

The Rise in Litigation Funds in the Channel Islands

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The impact of the COVID-19 pandemic on the economic climate has led to litigation funds becoming more topical and in demand than ever, providing clients with the opportunity to access justice despite the financial difficulties they may be facing as a result of the worldwide restrictions imposed on businesses.

Litigation funds (which can include litigation finance, legal finance and third party funding) provide a mechanism whereby an investor that is otherwise unconnected with a legal action may finance all or part of the costs associated with that legal action, in return for a pre-determined share of the proceeds arising from such action. For businesses with financial constraints or the desire to meet certain economic outcomes, litigation funding provides an invaluable service, giving businesses the opportunity to pursue valid claims and benefit from its success, without dwindling their cash flow at a time when it is paramount. Litigation funding fills a void currently unfulfilled by conditional fee arrangements and damages-based agreements, which do not assist with the upfront costs of litigation.

Since the landmark decision in *Re Valetta Trust* in 2012, litigation funding arrangements in Jersey are recognised and enforceable (despite the historic rule against champerty) on the grounds that such agreements facilitate access to justice for plaintiffs who would otherwise be unable to bring the litigation in question. Following on from this case, we have seen a steady increase in the use of litigation funding arrangements in Jersey which are both accepted and encouraged, provided that the agreements are properly structured. This trend is likely to continue given the impact that the coronavirus pandemic has had on businesses and the wider economy, and correlates with the rapid rise in the litigation funding industry across the globe.

In addition to assisting persons who lack the financial resources to fund a litigation or other legal action, litigation funding is also utilised by those who, despite having sufficient cash flow, do not have the appetite to bear the financial risks associated with litigation alone. Crucially, litigation funding does not impact upon the relationship between the client and lawyer, and the

client will continue to control and make decisions on how the legal action proceeds. The third party funder is generally a passive investor, receiving updates on the legal action whilst having no influence or impact.

In these uncertain economic times, the asset value of legal actions, which do not tend to follow general market trends, is increasingly sought after by investors. This interest is welcomed both by plaintiffs who would be unable to access justice without third party funding, and those who recognise third party funding as a way to offset the financial risk involved in pursuing legal action.

Ogier's Jersey and Guernsey teams have worked alongside a number of market leaders in this area and have significant experience in the regulatory and structuring issues to be considered.

As a result of recent market volatility, litigators worldwide are anticipating an inevitable rise in shareholder actions, with third party funders being provided with an opportunity to capitalise on the asset value of those actions.

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