

Irish Law Reform Commission publishes consultation paper on third-party litigation funding

Insights - 21/07/2023

The Law Reform Commission (LRC) this week published a consultation paper discussing the position of third-party litigation funding in Ireland. The paper analyses policy arguments for and against the practice, as well as potential legislative and regulatory models for its implementation.

Third-party funding refers to the practice of an entity financing litigation to which it is not connected. In most cases, the funder will take a proportion of the funded party's compensation if they are successful in their litigation. Currently, attempting to profit by investing in dispute resolution is illegal in Ireland. However, recent legal developments such as Denham CJ's decision in *Persona Digital Telephony Ltd v Minister for Public Enterprise [2017] IESC 27* and the Report of the Review of the Administration of Civil Justice in 2020 have prompted a review of this position.

The prohibition is based on the ancient legal concepts of maintenance and champerty. These concepts have been expressly retained in Irish law by the Statute Law Revision Act 2007 and by various statements of the courts. Countries such as England, Wales, New Zealand and Hong Kong have modernised their rules on third-party funding in recent years. Their respective models for legalisation are considered by the LRC in their paper.

The consultation paper identifies five main arguments against the legalisation of third-party litigation funding. These are:

- A possible increase in vexatious and meritless proceedings;
- Funded parties being under-compensated for harm suffered after paying the funder their return on investment;
- A possible increase in the cost of legal services and litigation;
- A possible increase in insurance premiums and costs for business; and

- It may not be appropriate for all types of legal proceedings.

The paper also identifies four arguments in favour of the legalisation of third-party litigation funding. These are:

- It will help to expand access to justice;
- It will improve equality of arms where there is an imbalance in financial power between parties;
- It can help to increase the pool of assets available to creditors in insolvency procedures; and
- It will address the 'corporate anomaly', whereby corporate entities can mimic a third-party funding agreement by issuing shares or transferring ownership of the company to fund its participation in dispute resolution.

The consultation paper goes on to consider five potential models for regulating third-party funding. These include voluntary or enforced self-regulatory regimes, a regime requiring the Court to certify the reasonableness of the funding agreement, and licensing regimes administered by either an existing or new, specialist regulator.

The LRC's stated aim in publishing this paper is to "*inform debate and stimulate discussion*". Responses are being welcomed until 3 November 2023. The feedback received will then assist the Commission in preparing a final report setting out its recommendations.

At Ogier Leman, we welcome the publication of this consultation paper and hope that it will be a catalyst for long overdue change in the law on third-party funding in Ireland. As was highlighted recently at Dublin International Disputes Week, there is great potential for Dublin to be a hub for large-scale international commercial disputes. Such potential will be significantly enhanced by the overturning of the prohibition on investing in dispute resolution in this jurisdiction.

For information on our dispute resolution services, please contact Cian or Stephen via their below contact details.

- [LRC CP 69 - 2023 Third-Party Funding - Full Text.pdf \(lawreform.ie\)](#)
- [LRC looks at pros and cons of third-party funding \(lawsociety.ie\)](#)

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Meet the Author



Cian O'Gorman

Associate

Ireland

E: cian.o'gorman@ogier.com

T: [+353 1 584 6766](tel:+35315846766)

Key Contacts



Stephen O'Connor

Partner

Ireland

E: stephen.oconnor@ogier.com

T: [+353 1 232 1074](tel:+35312321074)

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