

Glossary of terms

Adverse costs

In certain jurisdictions, the losing party must pay the legal costs of the winning party (in addition to their own).

Adverse costs or after the event insurance (“ATE”)

Specialist insurance designed to protect against adverse costs. Whilst various forms of ATE are available, a premium is usually always payable. ATE does not insure a party’s own-side legal costs.

Arbitration

A form of alternative dispute resolution in which the parties refer their dispute to one or more persons (known as “arbitrators” or together an “arbitral tribunal”), by whose decision (the “award”) they agree to be bound. Arbitration is often used to resolve disputes relating to international commercial transactions.

Arkin v Borchard Lines Ltd & Others (2005)

This was an important case in the English Court of Appeal that, amongst other things, reaffirmed the judiciary’s view that litigation funding has a legitimate role to play in resolving disputes and permitting access to justice.

Association of Litigation Funders (“ALF”)

The membership-based association for approved litigation funders launched in November 2011. Harbour is a founding member of the ALF.

Before the event insurance (“BTE”)

Certain household or car insurance policies include coverage for own-side legal costs up to a specified amount. BTE insurance is not generally available in commercial disputes.

Champerty and maintenance

Ancient common law doctrines which forbid agreements in which a person with no previous interest in a claim helps to finance it (maintenance) with a view to obtaining a share of the damages if it succeeds (champerty). In feudal times, these doctrines were intended to stop the well-resourced from unduly influencing the courts. Champerty and maintenance do not restrict litigation funding, which is supported by case law and in various judicial statements. See Arkin, the Civil Justice Council and Chapter 11 of The Jackson Report.

Civil Justice Council (“CJC”)

An advisory public body established under the Civil Procedure Act 1997 with responsibility for overseeing and coordinating the modernisation of the civil justice system. It provides advice to the Secretary of State for Constitutional Affairs on the effectiveness of aspects of the civil justice system, and makes recommendations to test, review or conduct research into specific areas. In 2007 the CJC published a report recommending the acceptance of third party funding.

Civil litigation

Civil litigation is the method by which the courts resolve disputes between parties seeking monetary, injunctive or declaratory relief. It is distinct from criminal litigation, in which the state prosecutes an individual for criminal offences.

Claimant

Any party bringing a claim whether through civil litigation, arbitration or a form of alternative dispute resolution.

Conditional fee arrangement (“CFA”)

This is an agreement whereby a lawyer agrees to partially discount their fees in return for a success fee should the case succeed. The success fee is determined by both the level of risk involved in the case and the amount of discount offered. It is also subject to a cap of 100% of the discounted amount.

Contingency fees

This is a different type of success fee in which the lawyers do not charge any fees throughout the case but take a percentage of the damages awarded to the claimant should the case succeed. Like CFAs, any amounts discounted or taken on contingency by the lawyers are irrecoverable if the case fails. Contingency fees are permitted in various jurisdictions. In the UK, contingency fees have been permitted in commercial litigation since 2013. The type of agreement which gives effect to contingency fees is known as a damages-based agreement or DBA.

Damages-Based Agreement (DBA)

See “Contingency fees”.

Loss of opportunity claims

A claim where damages are based on speculative future losses. The claimant claims that the defendant’s actions prevented him/her from making a profit or otherwise gaining an opportunity. The value of these claims is often uncertain.

Security for costs

In certain jurisdictions, a defendant is entitled to apply for security for their legal costs where they can show that there is a risk that these costs will not be met should they succeed in defending the claim. Security for costs can be provided by bank guarantee, deed of indemnity or payment of money into court.

Important information

Harbour Litigation Funding Limited ("HLF"), a company incorporated under the law of England and Wales, is authorised and regulated by the Financial Conduct Authority of the United Kingdom and acts as the exclusive investment sub-adviser to each of Harbour Litigation Investment Fund, L.P., Harbour Fund II, L.P., Harbour Fund III, L.P. and Harbour Fund IV, L.P. (the "Harbour Funds"). Each of the Harbour Funds is an exempted limited partnership organised under the laws of the Cayman Islands.

For the purpose of this material, a reference to "Harbour", "we", "us" or "our" shall mean (a) in the context of approving and providing litigation funding, any of the Harbour Funds (as the case may be) operating out of the Cayman Islands; and (b) in the context of investment advisory and/or marketing activities (including but not limited to general promotion of the Harbour Funds; market research on case opportunities; and identifying potential cases), HLF operating out of the United Kingdom.