

Alternative Funding Redux

Christian Stuerwald – 3 November 2017, Kiev
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Arbitration Funding – Basics

- In „traditional“ Arbitration Funding
 - The Funder bears the cost risk of the Claimant's dispute
 - ... in return the Funder is entitled to a share of the proceeds if the case is successful
- Traditionally Claimant focussed
- Commercial arbitrations: states (and state owned entities) are like other commercial participants, can be claimants or defendants
- Investor State arbitrations: states are defendants only

Arbitration Funding – Law Firm funding

➤ Law firm funding

- Law firm offers client reduced hourly fees, funders pays the balance in exchange for a (reduced) share of the proceeds

Or

- Law firm offers full contingency deal to client, but passes the (contingent) entitlement on for hourly rates payments from a funder
 - ✓ Client acquisition tool

Or

- Portfolio monetizations: law firm sells part of its contingent fee entitlements across a number of cases for cash
 - ✓ De-risking
 - ✓ Adverse selection
 - ✓ Accelerate cash flow

Arbitration Funding – selling late stage claims or awards

- Increased practical relevance due to influx of capital
- „Litigation fatigue“
 - 2-3 years of enforcement and
 - several millions in fees left to spend
- Commercial negotiation about claim value discount
- Set aside risk – late stage proceedings
- Enforcement risk – heavily fact specific
 - who is the respondent?
 - What is the seat of the arbitration?

Arbitration Funding – State funding

- Much talked about, rarely implemented
- Practical relevance has been low
- Successful defence cost funding triggers payment obligation to a funder
- Cash flow management
- Monetizations of claims:
 - Funders pay more than just legal costs
 - Claimant is free to use ,excess‘ as it sees fit, including funding cost of defending
 - Cross-support of a range of cases
 - Portfolio approach: states have litigious assets and liabilities

Annex

I. Who is Calunius?

➤ Calunius Capital LLP in London

- Regulated by the Financial Conduct Authority (FCA) since June 2007 and registered with the SEC (USA)
- Founder Member of the Association of Litigation Funders of England & Wales
- Exclusive investment adviser of the Calunius Litigation Risk Funds

II. Who is Calunius?

- Calunius Litigation Risk Funds in Guernsey (Fund 1, 2 und 3)
 - £200m (ca. €220m) of investor commitments
 - Investors are large, institutional entities
 - Founded in December 2010 (Fund 1), April 2014 (Fund 2) and October 2016 (Fund 3)
 - Regulated by the Guernsey Financial Services Commission (GFSC)

Speaker

- **Christian Stürwald, Head of Underwriting:**
 - From 2005-2010 worked at Allianz ProzessFinanz GmbH in München and London
 - Since 2011 at Calunius
 - 17 years of experience in large scale commercial litigation funding
 - Admitted as German lawyer (Rechtsanwalt) and solicitor (non-practising) in England & Wales

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