



HARBOUR
LITIGATION FUNDING

Kiev

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What is a funder?





What is a funder?

Definitions have focused on professional funders but include

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- A professional litigation funder such as Harbour
 - An insurer
 - A contingency fee lawyer
 - A bank lending money
 - Those providing corporate finance
 - Any ad hoc provider of funds
 - Creditors of an insolvent entity who chooses to fund a claim
 - A new equity investor
 - Anyone who pays the fees incurred in conducting a case for a return directly or indirectly





Types of arbitrations and claimants being funded

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Types of arbitrations and claimants being funded

- Important to understand context of numbers of claims being funded
 - Professional funders still only a handful e.g. Harbour one of largest funders in the world, funds c25 cases a year of which 5 are arbitrations
 - Of the c34 ICSID claims issued in 2013, 28 approached Harbour for funding and 1 was funded
 - All types of arbitration considered
 - Not just the impecunious
 - Solvent claimants facing squeeze on legal spend
- Claimants seeking case funding and corporate finance
 - Secured lending on the outcomes of arbitrations
 - Tendency for lawyers to believe large corporates can simply carry on paying their fees
 - Average budget for an arbitration now £4-5 million












Funding Criteria





Typical funding criteria

1. Is the claim a commercial dispute?
For example shareholder class actions, cartel actions, breach of contract, breach of statute, insolvency claims, breach of fiduciary duty and breach of trust but NOT personal injury, divorce or defamation 
2. Does the case have a potential damages or a money outcome of £10m or more? 
3. Is the defendant creditworthy?
Will the defendant be able to pay the damages being claimed with currently identifiable assets? 
4. Are the legal merits good?
Is the case on liability strong, is there a clear basis for the damages being claimed? How long will the claim take to reach conclusion and is written legal advice on the merits available? 
5. Are the costs realistic?
We do not require lawyers to work on a discounted fee basis but we do require a detailed budget of the costs through to final hearing. Realism is vital. 
6. Is the ratio of claim value to costs in the region of 10:1?
As a guide, we expect a £1m cost case to have a claim value of at least £10m 
7. Is the legal team appropriately experienced in the area of law concerned? 





Trends in arbitration decisions – adverse costs, disclosure and security for costs

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Trends in arbitration

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- Hong Kong report by Law Reform Commission sub committee 19 October 2015 – strong recommendation to permit funding – www.hkreform.gov.uk
 - Singapore position less clear – if Singapore parties in Singapore likely not permitted
 - Impact on competitiveness of arbitral centre
 - RSM v St Lucia – security for costs
 - CiArb and IBA guidelines on disclosure and security for costs - Muhammet v Turkey
 - Adverse costs awards inconsistent

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- Arbitration community needs to be clear about definitions
 - Apply rules consistently
 - A ‘funder’ includes a very wide ranging definition
 - Claimants want certainty when they embark on an arbitration

