

Introducing Litigation Funding

For potential litigants considering the use of Litigation Funding, the Association of Litigation Funders (the ALF) has produced this primer to provide a general understanding of how third-party funding for dispute resolution can work in practice. We hope you find this document of use, and should you have any further questions, we suggest you reach out to one of our Funder Members, details of whom can be found at www.associationoflitigationfunders.com.

What is litigation funding?

Litigation funding is when a third party finances costly litigation or arbitration cases. The Litigant obtains all or part of the funding to cover its legal costs from a private commercial litigation funder, who has no direct interest in the proceedings. And in return, if the case is won, the funder receives a pre-agreed share of the proceeds of the claim.

Litigation funding is typically non-recourse, which means if a case is unsuccessful, the funder loses its money and nothing is owed by the litigant.

How to access litigation funding

If you are a claimant with a meritorious commercial litigation or arbitration dispute, and lack the funds or would prefer not to tie up the funds necessary to finance the pursuit of the case, litigation funding can provide a cost-effective financing tool and a valuable means of access to justice. While you may sacrifice a proportion of any financial reward recovered if the case is successful, you face no downside if the case is unsuccessful.

Litigation funding is typically only available to commercial cases of a high value, and it is not yet suitable for consumer cases, personal injury cases, or claims that do not carry a sufficiently high level of damages.

Because the litigation funder's return is tied to the success of a case, funders must consider whether a case has good prospects of success. You should first identify a litigation funder from the ALF's list of Funder Members, who will carry out due diligence on your claim to evaluate its chances of success and likely costs.

If the funder considers that your claim is meritorious, you then enter into a Litigation Funding Agreement with that provider. The funders' share of the proceeds of a successful case is negotiated with the litigant at the outset. This financial reward typically consists of either a percentage of the damages recovered, or a multiple of the amount advanced by the funder, or a combination of the two.

You should also be aware that in many instances a funder may require that you also obtain After the Event (ATE) insurance, so as to protect you (and the funder) from having to pay any adverse costs in the event your claim is unsuccessful. The funder will typically pay for this insurance.

Who to work with

By working with a Funder Member of the ALF, litigants are assured that they will find an organisation that meets high quality standards.

Our Code of Conduct sets out the standards by which all Funder Members of the ALF must abide. It sets the standards for the capital adequacy of funders, sets out the specific, limited circumstances in which funders may be permitted to withdraw from a case, and outlines the way in which the roles of funders, litigants and their lawyers should be kept separate.

We hope this short summary has served as a helpful introduction to the practice of Litigation Funding, and that it has made clear the advantages of working with a Funder Member of the ALF. Further information may be found at www.associationoflitigationfunders.com.

