



## AD HOC COMMITTEE ON CONDITIONAL FEE RULES

Tony Woon Yeow Thong (Chairperson) | Gnasegaran s/o Egamparam | Jude Celestine Raj | Kanagasabapathi s/o Shanmugam | Kuthubul Zaman Bukhari | M Ramachelvam | Ng Kong Peng | Ravindra Kumar s/o G Rengasamy | Marianna Laureen Tan (Officer-in-charge)

### Conditional Fee Rules governing fees for personal injury matters

The Ad Hoc Committee on Conditional Fee Rules (“Rules Committee”), previously known as the Ad Hoc Committee on Contingency Fee Rules, is tasked with deliberating issues that may arise in introducing contingency fee rules and making recommendations to BC.

The Rules Committee met a number of times and considered, *inter alia*, whether BC would be in breach of section 112(1)(b) of the LPA, if it were to introduce the proposed contingency fee rules drafted by the BC Legal Profession Committee. The Rules Committee decided to adhere to BC’s view that a success fee arrangement, allowing conditional fees as decided in the case of *Chai Chee Chin & Ors v Tetuan Zahari, Ong & Co* [2006] 8 CLJ, is acceptable as the current law.

The Rules Committee recommended that BC adopt the contingency fee rules as proposed by the BC Legal Profession Committee and the BC Ad Hoc Committee on No-Fault Liability Scheme, with amendments. The Rules Committee proposed that the contingency fee rules be confined to personal injury cases only, as various issues relating to other areas of practice might require consideration from other BC committees and the Rules Committee will require more time and effort to take into account, and deliberate, the additional issues raised.

Further, there is urgency in light of certain NGOs stating that personal injury lawyers are taking a large percentage of the awards given and it being illegal to do so. These issues were raised due to the present proposal by BNM on the third party bodily injury or death claims scheme, which might effectively end the current practice of claims being filed in a court of law.

The Rules Committee recommended that the proposed contingency fee rules be introduced pursuant to section 77 of the LPA, which provides:

- (1) Without prejudice to any other power to make rules provided under this Act, the Bar Council may, with the approval of the Attorney General make rules for regulating the professional practice, etiquette, conduct and discipline of advocates and solicitors.
- (2) Any rules made pursuant to this section shall not come into operation until they have been published in the Gazette.

The Rules Committee was of the view that by introducing the contingency fee rules pursuant to that section, which permits the regulation of professional practice, the rules will come within the exception in section 112

of the LPA. According to section 112 (1) (b) of the LPA:

(1) Except as expressly provided in any written law, or by rules made under this Act, no advocate and solicitor shall -

...

(b) Enter into any agreement by which he is retained or employed to prosecute any suit or action or other contentious proceeding which stipulates for or contemplates payment only in the event of success in such suit, action or proceeding.

Via Circular No 184/2010 dated 1 July 2010, the Rules Committee requested Members to provide feedback on the proposed contingency fee rules.

The Rules Committee, at its meeting held on 29 Oct 2010, further revised the contingency fee rules and decided to rename them as “conditional fee rules”, in line with its recommendation to BC to adopt a conditional fee rule based on the discussion stated above. The proposed conditional fee rules, approved and adopted by BC in January 2011, will be submitted to AGC to be approved, and gazetted under section 77 of the LPA.

Tony Woon Yeow Thong  
Chairperson

Date: 9 Feb 2011

For any enquiries, please email:  
[ml.tan@malaysianbar.org.my](mailto:ml.tan@malaysianbar.org.my)