

A nighttime photograph of a cityscape. In the background, the illuminated dome of St. Paul's Cathedral is visible. In the foreground, a modern building with a curved, metallic facade is lit up. The sky is dark, and the city lights create a bokeh effect.

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AN INTRODUCTION TO NON RECOURSE DISPUTE RESOLUTION FUNDING

February 2018
Prague

WHAT IS DISPUTE RESOLUTION FUNDING?

- A simple financing arrangement
- Dispute resolution funder agrees to pay for the client's legal fees (usually including experts, outside counsel and disbursements) in accordance with an agreed budget
- The exact terms agreed with the funder will be reflected in a funding agreement to be entered into between the client, client's lawyers and the funder (tripartite)

DISPUTE RISK MANAGEMENT

How to manage risk?

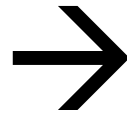
- ❖ Terminate the dispute risk (eg. settlement)
- ❖ Tolerate the dispute risk for the good of the relationship
- ❖ **Transfer the cost of running the dispute to a funder**
- ❖ **Transfer adverse costs risk to an insurer**
- ❖ **Treat the dispute risk by using the best lawyers**

“Good transfer and treatment of dispute risk allows potential claimants to better assess whether the dispute risk should be tolerated or terminated or if they should commence their claim.”

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DISPUTE RISK TRANSFER

- Legal fees and costs
- Adverse Costs
- Enforcement Costs



“it allows the claimant to focus their assessment on the probability of winning more than the impact of losing”

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DISPUTE RISK TREATMENT

- We know the legal market
- We can help secure the best legal team
- We can help retain the best experts

“Realistic legal budgets procure the best from the best”

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THE BENEFITS OF SINGLE CASE AND PORTFOLIO FUNDING

Single case

1. Transfer cost of running claim
2. Transfer cost of losing claim (ATE)
3. Transfer cost of enforcing award (ADI)
4. Some historic legal fees are recoverable
5. Early procurement of additional opinions and reports

Portfolio funding

1. 1 to 5 of the single case plus:
2. Alleviating legal budget pressures
3. Funds for a mix of both claimant and respondent work
4. Preferential funding terms (for diversified risk)
5. Preferential ATE coverage (for diversified risk)

THE PROCESS

1. Non-disclosure agreement
2. Initial review (1-2 weeks)
3. Agree period of exclusivity and commercial terms
4. Full review and decision (4-8 weeks)
5. On-going key stage reviews and monitoring

RETAINING CONTROL

- Instructions flow from claimant to legal team
- The lawyers duty is to the claimant
- Settlement can not be forced

“No subrogation through the back door”

RECOVERABILITY OF TPF COSTS – ATYPICAL BUT ENCOURAGING

1. *Essar Oilfield Services Limited v Norscot Rig Management Pvt Limited*
2. The funding was for £647,086.49 with the funder entitled to recover, in the event of success, either 300% of the funding advanced (being £1,941,259.47), or 35% of the damages recovered, whichever was the greater.
3. Court upheld the decision of the arbitrator in an ICC arbitration to allow the recovery of the costs of third party funding in addition to the award of costs and damages as "other costs" as provided for under the Arbitration Act 1996 (the Act) and the applicable ICC Arbitration Rules

CLIENTS

Who are our clients today?

- ❖ Access to justice
- ❖ SMEs
- ❖ Corporations
- ❖ States

“Vannin are currently funding over 100 cases globally”

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THANK YOU