

Legal Profession (Amendment) Bill

Bill No. 40/2021.

Read the first time on 1 November 2021.

A BILL

intituled

An Act to amend the Legal Profession Act.

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

Short title and commencement

1.—(1) This Act is the Legal Profession (Amendment) Act 2022 and, except for section 7, comes into operation on a date that the Minister appoints by notification in the *Gazette*.

5 (2) Section 7 is deemed to have come into operation on 18 November 2015.

Amendment of section 36P

2. Section 36P of the Legal Profession Act (called in this Act the principal Act) is amended by inserting, immediately after
10 subsection (1), the following subsections:

“(1A) However, a foreign lawyer granted full registration under this section may not, in any relevant proceedings or relevant appeal prescribed for the purpose of this subsection —

15 (a) plead any matter without the permission of the Singapore International Commercial Court or the appellate court, as the case may be; or

(b) make a submission on any matter of Singapore law, except as otherwise prescribed.

20 (1B) In considering whether to grant permission under subsection (1A)(a), the Singapore International Commercial Court or the appellate court (as the case may be) may take into account any relevant factor, including the prescribed factors.”.

Amendment of section 107

3. Section 107 of the principal Act is amended by inserting,
25 immediately after subsection (3A), the following subsection:

“(3AA) This section does not prevent a solicitor from entering into a conditional fee agreement that complies with Part 8A.”.

Amendment of section 111

4. Section 111 of the principal Act is amended by inserting,
30 immediately after subsection (2), the following subsection:

“(3) This section does not apply to an agreement which is a conditional fee agreement that complies with Part 8A.”.

Amendment of section 113

5. Section 113(8) of the principal Act is amended by deleting the words “guardian or of trustee under a deed or will, or of committee of any person or persons whose estate or property” and substituting the words “trustee under a deed or will, or of guardian or donee or deputy (as defined in section 2(1) of the Mental Capacity Act 2008) of a person who lacks capacity, and the estate or the property of the beneficiary or person”.

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New Part 8A

6. The principal Act is amended by inserting, immediately after section 115, the following Part:

“PART 8A

CONDITIONAL FEE AGREEMENTS

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Application and interpretation of this Part

115A.—(1) In this Part, unless the context otherwise requires —

“a solicitor, a foreign lawyer or a law practice entity” means a solicitor, a foreign lawyer or a law practice entity to whom or to which subsection (2) applies;

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“conditional fee agreement” means 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;

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“contentious proceedings” means proceedings before a court of justice or an arbitrator or any other dispute resolution proceedings;

“prescribed proceedings” means the contentious proceedings or class of contentious proceedings that are prescribed in regulations made under section 115B(7);

5 “uplift fee”, in relation to a conditional fee agreement, means the remuneration or costs which the agreement provides are payable in specified circumstances which are higher than the remuneration or costs that would otherwise be payable if there were no conditional fee agreement, and which may be determined by (but not limited to) reference to the difference between —

10 (a) the gross sum or hourly rates of remuneration or costs (as the case may be) which the agreement provides are payable in specified circumstances; and

15 (b) the gross sum or hourly rates of remuneration or costs (as the case may be) which would otherwise be chargeable if there were no conditional fee agreement.

20 (2) This Part applies to —

25 (a) a conditional fee agreement in relation to remuneration or costs in prescribed proceedings entered into on or after the date of commencement of section 6 of the Legal Profession (Amendment) Act 2022;

30 (b) all remuneration and costs received by a Singapore law practice or a solicitor practising in a Singapore law practice, including any such remuneration and costs received in respect of the practice of foreign law; and

(c) all remuneration and costs received in respect of the practice of Singapore law by —

35 (i) a Joint Law Venture or its constituent foreign law practice, a Qualifying Foreign Law Practice or a licensed foreign law practice;

- (ii) a foreign lawyer registered under section 36B;
or
- (iii) a solicitor registered under section 36E.

Conditional fee agreement for prescribed proceedings

115B.—(1) A solicitor, a foreign lawyer or a law practice entity may make with a client a conditional fee agreement in relation to remuneration or costs in prescribed proceedings. 5

(2) Where the requirements mentioned in subsection (4) are complied with in relation to a conditional fee agreement, the agreement — 10

(a) is not unenforceable by reason only of its being a conditional fee agreement; and

(b) is not contrary to public policy or otherwise illegal, by reason only that it is a contract for maintenance or champerty. 15

(3) The consequences for failure to comply with all of the requirements mentioned in subsection (4) are set out in section 115D.

(4) The requirements mentioned in subsections (2) and (3) are as follows: 20

(a) the conditional fee agreement must be in writing and signed by the client;

(b) the conditional fee agreement 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; 25

(c) any other requirement prescribed under subsection (7).

(5) A provision in any conditional fee agreement is void and unenforceable which has or purports to have the effect that the solicitor, foreign lawyer or law practice entity — 30

- (a) will not be liable for negligence; or
- (b) will be relieved from any responsibility to which the solicitor, foreign lawyer or law practice entity would otherwise be subject as a solicitor, foreign lawyer or law practice entity.

(6) To avoid doubt, a conditional fee agreement may provide for the whole or any part of the remuneration and costs payable in specified circumstances to include remuneration and costs incurred in relation to —

- (a) preliminary and preparatory advice and other legal services for the purposes of and before the commencement of any contemplated prescribed proceedings even if those proceedings are eventually not commenced or if the claim or dispute in those proceedings is settled; or
- (b) negotiations or settlement of a claim or dispute for the purposes of any contemplated prescribed proceedings even if those proceedings are eventually not commenced or if the claim or dispute in those proceedings is settled.

(7) The Minister may make regulations necessary or convenient for carrying out or giving effect to this Part, including regulations to prescribe any of the following:

- (a) the class or classes or descriptions of contentious proceedings to which a conditional fee agreement may relate;
- (b) requirements relating to the form of a conditional fee agreement;
- (c) requirements relating to the terms and conditions of a conditional fee agreement;
- (d) requirements relating to maximum limits on the remuneration or costs (including the uplift fee) that may be charged under a conditional fee agreement determined or calculated by reference to a prescribed

amount, a prescribed fixed or hourly rate or a percentage of the prescribed amount or rate or any combination thereof;

(e) requirements relating to prescribed information that must be provided to a client before any conditional fee agreement is entered into; 5

(f) requirements relating to a party to a conditional fee agreement.

(8) Rules of Court may make provision with respect to —

(a) the assessment of any remuneration or costs payable under a conditional fee agreement or in other circumstances mentioned in this Part; and 10

(b) the procedure and practice of applications made under this Part.

(9) The regulations made under subsection (7) and the Rules of Court made under subsection (8) may provide for different requirements, conditions or procedures for different classes or descriptions of proceedings. 15

(10) Any addition to or deletion or other variation of any requirement mentioned in subsection (4) does not affect any agreement which was entered into before the date of commencement of that addition, deletion or variation. 20

Effect of conditional fee agreement

115C.—(1) A conditional fee agreement does not affect the amount of, or any rights or remedies for the recovery of, any costs recoverable from the client by, or any costs payable to the client by, any person who is not the solicitor, foreign lawyer or law practice entity that conducted the proceedings for the client, and that person may (unless he or she has otherwise agreed) require any costs payable or recoverable by him or her to or from the client to be assessed. 25 30

(2) Despite subsection (1), the uplift fee (if any) is not recoverable from the person mentioned in that subsection.

5 (3) Despite subsection (1), the client is not entitled to recover from any other person, under any order for the payment of any costs which are the subject of the conditional fee agreement, an amount that is more than the amount payable by the client to the solicitor, foreign lawyer or law practice entity that conducted the proceedings for the client.

10 (4) It is an implied term of a conditional fee agreement that no claim may be made on a separate basis from the agreement by the solicitor, foreign lawyer or law practice entity in respect of any services, remuneration or costs in relation to the conduct and completion of the contentious proceedings in respect of which the agreement is made, except such services, remuneration or costs (if any) as are expressly provided in the agreement.

15 (5) Subject to the provisions of this Part, the costs of a solicitor, a foreign lawyer or a law practice entity, in any case where there is a conditional fee agreement, are not subject to assessment nor to the provisions of section 118.

Enforcement of conditional fee agreement

20 **115D.**—(1) No action or suit may be brought or instituted upon any conditional fee agreement except for an application made under this Part.

25 (2) Every question respecting the validity or effect of a conditional fee agreement may be examined and determined, and the agreement may be enforced or set aside on an application to the court of justice in which the contentious proceedings or any part of the proceedings was conducted, or, if the proceedings were not conducted in any court of justice, then by the General Division of the High Court.

30 (3) An application under subsection (2) may be made by any person or the representatives of any person who —

- (a) is a party to the conditional fee agreement; or
- (b) is or is alleged to be liable to pay, or is or is claiming to be entitled to be paid, the remuneration or costs in respect of which the agreement was made.

(4) Upon an application under subsection (2), the court mentioned in that subsection may enforce a conditional fee agreement in any manner and subject to any condition as to the costs of the application that the court thinks fit, if the court finds that —

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- (a) the requirements in section 115B have been complied with; and
- (b) the conditional fee agreement is neither void nor voidable on the ground of incapacity, fraud, misrepresentation, duress, coercion, undue influence, unconscionability, mistake or any other ground for invalidating a contract, having regard to the circumstances in which the agreement was made and the interests of all the parties to the agreement taken as a whole.

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(5) Upon an application under subsection (2), if the court mentioned in that subsection finds that the conditional fee agreement does not satisfy subsection (4)(a) or (b) —

- (a) the solicitor, foreign lawyer or law practice entity is not entitled to recover any amount in excess of the amount that would have been recoverable if the conditional fee agreement had satisfied subsection (4)(a) and (b), and must repay any excess amount received; and
- (b) subject to the limits mentioned in paragraph (a), the remuneration and costs incurred or chargeable in respect of the contentious proceedings included in the agreement are recoverable in the same manner and according to the same rules by which those remuneration and costs are recoverable on assessment if there had not been an agreement.

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(6) The court mentioned in subsection (2) may also make such order as to the costs of and relating to the application and the proceedings related to the application as the court thinks fit.

(7) Within 12 months after a payment has been made under a conditional fee agreement, the person who made the payment may make an application under this section to the court mentioned in subsection (2), and the court may, if it is satisfied that the special circumstances of the case so require —

- (a) reopen the conditional fee agreement;
- (b) order the remuneration and costs to be assessed; and
- (c) order the whole or any portion of the amount received by the solicitor, foreign lawyer or law practice entity to be repaid on such terms and conditions as to that court seem just.

(8) Where any conditional fee agreement is entered into by the client in the capacity of trustee under a deed or will, or of guardian or donee or deputy (as defined in section 2(1) of the Mental Capacity Act 2008) of a person who lacks capacity, and the estate or the property of the beneficiary or person will be chargeable with the amount payable under the agreement or with any part of that amount, the agreement must before payment be laid before the Registrar, who may examine it and disallow any part of it, or may require the direction of the General Division of the High Court to be taken on it.

(9) If in a case mentioned in subsection (8), the client pays the whole or any part of the amount payable under the conditional fee agreement without the previous allowance of the Registrar or the General Division of the High Court —

- (a) the client is liable at any time to account for the amount charged to the estate or property mentioned in subsection (8); and
- (b) the solicitor, foreign lawyer or law practice entity that accepted the payment may be ordered by the court mentioned in subsection (2) to refund the amount received by the solicitor, foreign lawyer or law practice entity.

Death or incapacity of solicitor or foreign lawyer or winding up or dissolution of law practice entity after conditional fee agreement made

115E.—(1) Where a solicitor or foreign lawyer has made a conditional fee agreement with his or her client and anything has been done by the solicitor or foreign lawyer under the agreement, and, before the agreement has been completely performed, the solicitor or foreign lawyer dies or becomes incapable to act, an application may be made under this section to the court by any party to the agreement or by the representatives of that party. 5 10

(2) Where a law practice entity has made a conditional fee agreement with its client and anything has been done by the entity or any of its partners, directors, officers or employees under the agreement, and, before the agreement has been completely performed by the entity or any of its partners, directors, officers or employees, the entity is wound up or dissolved, an application may be made under this section to the court by any party to the agreement or by the representatives of that party. 15 20

(3) The court has, upon the application under subsection (1) or (2), the same power to enforce or set aside the agreement, so far as it has been acted upon, as if the death, incapacity, winding up or dissolution had not occurred, and in exercising such power the court must have regard to the terms of the conditional fee agreement and in particular to any term in the agreement relating to the consequences of such death, incapacity, winding up or dissolution, as the case may be. 25

(4) The court may, even if it thinks the conditional fee agreement would have been enforceable under section 115D(4) if an application had been made under section 115D(2), order the amount due in respect of anything done under the agreement mentioned in subsection (1) or (2) to be ascertained by assessment. 30

5 (5) The Registrar, in ascertaining by assessment the amount mentioned in subsection (4), must have regard to the terms of the conditional fee agreement and in particular to any term in the agreement relating to the consequences of death or incapacity of the solicitor or foreign lawyer or the winding up or dissolution of the law practice entity (as the case may be) that is a party to the conditional fee agreement.

10 (6) Payment of the amount found to be due may be enforced in the same manner as if the conditional fee agreement had been completely performed by the solicitor, foreign lawyer or law practice entity, as the case may be.

Change of solicitor, foreign lawyer or law practice entity after conditional fee agreement

15 **115F.**—(1) If, after a conditional fee agreement has been entered into, the client changes the solicitor, foreign lawyer or law practice entity acting for the client before the conclusion of the prescribed proceedings to which the agreement relates (which the client may do despite the agreement), an application may be made to the court by any party thereto or by the representatives of that party.

20 (2) The court has, upon the application under subsection (1), the same power to enforce or set aside the agreement, so far as it may have been acted upon, as if the change of solicitor, foreign lawyer or law practice entity had not occurred and in exercising such power the court must have regard to the terms of the conditional fee agreement and in particular to any term in the agreement relating to the consequences of a change in or the death or incapacity of the solicitor or foreign lawyer or of the winding up or dissolution of the law practice entity, as the case may be.

25 (3) The court may, even if it thinks the conditional fee agreement would have been enforceable under section 115D(4) if an application had been made under section 115D(2), order the amount due in respect of anything done to be ascertained by assessment.

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(4) The Registrar, in ascertaining by assessment the amount due in respect of the proceedings conducted or work done, must have regard to —

(a) the circumstances under which the change mentioned in subsection (1) took place; and 5

(b) the terms of the conditional fee agreement and in particular any term in the agreement relating to the consequences of a change in or the death or incapacity of the solicitor or foreign lawyer or of the winding up or dissolution of the law practice entity, as the case may be. 10

(5) Upon an assessment mentioned in subsection (4), the solicitor, foreign lawyer or law practice entity is not entitled to the full amount of the remuneration or costs agreed to be paid unless it appears that there has been no default, negligence, improper delay or other conduct on the part of the solicitor, foreign lawyer or law practice entity affording reasonable ground to the client for the change of solicitor, foreign lawyer or law practice entity, as the case may be. 15

(6) Payment of the amount found to be due may be enforced in the same manner as if the conditional fee agreement had been completely performed by the solicitor, foreign lawyer or law practice entity, as the case may be.”. 20

Miscellaneous amendment

7. The principal Act is amended by deleting the words “the prescribed date” wherever they appear in the following provisions and substituting in each case the words “18 November 2015”:

Section 36I(9) and (10)

Section 174(4), (5), (6) and (7)

Section 175(4) and (5) 30

Section 176(4), (6), (11) and (13)

Section 177(10) and (11)

Section 178(7)

Section 179(9) and (10).

EXPLANATORY STATEMENT

This Bill seeks to amend the Legal Profession Act to provide a framework for conditional fee agreements (CFAs) between lawyers and law practices on the one hand and their clients on the other hand in relation to legal services in certain dispute resolution proceedings. The framework will apply to the same category of lawyers and law practice entities as that in Part 8 of the Legal Profession Act, i.e., Singapore lawyers and Singapore law practices, whether for the practice of Singapore or foreign law, as well as certain registered foreign lawyers and foreign law practices.

A CFA (defined in the new section 115A) is an agreement which provides for the whole or part of remuneration and costs in dispute resolution proceedings (whether in or outside Singapore) to be payable only in specified circumstances, and which may also provide for an “uplift fee”. Examples of “specified circumstances” are where the client succeeds in his or her claim or where certain agreed outcomes are achieved in the proceedings. An “uplift fee” is defined to mean the remuneration or costs which the CFA provides are payable in specified circumstances which are higher than the remuneration or costs that would otherwise be payable if there were no CFA. The “uplift fee” may also be determined (without limitation) by reference to differences between the gross sum or hourly rates of remuneration or costs payable in specified circumstances, and the sum or rates that are chargeable if there were no CFA. The word “costs” as defined in section 2(1) includes fees, charges, disbursements, expenses and remuneration. A CFA is different from the type of fee agreement where the remuneration or costs are payable as a percentage or proportion of the amount of damages awarded to or recovered by the client, and which continues to be prohibited.

The Bill also amends the Act to require a foreign lawyer with full registration to seek the permission of the court to carry out certain acts in proceedings before the Singapore International Commercial Court (called the SICC), or in an appeal against a judgment of the SICC, and to prohibit him or her from submitting on a matter of Singapore law in such proceedings or appeal.

Finally, the Bill clarifies the date on which various provisions of the Act were operationalised.

Clause 1 relates to the short title and commencement.

Clause 2 amends section 36P which allows a foreign lawyer with full registration to appear in prescribed proceedings before the SICC or in a prescribed appeal to an appellate court against a judgment or an order of the SICC. The effect of the amendment is that, in certain proceedings or appeals to be prescribed by rules, the foreign lawyer —

- (a) must obtain the permission of the SICC or the appellate court in order to plead any matter in the prescribed proceedings or appeals; and
- (b) must not make a submission on a matter of Singapore law.

Rules may provide exceptions to paragraph (a) or (b), and also prescribe factors that the court may consider in deciding whether to grant permission under paragraph (a).

Clause 3 amends section 107 to clarify that the prohibition of certain agreements and stipulations in that section does not prevent a solicitor from entering into a CFA that complies with the new Part 8A to be inserted by clause 6. A fee agreement where the remuneration or costs are payable as a percentage or proportion of the amount of damages awarded or recovered, however, remains prohibited by section 107.

Clause 4 amends section 111 to carve out a CFA that complies with the new Part 8A from the scope of costs agreements for contentious business permitted by that section. The term “contentious business” as defined in section 2(1) means “business done in or for the purposes of proceedings begun before a court of justice or before an arbitrator”. Consequently, sections 112 to 115 in Part 8 will not apply to a CFA. Section 107 will also continue to apply to CFAs that do not conform with the new Part 8A. There will therefore be no overlap as the CFAs that comply with the new Part 8A will instead be governed by the new Part 8A.

Clause 5 amends section 113(8) to update the obsolete reference to a committee of person or persons to a reference to a donee or deputy under the Mental Capacity Act.

Clause 6 inserts a new Part 8A on CFAs, containing new sections 115A to 115F.

The new section 115A sets out the scope and application of the new Part 8A and defines “conditional fee agreement”, “contentious proceedings”, “prescribed proceedings” and “uplift fee” for the purposes of the Part. The new Part 8A will apply to CFAs only in relation to certain contentious proceedings that will be specified in regulations. Contentious proceedings are proceedings before a court of justice or an arbitrator or any other dispute resolution proceedings. As mentioned above, a CFA is an agreement relating to the legal fees in contentious

proceedings (whether in or outside Singapore) which may provide for an “uplift fee” (as explained above). The contentious proceedings in which CFAs may be used are to be specified in regulations made under the new section 115B(7) and called “prescribed proceedings”. The new Part 8A will apply to the same category of lawyers and law practices as that in the existing Part 8, i.e., Singapore lawyers and Singapore law practices whether they are practising Singapore or foreign law, as well as certain registered foreign lawyers and foreign law practices that are regulated or licensed in Singapore. These persons and entities are collectively referred to in the new Part 8A as “a solicitor, a foreign lawyer or a law practice entity”.

The new section 115B expressly permits the making of a CFA in relation to remuneration or costs in prescribed proceedings. Where the requirements mentioned in the new section 115B(4) are complied with in relation to a conditional fee agreement, the agreement is (a) not unenforceable by reason only of its being a conditional fee agreement; and (b) not contrary to public policy or otherwise illegal, by reason only that it is a contract for maintenance or champerty. The consequences if these requirements are not complied with are set out in the new section 115D. The new section 115B(4) provides that the CFA must be in writing and signed by the client, must not provide for remuneration or costs based on a percentage or proportion of the damages or other amounts awarded or recovered, and satisfy other requirements specified in the regulations, which the Minister is empowered to make under the new section 115B(7). The new section 115B(6) seeks to avoid doubt that a CFA may provide for remuneration or costs incurred in relation to preliminary and preparatory advice and other legal services for the purposes of and before the commencement of any contemplated prescribed proceedings and negotiations or settlement of a claim or dispute, even if those proceedings are eventually not commenced or if the claim or dispute in those proceedings is settled. The new section 115B(5) is adapted from the existing section 112(5). Under the new section 115B(8), Rules of Court may be made to provide for the assessment of any remuneration or costs payable under a CFA and the procedure and practice of applications made under the new Part 8A. The new section 115B(10) provides that any addition to or deletion or variation of the requirements of a CFA under the new section 115B(4) by regulations made under the new section 115B(7) will apply prospectively to CFAs entered into on or after the date of the addition, deletion or variation.

The new section 115C provides for the effect of a CFA on legal costs. The new section 115C(1) clarifies that a CFA does not affect the recovery of costs from the client by a person who is not the solicitor, foreign lawyer or law practice entity that conducted the proceedings for the client, and costs payable to the client by such person, and such costs may be assessed, unless otherwise agreed. This would for example include party and party costs which the client may recover from the losing party or a third party in the court proceedings. The new section 115C(2) has the effect that if the CFA provides for payment of an uplift fee, the amount of uplift

fee cannot be recovered as party and party costs by the client against the losing party. The client can only recover from the other party the amount of costs as if there had been no CFA. The new section 115C(3) provides that the client cannot recover from the other party more than the amount paid by the client to the solicitor, foreign lawyer or law practice entity that conducted the proceedings for the client. The new section 115C(4) provides that it is an implied term of a CFA that no claim for remuneration and costs may be made on a separate basis from the CFA by the solicitor, foreign lawyer or law practice entity except where expressly provided in the CFA. The new section 115C(5) provides that where there is a CFA in place, the costs of a solicitor, foreign lawyer or law practice entity are not subject to assessment nor to section 118, subject to the provisions of the new Part 8A.

The new section 115D provides for the enforcement of CFAs and the determination of questions relating to the validity or effect of a CFA. An action or a suit cannot be brought or instituted upon any CFA except for an application made under the new Part 8A. Instead, an application may be made to the court (which includes a court other than the General Division of the High Court) in which the contentious proceedings were conducted. If the contentious proceedings were not conducted in any court, then the application may be made to the General Division of the High Court. If the court finds that the requirements in the new section 115B(4) are complied with and that the CFA is neither void nor voidable under the common law principles of contract having regard to the circumstances in which the CFA was made and the interests of all the parties to the agreement taken as a whole, the court may enforce it in any manner and subject to any conditions that the court may think fit. If the court does not make such findings, the solicitor, foreign lawyer or law practice entity cannot recover any amount more than the amount that would have been recoverable if the CFA had not been unenforceable. Any excess amount received must be repaid. The amounts not in excess may be recoverable on assessment by the court as if the CFA had not been made.

The new section 115D(7) provides that within 12 months after the amount agreed under the CFA has been paid, an application may be made to the court. The court may, if the special circumstances of the case so require, reopen the CFA, order that the remuneration and costs be assessed or order the whole or any portion of the amount received by the solicitor, foreign lawyer or law practice entity to be repaid. The new section 115D(8) provides that where a CFA is entered into by a client in the capacity of a guardian or donee or deputy of a person who lacks capacity or as a trustee under a deed or will and the estate or property of the beneficiary or person who lacks capacity will be chargeable with the amount payable under the CFA, the CFA must be laid before the Registrar of the Supreme Court (the Registrar) before payment. If payment is made without the approval of the Registrar or the General Division of the High Court, the client is liable to account to the person whose estate or property is charged, and the solicitor, foreign

lawyer or law practice entity that accepted the payment may be ordered by the court to refund the payment received.

The new section 115E provides for the consequences of the death or incapacity of the solicitor or foreign lawyer or the winding up or dissolution of the law practice entity after the CFA had been made. If this occurs, an application may be made to the court. The court has the same power to enforce or set aside the CFA, so far as it has been acted upon, as if the death, incapacity, winding up or dissolution had not occurred. In exercising such power, the court must have regard to the terms of the CFA, in particular to any term relating to the consequences of death, incapacity, winding up or dissolution of the solicitor, foreign lawyer or law practice entity, as the case may be. If the court orders the amount due in respect of the CFA to be ascertained by assessment, the assessing Registrar must also have regard to any such terms.

The new section 115F provides for the consequences where after a CFA has been made, the client changes the solicitor, foreign lawyer or law practice entity acting for the client before the conclusion of the prescribed proceedings. If this occurs, an application may be made to the court. The court has the same power to enforce or set aside the CFA, so far as it has been acted upon, as if the change of solicitor, foreign lawyer or law practice entity had not occurred. Similar to the new section 115E, the court must have regard to the terms of the CFA, in particular to any term relating to the consequences of a change in, death, incapacity, winding up or dissolution of the solicitor, foreign lawyer or law practice entity, as the case may be.

Clause 7 replaces the term “the prescribed date” in various provisions with “18 November 2015”, which is the date those provisions were operationalised.

EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.
