

Third-Party Funding

Negotiation of the funding contract

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Contracting Third-Party Funding

How to get funding?

Get in touch with funders

Directly
Lawyers
Brokers

First Questions

- Amount of the claim
- Where to enforce the award
- Who the parties are
- What kind of procedures (litigation or arbitration) and where
- Let's hear about the case and the merits of the claim (including legal issues) ...

Next steps

- **Non-Disclosure Agreement**
- **Disclosure of factual background and documents**
- **Term-sheet**
- **Due-diligence**
- **Execution of the funding agreement**
- **Outlay of funds (advances)**
- **3, 2, 1 and ... action**

Discussing the Term Sheet

Main topics:

- Estimated value of the claim
- Estimated budget (retainer legal team, arbitration costs, including arbitrators and experts' fees, legal fees, adverse costs' orders)
- Notices of payment (reimbursement of costs by the funder)
- Lawyers terms and conditions

Discussing the Term-Sheet

- The funder's fees

Period from start of funding to receipt of proceed	a) Multiple of actual outlay	b) Percentage of proceeds
Up to 12 months	2	5%
12 to 24 months	2.5	7.5%
24 to 36 months	3	10%
> 36 months	3.5	15%

Whichever the greatest !

Discussing the Term Sheet (cont.)

→ **Waterfall – who gets paid first?**

Funder: cash outlay

Funder: success fee

Lawyers' success fee

Claimant

→ **Monitoring of the case (check invoices, keeping updated, etc.)**

→ **Control of the claim:**

The Claimant will retain day to day and overall control and conduct of, and responsibility for, the Claim

Discussing the Term Sheet (cont.)

→ Representations and warranties | Guarantees |
Jurisdiction | Dispute Resolution

→ Exclusivity period

→ Termination rights:

The Funder may terminate the LFA immediately if the Claimant:

- *commits a material and irremediable breach; or*
- *becomes insolvent.*

The Funder may terminate the LFA by prior written notice if the Funder reasonably:

- *ceases to be satisfied about the merits of the Claim;*
- *believes that the Claim is no longer commercially viable; and/or*
- *believes that there has been a material breach of the LFA and the breach has not been remedied within the notice period.*

After the Term-Sheet

- **Due-diligence**
- **Execution of the agreement**
- **Channelling of funds**

What may really happen

- **Threshold to fund: +60% chances of prevailing or 99,9%?**
- **Selection of legal team and arbitrator**
- **Discussion of the legal strategy**
- **Mock arbitration prior to the execution of the agreement**
- **Instructions and termination rights**
- **“Financial advisor” in hearings**

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Negotiation of the Funding Contract!

Thank you!

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