payable by the client in specified circumstances. In other words, **no professional fees will be payable if the specified circumstances are not met**.

13. In a “no win, less fee” CFA, professional fees and the agreed uplift fee (if applicable) are payable by the client in specified circumstances. **In the event the specified circumstances are not met, a discounted professional fee (as agreed in the CFA) will be payable by the client.**

14. There are no prescriptive guidelines as to which type of CFA is best for different proceedings. This would be a point of contractual negotiation between a practitioner and their client. However, practitioners should take into account and assess the commercial risks of a matter (e.g. whether the prospects of achieving the specified circumstances are highly unlikely) in determining what type of CFA to use.

II. ENTERING INTO A CONDITIONAL FEE AGREEMENT

¹ Second Reading dated 12 January 2022 by Second Minister for Law, Mr Edwin Tong, on the Legal Profession (Amendment) Bill [Parliament No. 14, Session No. 1, Volume No. 95, Sitting No. 46]

² Ibid.

³ *Supra* note 2.

Structuring a CFA

15. Regulations 4 and 5 of the CFA Regulations prescribe the information, as well as terms and conditions to be included in a CFA.

16. To mitigate the risk of disputes on whether a CFA has been structured in accordance with the CFA Regulations, a sample CFA is set out in **Annex A** of this Guidance Note for a practitioner's use and modification.

17. Regulation 4(2)(b) of the CFA Regulations states that a client has the right to seek independent legal advice before entering into a CFA. We recommend that practitioners remind their clients of this right which includes the negotiations surrounding the specified circumstances set out within the CFA as well as the Uplift Fee.

18. A breakdown of the sample CFA set out in **Annex A** of this Guidance Note is set out below and includes a summary of topics a practitioner may encounter when preparing a CFA. Where applicable, references to relevant professional and ethical duties are made alongside the guidance proposed by the Law Society.

Section A: Scope of Work

Topic	Relevant Professional and Ethical Duties (Non-Exhaustive)	Guidance
Scope of the CFA	<ul style="list-style-type: none">- To determine whether a CFA can be made, practitioners should first refer to Regulation 3 of the CFA Regulations for the list of "prescribed proceedings".- The CFA should address whether the CFA's scope extends to appeals, enforcement, special interlocutory applications (e.g. application for interim injunctions, interim payments), and setting aside proceedings.	Please refer to the provisions within the CFA Regulations.

Section B: Payment to Us

Topic	Relevant Professional and Ethical Duties (Non-Exhaustive)	Guidance
Charging of Professional Costs	<ul style="list-style-type: none">- As the CFA forms part of the contract between the practitioner and client, the following documents should be attached to the CFA as Annexes and retained as one set:<ul style="list-style-type: none">(a) The Letter of Engagement / Terms of Business (whichever is appropriate); and(b) The Warrant to Act.- As the CFA is part of the contract between the practitioner and the client, practitioners should ensure that the terms of the CFA, Letter of Engagement / Terms	<p>Compliance with the general principles set out in the Legal Profession Act 1966, the Legal Profession (Solicitor's Remuneration) Order, and the PCR is to continue at all times.</p> <p>Practitioners should also keep in mind the Court's ability to review the enforceability of a CFA under Section 115D of the LPA.</p>

	<p>of Business (whichever is appropriate), and the Warrant to Act are consistent. Practitioners should also take care to specify which document takes precedence in the event of any conflict or inconsistency.</p> <ul style="list-style-type: none"> - In the CFA, reference to the deposit of fees agreed under the letter of engagement may be expressly made within the CFA, reminding clients that they may be asked to provide further deposits as the matter progresses. To reiterate, no deposit should be collected for the uplift portion, which depends on the triggering of a condition which will take place on a future occasion. - As with the Letter of Engagement, the CFA must clearly state whether the fees quoted are exclusive of disbursements and GST. 	
<p>Specified Circumstances</p>	<ul style="list-style-type: none"> - The CFA must clearly set out and define the circumstances that would constitute a successful outcome of the matter. This should account for whether reaching a settlement, obtaining certain cost orders, a mediated outcome, partial success, or early resolution of the proceedings constitute a successful outcome from the client's informed perspective. - The CFA should account for situations where Offer(s) to Settle are rejected and the client's claim proceeds to a hearing where they recover damages that are less than the Offer to Settle. The CFA should provide for how the practitioner would charge for work performed in these circumstances. - The CFA must not provide for the remuneration or costs to be payable as a percentage or proportion of the amount of damages or other amounts awarded to or recovered by the client in any contentious proceedings.⁴ - To mitigate the risk of a dispute, it is recommended that this portion of the CFA be as detailed as possible so that clients have a clear understanding of their fee payment obligations, and what specified circumstances would trigger those fee payment obligations. 	<p>Take reasonable steps to facilitate the client's understanding of the specified circumstances set out in the CFA.</p>

⁴ Section 115B(4)(b) of the LPA

<p>Uplift Fee (Optional)</p>	<ul style="list-style-type: none"> - Practitioners and clients have the option of negotiating and agreeing on an “Uplift Fee”⁵ which is payable in circumstances to be specified in the CFA. - If an Uplift Fee is agreed upon between the practitioner and the client, the particulars of the basis of calculation of the Uplift Fee, and an estimate or range of estimates of the resulting quantum of the Uplift Fee must be set out within the CFA in accordance with Regulation 5(b) of the CFA Regulations. - Current legislation does not impose a cap on the Uplift Fee and Parties are at liberty to negotiate this point with due consideration to be provided to the commercial risks of the matter. - To mitigate the risk of complaints on overcharging, practitioners may wish to consider capping their Uplift Fee. For reference, the following caps are (at the date of this Guidance Note) generally adopted in other jurisdictions: <ul style="list-style-type: none"> (a) England and Wales – 100% of normal professional costs (excluding disbursements); (b) Australia (New South Wales) – 25% of normal professional costs (excluding disbursements). <p><u>Important Notes:</u></p> <ul style="list-style-type: none"> - Practitioners are reminded that the CFA should not run afoul of Section 115C of the LPA which states that the Uplift Fee <u>cannot</u> be recovered as party and party costs by the client entering into the CFA. - Should the Uplift Fee exclude unpaid disbursements, this ought to be set out clearly within the CFA for clarity. 	<p>The charging of an Uplift Fee does not detract from a practitioner’s ethical obligations set out in Rule 17 of the PCR.</p>
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Section C: Cooling Off Period

Topic	Relevant Professional and Ethical Duties (Non-Exhaustive)	Guidance
<p>Cooling Off Period</p>	<ul style="list-style-type: none"> - Practitioners are to ensure compliance with the cooling-off periods mandated in Regulations 5 (c) and (e) of the CFA Regulations. 	

⁵ Section 115A(1) of the LPA defines an “Uplift Fee” as remuneration or costs which are higher than the remuneration or costs that would otherwise be payable if there was no CFA.

	- Cost consequences of terminating the CFA within the cooling-off periods should be clearly set out and agreed upon.	
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III. CONFIDENTIALITY

19. Practitioners should neither prohibit their clients from disclosing the CFA for the purposes of obtaining independent legal advice under Regulation 4(2)(b) of the CFA Regulations, nor prohibit their clients from disclosing the CFA to third-party funders who satisfy the qualifying requirements set out in Regulation 4 of the Civil Law (Third-Party Funding) Regulations 2017.

20. Practitioners are to continue acting in accordance with the confidentiality obligations set out in the PCR.

IV. TERMINATION OF CONDITIONAL FEE AGREEMENTS

21. Apart from the parties terminating a CFA during the cooling-off periods set out within Regulations 5 (c) and (e) of the CFA Regulations, it is recommended that practitioners enter into a new CFA with a client if they leave their law practice for another. All contractual, fiduciary, and confidentiality obligations that the departing practitioner may owe to the law practice they are leaving still apply.

22. To mitigate the risk of disputes, the CFA should clearly and expressly provide for cost consequences in the event the CFA is terminated before the specified circumstances are achieved.

23. Practitioners may decide whether to include a mutual termination clause within the CFA to provide for the termination of the CFA outside of the mandated cooling-off periods.

Date: 1 August 2022

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE

ANNEX A

Sample Conditional Fee Agreement

1. This document, together with our (*letter of engagement or terms of business*), forms a binding legal contract between you and our law practice pursuant to Part 8A of the Legal Profession Act 1966 (“LPA”) and the Legal Profession (Conditional Fee Agreement) Regulations 2022 (“Regulations”).
2. Regulation 4(2)(b) of the Regulations grants you the right to seek independent legal advice on this document before entering into it. We, therefore, recommend that you review this document carefully and seek independent legal advice should you wish to do so, prior to signing.

A. Scope of Conditional Fee Agreement

3. You have instructed us to act for you in (*insert type of prescribed proceeding under Regulation 3 of the Regulations*) (“**the Proceeding**”). This Proceeding falls within the definition of “prescribed proceedings” under section 115A(1) of the LPA read with Regulation 3 of the Regulations, for which a Conditional Fee Agreement may be made.
4. This Conditional Fee Agreement covers:

[Example:

The Proceeding, but it does not cover any appeal against any judgment or final order made in the Proceeding and any proceedings in connection with the enforcement of a judgment or final order made in the Proceeding.

OR

the Proceeding, but it does not cover any proceedings in connection with the enforcement or setting aside of any arbitral award made in the Proceeding].

5. This Conditional Fee Agreement does not cover:

[Example:

Any counterclaim against you].

B. Payment to Us

6. The details of the charging of our professional costs are set out in our (*letter of engagement or terms of business*).
7. We will be entitled to receive payment of our professional costs (as stipulated below) from you in the following specified circumstances:

[XX]

[Example:

Where you achieve a specified circumstance in the Proceeding which, as agreed with you, is (*insert details*), we will be entitled to receive (*insert %*) of our professional costs.)]

8. If the agreed specified circumstance is not achieved in the Proceeding, we will be entitled to (*a lower fee or a fixed fee or no fee, or our Basic Professional Costs*).
9. Uplift Fee (*optional*)

- 9.1 [Example:

Where you achieve a specified circumstance in the Proceeding which, as agreed with you, is (*insert details*), we will charge an additional “uplift” on our professional costs (“**Uplift Fee**”).

OR

Where you achieve a specified circumstance in the Proceeding which, as agreed with you, is

(insert details), we will charge:

- (a) The professional costs that will normally be charged if there was no Conditional Fee Agreement (“**Basic Professional Costs**”); and
- (b) An additional “uplift” of [x%] on our Basic Professional Costs (“**Uplift Fee**”).]

[*Note to Practitioners:*

Any amount of professional costs exceeding 100% of the Basic Professional Costs shall be considered an Uplift Fee as defined in Section 115A(1) of the LPA]

- 9.2 The Uplift Fee is set at (insert %) of our [Basic Professional Costs] if the agreed specified circumstance is achieved during, or at the conclusion of, the hearing of the Proceeding, or (insert %) if the agreed specified circumstance is achieved before the hearing of the Proceeding.

AND

The Uplift Fee is estimated to be:

- (a) (insert amount) or between (insert amount) and (insert amount) if the agreed specified outcome is achieved during, or at the conclusion of, the hearing of the Proceeding; or
- (b) (insert amount) or between (insert amount) and (insert amount) if the agreed specified outcome is achieved before the hearing of the Proceeding.

We will advise you of any change in circumstances which may cause a substantial variation of the above estimate(s).

- 9.3 Further particulars of the basis of our calculation of the Uplift Fee or the estimate or range of estimates of the Uplift Fee are as follows: (insert details).
- 9.4 This Uplift Fee cannot be recovered from your opponent and you remain personally responsible for paying us the Uplift Fee in full, if the agreed specified outcome is achieved in the Proceeding, regardless of any order for costs made against any other party.
- 9.5 If the agreed specified outcome is not achieved in the Proceeding, we will be entitled to (a lower fee or a fixed fee or no fee, or our Basic Professional Costs).
- 9.6 For the avoidance of doubt, you will continue to be obliged to pay in full the cost of all disbursements incurred in connection with the Proceeding. Disbursements are sums we have to pay to others and which are necessary for or assist in, the conduct of the Proceeding. Disbursements include, for example, experts' fees, court fees and travelling expenses.

C. Cooling off period and termination

10. Either you or our law practice may by written notice terminate this Conditional Fee Agreement, within five (5) days immediately after the date this Conditional Fee Agreement is entered into. If you terminate this Conditional Fee Agreement within the 5-day cooling off period, we will only charge you our professional costs (excluding any uplift fee) for services performed during the cooling-off period that was expressly instructed by or agreed to by you.
11. After this Conditional Fee Agreement is entered into, it may subsequently be varied only with the written consent of you and our law practice. Such variation may include the particulars set out in Section B. Either you or our law practice may by written notice terminate the variation agreement, within three (3) days immediately after the date the variation agreement is entered into. If you terminate the variation agreement within the 3-day cooling off period, we will only charge you our professional costs (excluding any uplift fee) for services performed during the cooling-off period that was expressly instructed by or agreed to by you.

[*Note to Practitioners:*

To mitigate the risk of disputes, practitioners are advised to also set out the cost consequences that may apply in the event the CFA is terminated before specified circumstances are achieved. This may include clarification that professional costs (excluding any uplift fee) for services performed up to the point of the CFA's termination may be chargeable.]

12. By signing this document, you have entered into a Conditional Fee Agreement with our law practice. This means that you will be bound by the terms and conditions in this Conditional Fee Agreement, including being billed in accordance with it.

D. Governing Law and Dispute Resolution

13. This Conditional Fee Agreement shall be governed by and construed in accordance with the laws of the Republic of Singapore.
14. All disputes, controversies, or differences (“**Dispute**”) arising out of or in connection with this Conditional Fee Agreement, including any questions regarding its existence, validity, or termination, shall first be referred to mediation in Singapore, in accordance with the Law Society Mediation Rules for the time being in force. In the event that the Dispute cannot be resolved in mediation within the time agreed by the Parties, the Parties shall refer the dispute to arbitration in Singapore in accordance with the Law Society Arbitration Scheme and the rules thereunder for the time being in force.

Signed by the client:
Date:

Signed by the law practice:
Date:

Acknowledgement

You acknowledge that our law practice has informed you of the following:

- (a) the nature and operation of this Conditional Fee Agreement, including but not limited to the terms stated herein;
- (b) the uplift fee (if any) is not recoverable from the person mentioned in Section 115C(1) of the LPA.
- (c) your right to seek independent legal advice before entering into this Conditional Fee Agreement; and
- (d) despite this Conditional Fee Agreement, you will continue to be liable for any costs orders that may be made against you by a court of justice or an arbitral tribunal (whichever is relevant).

Signed by the client:
Date: