

# Funding of Legal Services – Contingency Fees To Be Lawful in the Cayman Islands

The Private Funding of Legal Services Act, 2020 (the "Funding Act") provides that contingency fee arrangements will, when the Funding Act and its supporting regulations are brought into force, be lawful in the Cayman Islands. The supporting regulations are yet to be published.

This means that, subject to certain parameters (largely to be provided by supporting regulation), both conditional fee agreements (which allow for success fees to be paid by way of an uplift to hourly rates, and which have been available for some time) and contingency fee agreements (under which attorneys would receive a percentage of the spoils of success, and which have previously been unlawful) will be available in relation to Cayman Islands legal proceedings. This development assists in providing Cayman Islands attorneys with greater flexibility to structure their fees to the needs of the case at hand.

## Key Takeaways

- 'Contingency fee arrangements' will be lawful in the Cayman Islands. The rules of champerty and maintenance which previously presented issues for such arrangements will be abolished. Contingency fee arrangements will now be defined as an *"agreement with a client in which it is agreed that the remuneration paid to the attorney-at-law for the legal services provided to or on behalf of the client is contingent, in whole or in part, on the successful disposition or completion of the matter in respect of which the legal services are provided."* This will cover agreements whereby the attorney's remuneration is calculated:
  - (a) as a percentage of the recoveries made by the client in the litigation (the maximum allowed percentage will be prescribed in the regulations); or
  - (b) by reference to its normal fees plus a 'success fee' that is payable depending on the result of the litigation. The maximum allowed success fee is a 100% uplift on the attorney's normal fees.
- The Court will have a discretion (subject to certain limitations) to permit arrangements with higher rates than the above, provided that the attorney and the client make an application to the Court seeking approval for that arrangement.
- Any contingency fee agreement purporting to say that an attorney is not liable for negligence will be void.
- The Court will have jurisdiction to 'reopen' a contingency fee agreement where *"it appears to the Grand Court that special circumstances of the case require the contingency fee agreement to be reopened"*. Whether 'special circumstances'

exist will likely be particularly fact sensitive and decided on a case-by-case basis.

- Special rules will apply to clients in the capacity of guardian, attorney or trustee. Before they can enter a contingency fee arrangement, the client or their attorney must present the contingency fee agreement to the Clerk of the Court, who has the power to disallow any part of the agreement or require directions from the Court. Therefore, in the context of trust litigation in particular the Court retains greater powers in respect of contingency fee agreements.
- The Funding Act also contains provisions for litigation funding agreements. These are agreements whereby a third party funder agrees to fund a client's legal costs in exchange for the client agreeing to pay a certain sum to the funder depending on the result of the litigation. The provisions relating to litigation funding agreements are reasonably light-touch, although greater clarity on the criteria that these agreements are required to satisfy will come in the regulations.

We intend to provide a further update once the Funding Act and regulations have both come into force. Should you have any queries in the meantime, please reach out to one of the persons listed below or your usual Maples Group contact.

## **Cayman Islands**

### **Aristos Galatopoulos**

+1 345 814 5241

[aristos.galatopoulos@maples.com](mailto:aristos.galatopoulos@maples.com)

### **James Eldridge**

+1 345 814 5239

[james.eldridge@maples.com](mailto:james.eldridge@maples.com)

### **Nick Herrod**

+1 345 814 5654

[nick.herrod@maples.com](mailto:nick.herrod@maples.com)

### **Luke Armitage**

+1 345 814 5473

[luke.armitage@maples.com](mailto:luke.armitage@maples.com)

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