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## Hong Kong and Singapore usher in a brave new world of third party funding with flexible regulatory frameworks

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Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Ordinance 2017 (Hong Kong)

Arbitration Ordinance (Hong Kong)

Mediation Ordinance (Hong Kong)

Civil Law (Amendment) Act 2017 (Singapore)

Civil Law (Third-Party Funding) Regulations 2017 (Singapore)

Legal Profession (Professional Conduct) (Amendment) Rules 2017 (Singapore)

### \*Int. A.L.R. 132 1. Introduction

On 23 June 2017, Hong Kong gazetted legislation<sup>1</sup> expressly allowing third-party funding (Funding) of arbitration, mediation, and associated court proceedings. Alongside Singapore<sup>2</sup> this places Hong Kong at the cutting edge of developing a regulatory framework for this new and controversial area.<sup>3</sup>

These legislative developments address the tension between Hong Kong and Singapore's status as leading centres for international arbitration, and current case law<sup>4</sup> confirming that the common law doctrines of maintenance and champerty and illegality for reasons of public policy (all of which may prohibit Funding), subsist in these jurisdictions. The legislation modifies or exempts the application of the existing common law prohibitions (without abolishing any of the subsisting common law doctrines) in the context of international arbitration and related mediation and court processes, and beyond.<sup>5</sup>

Hong Kong and Singapore have elected to enact flexible regulatory frameworks seeking to balance the certainty needed in accommodating Funding in international arbitration, while responding to risks arising in this rapidly developing industry.

## 2. Hong Kong legislation

### 2.1 Implementation of the legislation

The Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Ordinance 2017 (TPFAO), was gazetted on 23 June 2017<sup>6</sup> but is not yet fully in effect. It amends Hong Kong's Arbitration Ordinance (Cap. 609) (HKAO) and Mediation Ordinance (Cap. 620) (HKMO) to implement Hong Kong's regulatory framework for Funding in arbitration, mediation, and associated court proceedings. It also facilitates the development of a proposed future "Code of Practice" to form an integral part of the regulatory framework. A draft Code of Practice has been prepared,<sup>7</sup> and awaits public consultation.

Following the TPFAO and code of Practice coming fully into effect, the Hong Kong Government has agreed "in principle" to an initial three year "light touch" approach in line with international practice.<sup>8</sup>

### 2.2 Structure of the legislation

The TPFAO sets out its legislative purpose in Division 1(s.98E), in quite conservative terms, namely to:

"ensure that third party funding of arbitration is not prohibited by particular common law doctrines" (emphasis added); and

"provide for measures and safeguards in relation to third party funding of arbitration".

This reflects the continuing existence of maintenance and champerty as common law doctrines in Hong Kong which are not abolished, but are exempted in their application to "arbitration". This section on statutory "purpose" will likely be taken into account in the interpretation of the legislation generally.

Division 2 sets out the definitions and interpretation provisions, followed by Division 3 (not initially in force), which provides for the exemptions regarding the tort and common law offences of maintenance and champerty, in specified circumstances Division 4, dealing with the Code of Practice, and finally Division 5, which sets in place "Other Measures and Safeguards \*Int. A.L.R. 133 " relating to confidentiality and disclosures.

### 2.3 Division 2 — Interpretation

In the context of Funding and TPFAO, a discussion on definitions and interpretation is critical. The international arbitration community has discussed the need to provide appropriate definitions to allow proper categorisation and consistent treatment of the wide variety of Funding structures that exist.<sup>9</sup> As the TPFAO provides exemptions for Funding only in the context of "arbitration" it is essential to determine the precise scope of this "carve-out" from the common law doctrines.

Hong Kong, taking a broader approach than Singapore,<sup>10</sup> allows Funding for all arbitrations, both "domestic" and "international". In addition, the definition of "arbitration", under the HKAO (new Pt 10A), is extended to include court proceedings covered under the HKAO, proceedings before an emergency arbitrator, and mediation proceedings.<sup>11</sup>

The New HKAO Pt 10A provides a complex, interlocking definition of Funding, in several parts:

"Third party funding of arbitration is the provision of arbitration funding for arbitration —  
under a funding agreement;

to a funded party;

by a third party funder; and

in return for the third party funder receiving a financial benefit only if the arbitration is successful within the meaning of the funding agreement"

(emphasis added)

Each part of this definition must be read alongside the others. While each component has a potentially broad scope,<sup>12</sup> the legislation only affords protection when all components intersect and overlap.

Importantly, the definitions:

require the "funding agreement" to be in writing, and entered into after the commencement date of Division 3 (which has not yet occurred)<sup>13</sup>;

identify a "funded party" as a party to an "arbitration" (or one that is likely to be or has been such a party)<sup>14</sup>; and

identify a "third party funder" as one who does not have an interest in the arbitration<sup>15</sup> recognised by law other than under the funding agreement.<sup>16</sup>

It is currently unclear what will constitute an "interest recognised by law", and this may be the subject of future judicial clarification, particularly as to whether such an interest may extend to contractual or financial interests in the outcome of the arbitration.

### 2.4 Division 3 — Allowing Funding in Arbitration

The main operative provision of the TPFAO states that the torts and common law offences of maintenance and champerty do not apply to Funding in "arbitration",<sup>17</sup> whether seated in Hong Kong or not.<sup>18</sup> This enables Hong Kong entities to provide Funding in support of arbitrations in other jurisdictions.

However, the TPFAO adds s.98M to the HKAO, providing that no rule of law regarding a contract being treated as "contrary to public policy or otherwise illegal" is affected.

This reservation regarding "public policy" and illegality is potentially significant:

In *Unruh v Seeberger*,<sup>19</sup> the Court of Final Appeal suggested that a Funding arrangement might be against public policy if, on the "the totality of the facts", the arrangement "posed a genuine risk to the court's processes"<sup>20</sup>; and

Both the HKAO<sup>21</sup> and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958)<sup>22</sup> provide that an award may not be recognised or enforced if it is against public policy.

Therefore, despite the TPFAO, there may still be some Funding arrangements which could be considered "contrary to public policy or otherwise illegal" and outside the protection of the TPFAO. This accords with the "purpose" of the TPFAO, and may enhance the enforceability of the Code of Practice and confidentiality and disclosure requirements considered below. It appears to provide tribunals and courts with an ability to strike down Funding arrangements which violate the Code of Practice or other applicable standards to such an extent that they can be considered against "public policy" by pos \*Int. A.L.R. 134 ing a "genuine risk to the court's processes".

Under the TPFAO, lawyers (or those in a lawyer's practice)<sup>23</sup> cannot directly provide Funding where they are acting for one of the parties in the relevant "arbitration".<sup>24</sup> The door may be left open for law firms to, in future, provide Funding services in "arbitration" for parties that they do not act for.<sup>25</sup>

## 2.5 Division 4 — Code of Practice

An integral part of the TPFAO regulatory framework is to be the Code of Practice, which is still in draft (Draft Code).<sup>26</sup> The TPFAO provides the framework for implementation of the Code of Practice,<sup>27</sup> including guidelines on the types of provisions it should contain.<sup>28</sup>

The Code of Practice is to be developed, issued, revoked or amended (as necessary) by an "authorized body"<sup>29</sup> and administered with reference to an "advisory body".<sup>30</sup> It is anticipated<sup>31</sup> that (at least initially) both functions will be fulfilled by the Advisory Committee on the Promotion of Arbitration (established by Department of Justice in 2014).<sup>32</sup> Both the "authorized body" and the "advisory body" are to be appointed by the Secretary for Justice by notice published in the Gazette (New HKAO Pt 10A s.98X).

The Draft Code suggests that the final version of the Code of Practice will focus on the standards that "third party funders" are ordinarily expected to adopt when carrying out activities in connection with Funding for "arbitration". The Draft Code runs to eight pages,<sup>33</sup> including important provisions on:

Promotional material — which must be clear and not misleading;

Funding arrangements — which must clearly set out the key features, risks and terms, including: undertakings that the "third party funder" must not seek to control or direct the "funded party";

the extent to which "third party funders" will be liable for adverse costs orders, insurance premiums, security for costs and other financial liabilities; and

the basis on which the Funding arrangements may be terminated (e.g. "third party funders" may not have a discretionary right to terminate, and may only terminate in certain specified reasonable circumstances).

Capital adequacy — the "third party funder" must be able to pay all debts as they become due and payable, cover aggregate funding liabilities under all Funding agreements for a minimum of 36 months, and maintain access to a minimum of HK \$20 million of capital;

Conflicts of interest — the "third party funder" must have effective procedures for addressing potential, actual, or perceived conflicts of interest for the protection of "funded parties";

Complaints — the "third party funder" must have effective procedures for addressing complaints by "funded parties" and which allow "funded parties" to obtain and enforce meaningful remedies;

Audit and Supervision — the "third party funder" must submit annual returns to the "advisory" body, including:

Any complaints by "funded parties"; and

Any findings by a court or tribunal of a failure to comply with the Code of Practice or Division 5 of the TPFAO.<sup>34</sup>

The Draft Code generally appears to impose strict requirements on a "third party funder" and seeks to protect "funded parties".

Failure to comply with a provision of the Code of Practice does not, of itself, constitute a breach of the TPFAO. However, any failure to comply with the Code of Practice will be taken into account by a court or tribunal if it is "relevant to the question being decided".<sup>35</sup> While the meaning of these words will be subject to judicial interpretation, they will likely relate to whether the Funding arrangements will be considered "contrary to public policy" and therefore unenforceable, as foreshadowed above.

## 2.6 Division 5 — Confidentiality and Disclosures

As both the HKAO and HKMO contain statutory protections for the confidentiality of information relating to arbitration and mediation respectively, the TPFAO provides exceptions to allow information to be communicated to "third party funders".<sup>36</sup>

New HKAO Part 10A ss.98U and 98V regulate disclosures to other parties in the "arbitration" of the fact of "third party funding". The "funded party" must give written notice<sup>37</sup> to the other parties and the "arbitration body"<sup>38</sup> that a "funding agreement" has been made and provide the name of the "third party funder". A similar notice must be given when the "funding agreement" ends.<sup>39</sup>

Failure to comply with Division 5 does not, of itself, render any person liable to any sanction. However, it may be taken into account by a court or tribunal if it is relevant to the question being decided.<sup>40</sup>

## 3. Singapore legislation

Having launched its public consultation on Funding only in June 2016,<sup>41</sup> Singapore raced ahead to become the first Asian jurisdiction to enact specific legislation in the area, with the amending legislation passed into law by Parliament on 10 January 2017,<sup>42</sup> coming into full effect on 1 March 2017.<sup>43</sup> The Singapore government specifically identified the need to

"level the playing field so that international businesses that arbitrate in Singapore are able to make use of the financing and risk management tools available to them in other major arbitration centres".<sup>44</sup>

The structure of Singapore's new regime on Funding shares some commonalities with its Hong Kong counterpart (albeit with a few key differences discussed below):

the principal legislation, the Civil Law (Amendment) Act 2017 (CLAA), addresses the common law torts of maintenance and champerty and the general legality of Funding contracts;

subsidiary legislation in the form of the Civil Law (Third-Party Funding) Regulations 2017 (Regulations) defines a "carve-out" for international arbitration; and

the Legal Profession (Professional Conduct) (Amendment) Rules 2017 (PCR) impose specific duties on legal practitioners.

An additional feature in Singapore has been the promulgation of complementary "soft regulation" in the form of guidelines and practice notes from stakeholders, namely the Singapore Institute of Arbitrators (SIARB), Singapore Law Society and Singapore International Arbitration Centre (SIAC).

### 3.2 The Civil Law (Amendment) Act 2017

While the Hong Kong regime exempts operation of the common law torts of maintenance and champerty in respect of Funding in "arbitration", the Singapore legislation<sup>45</sup> abolishes the torts<sup>46</sup> in their entirety. At the same time, the CLAA provides that Funding contracts may be unenforceable on the basis that they are contrary to public policy and, thereby, illegal.<sup>47</sup> The statute then creates a defined "carve-out" for Funding contracts involving a "qualifying Third-Party Funder" in "prescribed dispute resolution proceedings".<sup>48</sup>

### 3.3 Civil Law (Third-Party Funding) Regulations 2017

The legality of Funding contracts in Singapore turns on whether: the funding relates to "prescribed dispute resolution proceedings"; and the funder \*Int. A.L.R. 136 is a "qualifying Third-Party Funder".

Prescribed Dispute Resolution Proceedings: At present, only Funding contracts for international arbitration or related court and mediation proceedings are enforceable.<sup>49</sup> Domestic arbitration, and other proceedings unconnected with international arbitration, including proceedings before the Singapore International Commercial Court continue to be out of bounds for Funding. In contrast, Hong Kong allows Funding of all arbitration, mediation (whether connected to an arbitration or not) and associated court proceedings. The Singapore government has however indicated their intention to "allow the framework to be tested within a limited sphere by parties of commercial sophistication" while foreshadowing the likelihood that the "framework may be broadened in future after a period of assessment".<sup>50</sup>

Qualifying Third-Party Funder: The funder-specific regulations are directed at limiting the provision of Funding to well-capitalised, professional third-party funders. To qualify, the funder must: carry on the principal business of funding claims, whether in Singapore or elsewhere; and have at least SG \$5 million<sup>51</sup> in paid-up share capital or managed assets.<sup>52</sup>

Like in Hong Kong, failure to comply with these requirements is not actionable per se, but may affect the enforceability of the relevant Funding contract by the funder (without affecting the rights of the funded party to enforce as against the funder). Interestingly, the Singapore regime provides a potential "escape clause" for a non-compliant funder, who can apply to a court or arbitral tribunal to enforce its Funding contract on the ground that the non-compliance was due to "inadvertence or some other sufficient cause" or that it is otherwise "just and equitable" for the Funding contract to be enforced.<sup>53</sup>

Two further features of the Singapore regime, vis-à-vis Hong Kong, are apposite to note:

As Hong Kong does with its Code of Practice, Singapore's regime leaves much of the finer detail to the Regulations. Singapore's Regulations come directly under the purview of the Minister for Law,<sup>54</sup> as distinct from the more formal process for amendments of Hong Kong's Code of Practice. Although a further round of industry consultation is likely, this streamlined process allows the Singapore government to act relatively swiftly in refining the framework during its initial years;

Compared with Hong Kong's Draft Code, Singapore's Regulations (which span just four sections, over three pages), adopt a superficially more "light touch" approach. Notably, the Regulations do not venture into prescribing requirements for the Funding contract itself, a matter which has been left to users and supplementation by "soft regulations" by industry stakeholders (see further below).

### 3.4 Legal Profession (Professional Conduct) (Amendment) Rules 2017

The amendments to Singapore's PCR, which regulates the professional conduct of legal practitioners, are primarily aimed at averting conflicts of interest by:

imposing on legal practitioners a duty to notify all parties to the dispute resolution proceedings before a court or tribunal of the existence of any Funding contract related to the proceedings along with the identity of the relevant funder<sup>55</sup>; and

setting out the boundaries of any financial or fiduciary relationship that a legal practitioner may have with a funder, e.g. lawyers are permitted to refer a third-party funder to their clients but are prohibited from receiving any direct financial benefit from such a referral.<sup>56</sup>

### 3.5 "Soft regulation"

Singapore's approach to Funding regulation presently envisages the use of "industry-promulgated guidelines or best practices" by stakeholders best positioned to closely monitor developments.<sup>57</sup> Two key institutions within the Singapore arbitration community have already published such guidelines. It is understood that the Singapore Law Society will also be publishing a set of complementary guidelines setting out best practices for lawyers and their duties in connection with Funding.

The SIAC issued a Practice Note on Arbitrator Conduct in Cases Involving External Funding (SIAC Practice Note).<sup>58</sup> This Practice Note gives guidance, inter alia, to arbitrators regarding Funding. The \*Int. A.L.R. 137 key provisions of the SIAC Practice Note:

set out obligations of disclosure for arbitrators with regard to any relationship with a funder involved in a case<sup>59</sup>;

clarify that an arbitral tribunal has the power to order disclosure of the existence of a Funding relationship, including the identity of the funder, details of its interest in the outcome of the proceedings and whether it has committed to undertake any adverse costs liability<sup>60</sup>; and

clarify when the involvement of a funder may or may not be taken into account in relation to the merits of the case, e.g. that fact that a party is funded alone should not be taken as indication of its financial health, particularly in the context of a security for costs application,<sup>61</sup> but a Funding arrangement may be taken into account when apportioning costs.<sup>62</sup>

The SI Arb has issued Guidelines for Third Party Funders (SI Arb Guidelines) "to promote best practices among Funders" by setting "expectations of transparency and accountability" and "high ethical standards".<sup>63</sup> The SI Arb Guidelines cover a full spectrum of best practices that ought to be observed by a funder, including, inter alia, to:

take reasonable steps prior to the execution of a Funding agreement to:

ensure it has met the relevant statutory qualifications;

advise the prospective funded party to obtain independent legal advice on the terms of the Funding agreement; and

satisfy itself on the absence of any conflicts of interest<sup>64</sup>;

ensure that its marketing and publicity materials are not false or misleading<sup>65</sup>;

ensure that the Funding agreement itself meets certain essential criteria, such as:

indicating the amount of Funding and agreed investment return; and

setting out whether the funder is liable for any adverse costs, insurance premiums or security for costs;

ensure that it is audited regularly and maintains access to the adequate financial resources to meet its obligations<sup>66</sup>;

observe and maintain the confidentiality and/or privileged nature of any information or documents<sup>67</sup>;

abide by strict conflicts of interest rules<sup>68</sup>; and

not influence the funded party's legal practitioner to "cede control or conduct" except to the extent expressly permitted by Funding agreement.<sup>69</sup>

While the Singapore Law Society has not formally published its Funding Guidance Note, it is understood that draft guidelines are in existence and undergoing a process of internal review and refinement.<sup>70</sup>

### 4. Comparison and conclusion

Comparing the approaches taken by Hong Kong and Singapore, it can be seen that both jurisdictions have created flexible frameworks, where the operative parts of the regulations can be changed relatively quickly without the need for time consuming legislative processes. In Singapore, this is done

through subsidiary legislation made by the Minister for Law. In Hong Kong, this will primarily be done through amendments to the Code of Conduct (with the involvement of the "authorized body" and "advisory body"). In both jurisdictions, the courts may eventually be called upon to clarify key aspects of the legislation, particularly in relation to questions of "public policy".

In the immediate term, Singapore appears to have taken a "lighter touch" to regulation than Hong Kong, leaving many questions addressed by Hong Kong's Draft Code to be dealt with by recommendations of stakeholders. That said, Hong Kong's implementation of its Funding measures also involves an initial "light touch" period of three years, during which refinement and development of the regulatory approach is expected.

Clearly, the authorities in both jurisdictions have a sophisticated approach to Funding and are fully aware of the risks and controversies it entails. Both jurisdictions have shown their ability to adapt quickly to adopt measures consistent with the expectations of arbitration users, while staying flexible in their ability to intervene promptly to stay abreast of rapid development *Int. A.L.R.* 138 s in the market for third party funding of international arbitration.

*Int. A.L.R.* 2017, 20(4), 132-137

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1. The Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Ordinance 2017.
  2. Singapore's Civil Law (Amendment) Act 2017 and the Civil Law (Third-Party Funding) Regulations 2017 came into effect on 1 March 2017.
  3. von Goeler, *Third Party Funding in International Arbitration and its Impact on Procedure* (Wolters Kluwer, 2016), pp.74–75; Bao, "Third Party Funding in Singapore and Hong Kong: The Next Chapter" (2017) 34 *J. Int. Arb.* 387; Ng, "The Role of the Doctrines of Champerty and Maintenance in Arbitration" (2010) 76 *Arb.* 208, 208; Shahdadpuri, "Third-Party funding in International Arbitration: Regulating the Treacherous Trajectory" (2016) 12(2) *AIJA* 77; Hong Kong Legislative Council Brief: Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Bill 2016 (File Ref.: LP 19/00/16C), p.2; Law Reform Commission of Hong Kong, Report on Third Party Funding for Arbitration (October 2016), p.6.
  4. In Hong Kong, cases such as *Unruh v Seeberger* (2007) 10 HKCFAR 31 and *Winnie Lo v HKSAR* (2012) 15 HKCFAR 16; In Singapore, cases such as *Otech Pakistan Pvt v Clough Engineering Ltd* [2006] SGCA 46; *Jane Rebecca Ong v Lim Lie Hoa* [1996] SGHC 140.
  5. *Unruh v Seeberger* (2007) 10 HKCFAR 31 at [82]–[85]; Ng, "The Role of the Doctrines of Champerty and Maintenance in Arbitration" (2010) 76 *Arb.* 208, 208.
  6. Gazette Published Friday 23 June 2017, No.25 Vol.21 — Legal Supplement No.1. Key operative sections (Pt 10A, Division 3 and s.7A(c) and (d)) are not yet in effect, pending notification from the Secretary of Justice.
  7. Hong Kong Legislative Council Brief: Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Bill 2016 (File Ref.: LP 19/00/16C), Annexes B and C.
  8. Hong Kong Legislative Council Brief: Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Bill 2016 (File Ref.: LP 19/00/16C), Annex B: Responses of the Government to the recommendations made by the Law Reform Commission of Hong Kong in the Report on Third Party Funding for Arbitration (October 2016), Recommendation 3(1)-(2).
  9. von Goeler, *Third Party Funding in International Arbitration and its Impact on Procedure* (2016), p.428.
  10. See section 3 below.
  11. New HKAO Pt 10A s.98F.
  12. E.g. the definition of "provision" may include the provision of funding to another person at the request of the funded party or the provision of arbitration funding by another person arranged by the third party funder (New HKAO Pt 10A s.98F).
  13. New HKAO Pt 10A s.98H; see section 2.1 above.
  14. New HKAO Pt 10A s.98I.
  15. Including any arbitration that is likely, or arbitration that has ended.
  16. New HKAO Pt 10A s.98J.

17. New HKAO Pt 10A ss.98K, 98L; New HKMO s.7A.
18. New HKAO Pt 10A s.98N.
19. Unruh v Seeberger (2007) 10 HKCFAR 31.
20. Unruh (2007) 10 HKCFAR 31 at [102]–[105].
21. HKAO s.81.
22. Article V, 2.(b).
23. Including all Hong Kong barristers, solicitors, and registered foreign lawyers: New HKAO Pt 10A s.98I.
24. New HKAO Pt 10A s.98O.
25. However, for this to occur, amendments will need to be made to the Hong Kong Solicitor's Guide to Professional Conduct, section 4.17, which prohibits solicitors from entering into a contingency fee arrangement (i.e. any arrangement whereby a solicitor is to be rewarded only in the event of success in a litigation by the payment of any sum).
26. Hong Kong Legislative Council Brief: Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Bill 2016 (File Ref.: LP 19/00/16C), Annex C.
27. New HKAO Pt 10A Division 4.
28. New HKAO Pt 10A s.98Q.
29. New HKAO Pt 10A s.98P.
30. New HKAO Pt 10A s.98Q(d), (i), (j) and in accordance with the process set out in New HKAO Pt 10A ss.98P and 98R.
31. Law Reform Commission of Hong Kong, Report on Third Party Funding for Arbitration, Executive Summary, p.7; Bao, "Third Party Funding in Singapore and Hong Kong: The Next Chapter" (2017) 34 J. Int. Arb. 387, section 3.1.
32. However, the Hong Kong Government has stated that it will first need to consult with the members of the Advisory Committee on the Promotion of Arbitration and other stakeholders before expressing a final view: Hong Kong Legislative Council Brief: Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Bill 2016 (File Ref.: LP 19/00/16C), Annex B: Responses of the Government to the recommendations made by the Law Reform Commission of Hong Kong in the Report on Third Party Funding for Arbitration (October 2016), Recommendation 3(7).
33. For comparison, the UK's Association of Litigation Funders Code of Conduct for Litigation Funders (November 2014) runs to five pages.
34. i.e. confidentiality and disclosure requirements; see section 2.6 below.
35. New HKAO Pt 10A s.98S.
36. New HKAO Pt 10A, s.98T; HKAO s.18(2); TPFAO s.98T(2)–(3).
37. This notice must be given at the commencement of the arbitration or within 15 days of the Funding agreement being made (if the agreement is made after commencement of arbitration).
38. Which includes a court, or mediator if relevant.
39. The funded party must give a written notice of this fact (as well as the date on which the "funding agreement" ended) to parties to the "arbitration" and the "arbitration body", within 15 days of the agreement ending.
40. New HKAO Pt 10A s.98S.
41. Public Consultation on the Draft Civil Law (Amendment) Bill 2016 and Civil Law (Third Party Funding) Regulations 2016, 30 June 2016 to 29 July 2016; although this was the second time that Singapore held public consultation over legislating in favour of third party funding in relation to arbitration — the first occasion being in November 2011 in connection with amendments to the International Arbitration Act (Cap. 143A).
42. Singapore Civil Law Act (Cap 43), Singapore Civil Law (Third-Party Funding) Regulations 2017, Singapore Legal Profession (Professional Conduct) (Amendment) Rules 2017.
43. Civil Law (Amendment) Act 2017 (Commencement) Notification 201.
44. Second Reading Speech by Senior Minister of State for Law, Indraneel Rajah SC, on the Civil (Amendment) Bill 2016.
45. CLAA s.5A(1).

- [46.](#) As most recently formulated by the Singapore High Court in *Jane Rebecca Ong v Lim Lie Hoa* [1996] SGHC 140.
- [47.](#) CLAA s. 5A(2) which provides that the amendments do 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".
- [48.](#) CLAA s.5B(2). Both terms are further defined in the subsidiary Regulations.
- [49.](#) Regulations r.3.
- [50.](#) Second Reading Speech by Senior Minister of State for Law, Indranee Rajah SC, on the Civil (Amendment) Bill 2016.
- [51.](#) Approximately HK \$28.26 million or US \$3.61 million.
- [52.](#) Regulations r.4.
- [53.](#) CLAA s.5B(5) and (6).
- [54.](#) CLAA s.5B(8).
- [55.](#) PCR r.49A.
- [56.](#) PCR rr.49B, 107(3A).
- [57.](#) Second Reading Speech by Senior Minister of State for Law, Indranee Rajah SC, on the Civil (Amendment) Bill 2016.
- [58.](#) PN — 01/17 (31 March 2017).
- [59.](#) SIAC Practice Note, ss.4 and 6.
- [60.](#) SIAC Practice Note, s.5.
- [61.](#) SIAC Practice Note, s.9.
- [62.](#) SIAC Practice Note, ss.10 and 11.
- [63.](#) SI Arb Guidelines, s.1.3.
- [64.](#) SI Arb Guidelines, s.2.1.
- [65.](#) SI Arb Guidelines, s.2.3.
- [66.](#) SI Arb Guidelines, ss.4.1 and 4.2.
- [67.](#) SI Arb Guidelines, s.5.
- [68.](#) SI Arb Guidelines, s.6.
- [69.](#) SI Arb Guidelines, s.6.1.4.
- [70.](#) One of the authors is a member of one of the drafting committees behind one of the sets of Singapore guidelines on Funding and has reviewed various drafts of the Singapore Law Society's guidance note, which was prepared in coordination with the SI Arb's Guidelines and the SIAC's Practice Note.