
ALTERNATIVE FUNDING OPTIONS FOR LITIGATION

It is well known that litigation can be expensive. At the extreme, it involves exposure not just for your own but also for your opponent's costs. The cost risks often influences and may sometimes determine how you deal with a dispute. Therefore any funding options which reduce your legal spend and increase certainty as to your financial exposure will undoubtedly assist in the effective management of a dispute.

There are a number of options you may wish to consider.

CFAs

A Conditional Fee Agreement ("CFA") is a method by which Lewis Silkin will, in certain circumstances, share the risk of litigation with you. Under a CFA, we will agree to discount our standard charge out rates. You will pay only the discounted rates by monthly bills as the case progresses. This discount does not apply to disbursements.

If an agreed result, e.g. a win at trial or a favourable settlement, is not achieved we will charge you no more than the discounted rates you paid as the case was proceeding.

If we achieve or exceed the agreed result we will charge an uplift on those rates. The uplift will comprise the balance between our discounted rates and our standard rates plus a success fee which will be a percentage of our standard rates. If the court awards costs (usual if you win) or the other party agrees to pay costs on a settlement, you will be entitled to seek recovery of the bulk of these charges, disbursements and the success fee from your opponent.

Generally we would consider that a dispute is suitable for a CFA if it falls within the following criteria:

- the value of the claim is more than £150,000; and
- a detailed merits assessment of the claim shows a good prospect of success i.e. your chances of succeeding at trial are 60% or more; and
- your opponent has the ability to pay any potential award of damages and costs.

CFAs can be entered into at any stage of the proceedings although it is normally beneficial for you to enter into such an agreement sooner rather than later. For more information on CFAs, please see the Lewis Silkin In Brief "[What you need to know about a Conditional Fee Agreement](#)"

ATE

If you are unsuccessful in your dispute the court will usually order that you pay your opponent's costs. It is possible to limit your exposure for your opponent's costs by taking out After the Event Insurance ("ATE"). ATE is an insurance policy which covers the risk that you may lose the case and have to pay your opponent's costs and disbursements as well as your own disbursements. ATE does not normally cover your own costs (but can cover your own disbursements).

A helpful feature of ATE is that the premium is usually deferred until the conclusion of the case and, if you are not successful at trial, is usually not payable at all. If you are successful at trial, the premium will be payable, but are usually recoverable from your opponent.

Therefore, subject to the level of cover obtained, your exposure is limited to the amount of the premium. The premium is likely to be in the region of between 30% - 40% of the costs which you are seeking to insure against paying.

The insurer will want to be satisfied the claim is likely to succeed and that the other party will be able to pay the premium, if ordered by the Court or agreed as part of any settlement.

The ATE market is still relatively young for commercial disputes but has grown significantly in the last few years. We work closely with an insurance broker, "The Judge", who is very experienced in this area. The Judge will approach the market for, and identify a number of, competitive quotes. We will assist you in the preparation of any such application for ATE. ATE can be a powerful tool, not only in providing a degree of financial certainty but also in increasing pressure on an opponent to settle.

For more information on ATE insurance see Lewis Silkin In Brief "[What you need to know about After the Event Insurance for Costs](#)".

For more information on these funding options please contact Paula Barry on T: 020 7074 8099 or E: paula.barry@lewisilkin.com or your usual Lewis Silkin contact.