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2019 Global Survey on the Commercialisation of Disputes

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Introduction

Christian Toms – Brown Rudnick LLP

Just as economies and businesses have to adapt and evolve in order to keep pace with the changing world, so too does the practice of law.

Whereas litigation and related disputes work was once regarded by those forced into its sometimes unforgiving arena purely as a 'distressed' purchase, and an unwelcome even if necessary drain on resources, in some quarters it is increasingly being looked at in a quite different way. A claim (or indeed an order/judgment) can have its own intrinsic, measurable value, and so properly can be regarded and treated as an asset - something which in turn can be bought, sold and financed.

The growing Third Party Funding market is at the forefront of a move towards commoditising the resolution of disputes and the enforcement of judgments. However, while the concept and practice of "litigation/arbitration funding" has been around for longer than many may realise, the commercial businesses that have emerged in this area still constitute a relatively young market, and one that is yet to make inroads in all jurisdictions. One driver of growth has been the push to ensure that a party should not inevitably be barred from pursuing an entitlement merely by reason of their own impecuniosity; the argument is that this risks an imbalance between parties' ability to seek justice

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purely based on the availability of resources.

That said, the key characteristics of a Third Party Funding arrangement are often what pose the biggest hurdle to acceptance of such arrangements i.e. (i) the provision of financial support to one party involved in a dispute (call them Party A), with such financial support coming from a third party totally unconnected to anyone actually interested in the dispute (let's call the funder Party C); and (ii) in return for Party C's provision of financial support it is agreed, but only upon a successful outcome for Party A, that the third party funder (Party C) will be repaid its investment together with a percentage (in some cases up to 40-50%) of any settlement amount or damages award the successful party (Party A) might receive from the loser (Party B).

The reason such arrangements can present an issue is because they fall foul of many jurisdictions' prohibition (civil and criminal) of Maintenance (i.e. the involvement of a disinterested party in the encouragement of a lawsuit) and Champerty (i.e. the provision of support to a person in a lawsuit on condition that a share of the spoils will go to the supporter). However, these doctrines are, at best, centuries old, and based on historic concerns (at least when considering England & Wales) that arose from feudal power structures and the risk of abuse by powerful landowners supporting otherwise unmeritorious claims for their own ends. However, with the established independence of the judiciary in many jurisdictions, arguably such concerns should no longer hold sway in twenty first century disputes. That is, of course, not to say there are not still potential risks with the Third Party Funding concept. Arguments are often made about: the kind of bargains struck and their
impact on the actual amounts ultimately received by a party bringing a claim; the dangers of a flood of litigation that would otherwise be avoided; unnecessarily prolonged litigation; of oxygen being given to otherwise vexatious litigation; and of course ethical concerns in the prosecution of any litigation (and crucially pursuit of settlement), when lawyers and third party funders are inevitably relying on the quantum of recovery for a significant part of their remuneration.

Nevertheless, in a marketplace of relatively choosy funders increasingly populated by sophisticated and savvy client counterparties, the benefits of Third Party Funding, both as a way to access justice and to manage the bottom line, are often being seen to outweigh the potential risks - so the market continues to grow.

Similarly, there continues to be considerable growth in the availability and use of technology enabling lawyers and their clients to benefit from the commoditisation of more process driven day-to-day legal work, as well as gains in efficiency, speed and therefore cost-savings when undertaking other labour intensive tasks such as document review and electronic disclosure. Increasingly local courts/tribunals and their procedure rules are supportive of the use of such new technologies, and arguably they have little option. It is now difficult to ignore that, as we collectively create more and more electronic documents and data (estimated at more than 2.5 quintillion bytes of data every single day), and grow more and more accustomed to dealing with and using our electronic assistants and portable tablets both at work and at home, that when the situation is right such technology also can bring efficiency and cost savings to the business of disputes (and not just as to their preparation, but also their presentation to a court/tribunal).

Taking all of this into consideration, the aim of this project was to seek a better understanding of two key areas impacting legal practice across various jurisdictions: (1) the availability and reality of Third Party Funding; and (2) the availability and use of technology in local Court hearings and the broader practice of dispute resolution. The underlying survey was conducted with the assistance of the firms listed as contributors. Brown Rudnick's gratitude and sincere thanks goes to all of them, and their contributing attorneys, for their patience and efforts in putting together what it is hoped will be a useful resource on at least two key aspects of what we are increasingly seeing as a growing move towards the commoditisation of disputes.

Jurisdiction Overview

Jusrisdiction	Contingency Arrangements	Third Party Funding	Litigation Insurance	Technologically Equipped Courts	E-Filing	Online Docket	Court Apps	E-Disclosure Toools (TAR) Promoted/Widely Used
Argentina	✓	⊘	✓	Not Well Equipped	✓	✓	⊘	⊘
Azerbaijan	⊘	⊘	✓	Getting There	✓	✓	⊘	⊘
Bermuda	⊘	✓	✓	Lagging Behind	⊘	⊘	⊘	⊘
Bulgaria	✓	⊘	✓	Not Well Equipped	⊘	⊘	⊘	⊘
Canada	—	✓	✓	Getting There	✓	⊘	⊘	⊘
Cayman Islands	⊘	✓	✓	Getting There	⊘	⊘	⊘	✓
Chile	✓	⊘	⊘	Lagging Behind	✓	✓	⊘	⊘
Cyprus	⊘	⊘	✓	Not Well Equipped	⊘	⊘	⊘	⊘
Ecuador	✓	✓	⊘	Getting There	⊘	⊘	⊘	⊘
Egypt	✓	✓	⊘	Not Well Equipped	⊘	⊘	⊘	⊘
England & Wales	✓	✓	✓	Well Equipped	✓	✓	⊘	✓
France	✓	✓	✓	Not Well Equipped	✓	⊘	⊘	⊘
Georgia	✓	✓	⊘	Lagging Behind	⊘	⊘	⊘	⊘
Guatemala	✓	✓	✓	Getting There	⊘	⊘	⊘	⊘
Guernsey	⊘	✓	✓	Getting There	⊘	⊘	⊘	⊘

Jusrisdiction	Contingency Arrangements	Third Party Funding	Litigation Insurance	Technologically Equipped Courts	E-Filing	Online Docket	Court Apps	E-Disclosure Toools (TAR) Promoted/Widely Used
Hungary	✓	⊘	⊘	Lagging Behind	✓	⊘	⊘	⊘
Indonesia	✓	✓	✓	Not Well Equipped	✓	⊘	⊘	⊘
Ireland	⊘	⊘	✓	Well Equipped	✓	⊘	⊘	✓
Italy	⊘	✓	⊘	Getting There	✓	✓	⊘	⊘
Japan	✓	⊘	✓	Lagging Behind	✓	⊘	⊘	⊘
Jersey	⊘	✓	✓	Getting There	✓	⊘	⊘	✓
Kazakhstan	✓	⊘	✓	Lagging Behind	✓	✓	✓	⊘
Latvia	✓	⊘	⊘	Getting There	✓	⊘	⊘	⊘
Lebanon	✓	⊘	⊘	Not Well Equipped	⊘	⊘	⊘	⊘
Lithuania	✓	✓	⊘	Getting There	✓	✓	⊘	✓
Malta	⊘	⊘	✓	Lagging Behind	⊘	✓	✓	⊘
Nigeria	✓	⊘	✓	Not Well Equipped	✓	⊘	⊘	⊘
Singapore	⊘	✓	✓	Well Equipped	✓	✓	⊘	✓
South Africa	✓	✓	✓	Not Well Equipped	⊘	⊘	⊘	⊘
Spain	✓	✓	✓	Getting There	✓	⊘	⊘	⊘
The Netherlands	⊘	✓	✓	Getting There	✓	✓	⊘	⊘
Unites Arab Emirates	⊘	✓	⊘	Getting There	✓	✓	✓	⊘
Ukraine	✓	✓	✓	Not Well Equipped	⊘	✓	⊘	⊘
USA (New York)	✓	✓	⊘	Getting There	✓	✓	⊘	✓

Argentina

Contributor: Martin Torres - M. & M. Bomchil

Q. Are lawyers able to enter into contingency / damages sharing agreements with clients?
Yes. These arrangements are very common. Typically the lawyers will be paid a fixed amount for the case, plus a contingent success fee.

Q. Recoverability of client costs and/or success fees?
As a general rule costs are recoverable.

Q. Can a Defendant obtain an order for security for costs?
Yes.

Q. How active is the Court costs management? Are cost budgets required?
It is unusual to see the courts becoming involved in such issues.

Q. Is Third Party Funding of disputes available?
There is still no developed market for such funding presently. That said, there is no express ban on such arrangements.

Q. Is insurance for legal costs available?
Yes, for both litigation and arbitration, and there are

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some specialist insurers who operate in this area. Where insurance is offered premiums can usually be deferred. However, whilst available, insurance arrangements for litigation costs are still uncommon.

Q. Is there any applicable code of conduct /regulation for insurers?
No. However, insurers do not get involved in any way in the claims they insure. As well as adverse costs it is also possible for a claimant to insure its own costs exposure in the event their claim is unsuccessful.

Q. Are any other claim financing / insurance arrangements available to a Claimant?
No.

Q. How technologically equipped is your Court system e.g. paperless / live transcripts / touch screen technology etc?
The courts tend to be poorly equipped in relation to available technology.

Q. Are any or all of the following available: e-filing; on-line access to the court docket/file; smart-phone applications to assist court interactions?
Yes, e-filing is available for all kinds of judicial writs. Similarly online access is available to court dockets. Smartphone apps are not in use.

Q. Are Judges available 24/7?
No.

Q. Are interim/interlocutory hearings heard by telephone conference/Skype/Video conference ?
No.

Q. Is evidence at trial capable of being by Skype / Video conference ?
No.

Q. What are your court's views on the use of e-disclosure technology?
E-disclosure is not presently in use. There is no view presently on the use of technology assisted review solutions such as predictive coding.

Q. How widespread is the use of technology aided review tools such as predictive coding?
This is not currently used either by parties to disputes or by law enforcement or regulators.

Azerbaijan

Contributors: Ismail Askeriov and Anar Janmammadov - MGB Law Offices

Q. Are lawyers able to enter into contingency / damages sharing agreements with clients?
No, although there is no formal bar on such arrangements. Typical fee arrangements are therefore the usual 'hourly rate' basis or fixed fee agreements.

Q. Recoverability of client costs and/or success fees?
As a general rule costs are recoverable, although Judges are entitled to reduce the amount of a lawyer's fee that would otherwise be recoverable to what they determine a 'reasonable' amount – depending on the complexity of a case.

Q. Can a Defendant obtain an order for security for costs?
No, although freezing type orders are sometimes granted to prevent assets that might be used to satisfy a judgment being disposed of.

Q. How active is the Court costs management? Are cost budgets required?
It is unusual to see the courts becoming involved in such issues.

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Q. Is Third Party Funding of disputes available?
No, not for either litigation or arbitration.

Q. Is insurance for legal costs available?
Yes. However, whilst available, insurance arrangements for litigation costs are still uncommon.

Q. Is there any applicable code of conduct /regulation for insurers?
No.

Q. Are any other claim financing / insurance arrangements available to a Claimant?
No.

Q. How technologically equipped is your Court system e.g. paperless / live transcripts / touch screen technology etc?
The courts are getting there in terms of available technology, and the Civil procedure Code requires that hearings of commercial disputes must be video recorded by the court.

Q. Are any or all of the following available: e-filing; on-line access to the court docket/file; smart-phone applications to assist court interactions?
Yes, e-filing is available for all kinds of documents usually filed in a case e.g. statements of claim, documents supporting the claim, motions etc. Similarly, online access to the court file is available to the parties to a matter, but problems with the IT system sometimes makes this impossible. Smartphone apps are not in use.

Q. Are Judges available 24/7?
Each District Court has a judge available 24/7, but only for criminal cases.

Q. Are interim/interlocutory hearings heard by telephone conference/Skype /Video conference ?
No.

Q. Is evidence at trial capable of being by Skype / Video conference ?
No.

Q. What are your court's views on the use of e-disclosure technology?
E-disclosure is not presently in use. There is no view presently on the use of technology assisted review solutions such as predictive coding.

Q. How widespread is the use of technology aided review tools such as predictive coding?
This is not currently used either by parties to disputes or by law enforcement or regulators.

Bermuda

Contributor: Rhys Williams - Conyers Dill & Pearman

Q. Are lawyers able to enter into contingency / damages sharing agreements with clients?
No. These are prohibited by the Barristers' Code of Professional Conduct 1981, Rule 96. The Bar Council has proposed allowing conditional/contingent fee structures however no steps have been taken to do so thus far.

Q. Recoverability of client costs and/or success fees?
As a general rule costs follow the event i.e. loser pays. Success fees are not recoverable.

Q. Can a Defendant obtain an order for security for costs?
Yes. The Court may order security for costs where it appears to the Court that: (1) The plaintiff resides abroad; (2) The plaintiff is suing in a nominal capacity on behalf of someone else and may not be able to satisfy an order for costs; or (3) The plaintiff has changed address with a view to evading the consequences of the litigation, or the address in the Writ is incorrect. Such security can in theory be dealt with by obtaining an insurance policy / third party funder indemnity.

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Q. How active is the Court costs management? Are cost budgets required?
Not at all. Cost protection orders are available in limited cases of public interest, where the party has no financial interest in the outcome of the case and would otherwise not bring the case if they were to be exposed to costs orders.

Q. Is Third Party Funding of disputes available?
Yes, for both litigation and arbitration, Claimants and Defendants. However, such funding arrangements are presently uncommon with no developed or developing market for third party funders.

Q. Is it necessary to notify an opponent of any Third Party Funding arrangements?
No.

Q. Is there any applicable code of conduct /regulation for Third Party Funders?
There is no code of conduct. In principle there is no reason why third party funders cannot control a case, although in practice it has not been experienced in Bermuda. There are presently no restrictions on the types of cases that can be funded or any areas typically avoided.

Q. Are Third Party Funders at risk of costs awards in the event a funded claim is unsuccessful?
Yes.

Q. Is insurance for legal costs available?
Yes, for both litigation and arbitration. However, such arrangements are presently uncommon.

Q. Is there any applicable code of conduct /regulation for insurers?
There is no code of conduct.

Q. Are any other claim financing / insurance arrangements available to a Claimant?
Yes, although such arrangements are very rare.

Q. How technologically equipped is your Court system e.g. paperless / live transcripts / touch screen technology etc?
They tend to be lagging behind in these areas.

Q. Are any or all of the following available: e-filing; on-line access to the court docket/file; smart-phone applications to assist court interactions?
No.

Q. Are Judges available 24/7?
No.

Q. Are interim/interlocutory hearings heard by telephone conference / Skype / Video conference ?
The courts have the capability, although in practice it never occurs.

Q. Is evidence at trial capable of being by Skype / Video conference ?
In civil and commercial trials where both sides have given consent.

Q. What is your court's views on the use of e-disclosure technology?
E-disclosure is permitted and encouraged if it will save time and costs. There is no view presently on the use of technology assisted review solutions such as predictive coding.

Q. How widespread is the use of technology aided review tools such as predictive coding?
Clients and parties to disputes are yet fully to embrace such technology. Similarly it is not yet typically used by law enforcement or regulators.

Bulgaria

Contributor: Kina Chuturkova - Boyanov & Co.

Q. Are lawyers able to enter into contingency / damages sharing agreements with clients?
Yes except in criminal cases and in non-pecuniary civil disputes. However, contingency agreements are still uncommon in Bulgaria. Typically, arrangements between a lawyer and a client will provide for a fixed fee (an hourly rate or a cap fee). In litigation, a separate fee is agreed for each court instance. In the event of a fixed fee, the agreed amount must not go below a minimum sum determined by the Regulation on Minimum Lawyer Fees.

Q. Recoverability of client costs and/or success fees?
The rule of thumb is that in litigation the winning party may recover costs as well as lawyer fees that have been agreed and paid prior to the completion of the last court hearing before the respective court instance. As a result, success fees cannot be recovered in litigation. Also, a party may complain that the costs and expenses claimed by the other party are excessive. In such cases, the court may award a reduced amount for lawyer fees taking into consideration the factual and legal complexity of the case.

Q. Can a Defendant obtain an order for security for costs?
Security for costs is not regulated under the Bulgarian law, and the parties cannot request assistance from courts in securing their potential cost claims.

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Q. How active is the Court costs management? Are cost budgets required?
Bulgarian courts do not deal with the management of parties' costs.

Q. Is Third Party Funding of disputes available?
No. While Third Party Funding is not prohibited by law in express terms, the lack of statutory regulation creates a lot of issues related to the role of financier in court proceedings, including conflict of interests, as well as recovery of third party funds.

Q. Is insurance for legal costs available?
Yes. Pursuant to Article 420 (1) of the Insurance Code, insurance for legal expenses is available with respect to judicial, pre-trial, administrative and arbitration proceedings. However, liability for fines, confiscation or other pecuniary sanctions are not insurable - Article 420 (2).

Q. Is there any applicable code of conduct /regulation for insurers? How involved are insurers permitted to become with an insured case?
There is no specific code of conduct. However, the Insurance Code requires that an insurer who offers insurance for legal costs must take the necessary steps to avoid conflicts of interests e.g. compliance with at least one of: (i) the insurer does not permit its employees involved in settlement of claims or the provision of legal advice in relation to insurance for legal expenses to perform any similar operations with regard to other types of insurances; (ii) if the insurer provides insurance for legal expenses and other types of insurance, it refers the settlement of claims under the insurance for legal expenses to another legal person, in accordance with the requirements of the Insurance Code; or (iii) the insurer notifies the insured person about his/her right to authorize a lawyer at their own discretion to defend their interests from the moment at which the insured person's right to file a claim under the insurance policy has arisen. The Insurer's procedure for avoiding conflicts of interest must be stated in the insurance policy.

There are mandatory rules regarding the insured's rights to appoint a lawyer at his/her own choice and defend their case. Insurers are not allowed to intervene in this process and give instructions to the insured's representative. Although, it is not stated in express terms insurers may provide assistance, but it is for the insured to decide whether to comply with this advice.

Q. Are any other claim financing / insurance arrangements available to a Claimant?
No.

Q. How technologically equipped is your Court system e.g. paperless / live transcripts / touch screen technology etc?
The Bulgarian Civil Procedure Code which entered into force in 2008 provides for service of court documents via e-mail, if the party so agrees. Although a lot has been done in recent years, Bulgarian courts cannot be said to be well equipped. They do not use any of the technologies listed above.

Q. Are any or all of the following available: e-filing; on-line access to the court docket/file; smart-phone applications to assist court interactions?
No to e-filing and smart-phone apps. Some courts (e.g. Sofia City Court) allow parties/non-parties access to the court's electronic register where they can check the development of the case. However, they do not have access to court documents or the other party's filings. In other courts (e.g. Supreme Court of Cassation, Supreme Administrative Court, Sofia Appellate Court), parties are given access to court decisions, but they cannot access other court documents and parties' filings. Other courts do not provide any on-line access.

Q. Are Judges available 24/7?
There are duty judges that are available 24 hours a day 7 days a week. They are authorized to hear certain criminal matters. No duty judges are available in civil and commercial cases.

Q. Are interim/interlocutory hearings heard by telephone conference/Skype/Video conference ?
Pursuant to Article 135 (1) of the Civil Procedure Code, court hearings are held in the court building. Conduct of hearings outside the building of the court is admissible to avoid cost increase. Hearings through phone line, Skype or Video conference are not permitted in Bulgaria.

Q. What are your court's views on the use of e-disclosure technology?
E-disclosure technology solutions are not presently used in the country. The only legal provision on presentation of electronic documents before the civil courts is Article 184 of the Civil Procedure Code according to which an electronic document may be presented reproduced on paper copy authenticated by the party. However the court may obligate the party to present the document on an electronic data medium too. If the court does not have at its disposal technical means and experts making it possible to reproduce the electronic document and to duly verify the electronic signature in the courtroom in the presence of the persons who appeared, electronic copies of the document shall furthermore be presented to each of the parties to the case.

Canada – (common law jurisdictions)

Contributor: R. Seumas M. Woods - Blakes

Q. Are lawyers able to enter into contingency / damages sharing agreements with clients?

Yes. Contingency fee arrangements are common in personal injury and class action cases, but otherwise very uncommon. In such cases legal services are provided in return for a fixed portion of any settlement or award. Typically the client will have to pay disbursements as the case progresses.

Q. Recoverability of client costs and/or success fees?

Basically there are two scales of cost awards, partial indemnity in which a party receives about 35% of their actual costs, and substantial indemnity in which the award is closer to 60% of their costs. Full indemnity is usually only available in cases where the governing contract provides for such an award.

Q. Can a Defendant obtain an order for security for costs?

Only where the plaintiff is a non-resident without assets in the jurisdiction and there is some question about the enforceability of a costs award in the other jurisdiction, or where the plaintiff is a corporation and

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there is good reason to believe it has insufficient assets in the jurisdiction to pay a costs award.

Q. How active is the Court costs management? Are cost budgets required?

In non-third party funded cases, not at all. The Courts are involved in the case of third party funders funding putative plaintiffs in class actions. In that situation the Courts must approve the funding arrangement and typically review a proposed litigation budget.

Q. Is it necessary to notify an opponent of any Third Party Funding arrangements?

In the case of class actions the Court must approve the funding arrangement so disclosure is mandatory. Outside of that context, and corporate reorganizations subject to a court approval process, the issue is not settled.

Q. Is there any applicable code of conduct?

There is no applicable code of conduct. In the case of class actions requiring court approval of the funding arrangements, the Courts will scrutinize the terms of the funding agreement, including those terms dealing with the funder's on-going involvement in the funded case.

Q. Is insurance for legal costs available?

Yes.

Q. Is there any applicable code of conduct for insurers?

No.

Q. Are any other claim financing/insurance arrangements available to a Claimant?

Yes. The class proceedings regimes typically include a public body to which prospective class plaintiffs may apply for funding.

Q. Is Third Party Funding of disputes available?

Yes. Third Party Funding is available for litigation and arbitration claims. There is a possible developing market for Third party funding which is at its very early stages.

Q. Are Third Party Funders at risk of costs awards in the event a funded claim is unsuccessful?

There is no decision involving costs against a third party funder as yet.

Q. How technologically equipped is your Court system e.g. paperless / live transcripts / touch screen technology etc?

Some progress has been made, but it varies from province to province, and even from one part of a province to another part. There are few paperless trials given the technology available to the Courts. Litigants prepared to fund themselves the costs associated with higher levels of technology typically can use it. Funding for technology for the courts is not a government priority.

Q. Are any or all of the following available: e-filing; on-line access to the court docket/file; smart-phone applications to assist court interactions?

No to on-line access to dockets or smart-phone apps. E-filing is available, but only for some court documents in some situations, for example at the Court of Appeal. However, it is not common in the lower level courts. No pre-registration of an account is needed.

Q. Are Judges available 24/7?

Yes, although there may be practical issues with obtaining a judge at very short notice. It will usually depend on the individual jurisdiction and branch of the court.

Q. Are interim/interlocutory hearings heard by telephone conference / Skype / Video conference ?

Yes. Some judges will hear matters over the telephone or by video conference.

Q. Is evidence at trial capable of being by Skype / Video conference ?

Yes.

Q. What are your court's views on the use of e-disclosure technology?

Not so much a court view as a view held by individual judges. Newer appointments are more ready to

accept such solutions.

Q. How widespread is the use of technology aided review tools such as predictive coding?

Not used.

Cayman Islands

Contributors: Paul Smith and Spencer Vickers - Conyers Dill & Pearman

Q. Are lawyers able to enter into contingency / damages sharing agreements with clients?
No, contingency fee agreements are unlawful. However, it is lawful for lawyers to enter a fair and reasonable conditional fee arrangement for an increase in fees to reflect the nature of the risk undertaken by counsel in accepting a case without the assurance of receiving payment.

Q. Recoverability of client costs and/or success fees?
The Court may order that costs (including attorney's fees, court fees, expert witness fees, travelling expenses for witnesses, and any other expense reasonably incurred by an attorney during the course of the litigation not included in the attorney's fees) are recoverable from an unsuccessful party. However, there are various restrictions on recoverability and it is rare that a client's full costs would be recoverable. For instance, foreign attorneys' fees are generally not recoverable. The Arbitration Law 2012 provides that every arbitration agreement shall be deemed to include a provision that costs awards shall be in the discretion of the arbitral tribunal (unless the contrary is stated).

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Q. Can a Defendant obtain an order for security for costs?
Yes. Where a plaintiff may be unable or unwilling to satisfy a costs order a defendant can apply to court for an order that the plaintiff provide security for costs. Generally such an order requires the plaintiff to deposit an amount with the Court. The Court has previously found that an ATE insurance policy obtained after security for costs was ordered did not constitute acceptable security (in that case it was relevant that the policy was with a UK insurer with no assets in the Cayman Islands). However, if ATE insurance is obtained prior to any security for costs orders the Court will take it into account.

Q. How active is the Court costs management? Are cost budgets required?
There are no requirements to file costs budgets in advance. However, after costs orders are made, if parties do not agree on costs, the Taxing Officer (a court official) may be called upon to review a detailed bill of costs from the party claiming costs and to assess the reasonableness of the claim. The Taxing Officer may consider written submissions and may also request further information. The Taxing Officer will then issue a costs certificate setting the amount to be paid. Either party may apply to Court to review the Taxing Officer's decision. A Judge then may request further evidence/submissions. A party may still appeal the Judge's decision to the Court of Appeal. However, leave to appeal will only be granted in limited circumstances

Q. Is Third Party Funding of disputes available?
Yes. Third party funding is often utilized in official liquidations. 2017 case law has provided helpful guidance on features to be included in litigation/arbitration funding arrangements to ensure they are lawful. This may now encourage more parties (including outside of liquidation matters) to consider Third Party Funding options (A Company v A Funder (unreported, 23 November 2017)). Presently third party funders who fund Cayman Islands litigation tend to be based in other jurisdictions, such as the UK and the United States of America.

Q. Is it necessary to notify an opponent of any Third Party Funding arrangements?
There is no requirement that the Court or an opponent must be notified of Third Party Funding arrangements. However, liquidators must request the Court's sanction to agree them given their duties to the Court.

Q. Is there any applicable code of conduct /regulation for Third Party Funders?
There is no code of conduct. However, the Court is unlikely to approve of any third party agreement which allows a third party funder to control litigation, as such control may have a tendency to corrupt public justice.

Q. Are Third Party Funders at risk of costs awards in the event a funded claim is unsuccessful?
Costs orders against non-parties are rare, but within the wide discretion of the Court. Where a non-party funds the proceedings, is substantially responsible for them and they are ultimately unsuccessful, the Court may require that party to pay the successful party's costs. This is particularly so if the Court considers that the third party funder is the "real party" to the litigation (In re Primeo Fund (unreported, 1 August 2017)).

Q. Is insurance for legal costs available?
Yes, but obtaining insurance in respect of arbitration claims and after the event insurance are both uncommon. There is no established local market for insurance for legal fees, but it is not barred and so it may, in principle, be possible to obtain elsewhere. Accordingly, insurers tend to be based in other jurisdictions e.g. the UK and the United States of America.

Q. Is there any applicable code of conduct /regulation for insurers?
There is no code of conduct.

Q. Are any other claim financing / insurance arrangements available to a Claimant?
In principle yes (to the extent that they do not constitute an offence under the common law rules of maintenance and champerty) but such arrangements are not readily available in the Cayman Islands.

Q. How technologically equipped is your Court system e.g. paperless / live transcripts / touch screen technology etc?
Many of the Cayman Islands courtrooms have video teleconference facilities. Screens for e-trials, paperless trials and touch screen technology are not provided. Parties can arrange live transcripts of trials.

Q. Are any or all of the following available: e-filing; on-line access to the court docket/file; smart-phone applications to assist court interactions?
No. The Court has though recently announced that they will start trialling an e filing system.

Q. Are Judges available 24/7?
No.

Q. Are interim/interlocutory hearings heard by telephone conference / Skype / Video conference ?
Yes. The Court has video teleconference facilities. It is not uncommon for overseas Judges to hear urgent interim applications via video teleconference, while counsel attend the Court in the Cayman Islands.

Q. Is evidence at trial capable of being by Skype / Video conference ?
Yes.

Q. What are your court's views on the use of e-disclosure technology?
The Court is generally supportive of parties using technology to identify relevant electronic documents.

Q. How widespread is the use of technology aided review tools such as predictive coding?
While e-discovery platforms are common in large litigations and familiar to law firms, many clients/parties are not as familiar. As parties/Courts become more comfortable such products will become more common.

Chile

Contributor: Cristóbal Jimeno Chadwick - Gutiérrez Waugh Jimeno & Asenjo Abogados

Q. Are lawyers able to enter into contingency / damages sharing agreements with clients?

Yes, but it is uncommon. Even though attorneys are allowed to agree on "damages sharing agreements" in which the attorney's fee depends exclusively on the results of the trial, this is not a common practice in Chile. Usually attorneys (in civil and commercial matters) agree on fees that include both a fixed fee (despite the result of the trial) and a success fee. The Chilean Bar Association's "Code of Ethics" includes a detailed regulation on "damages sharing agreements" – however membership of the Bar is voluntary in Chile.

Q. Recoverability of client costs and/or success fees?

Yes, however costs granted by Chilean courts never fully cover the actual costs incurred by the parties in a trial. Awards of costs are almost "symbolic" under Chilean legal practice.

Q. Can a Defendant obtain an order for security for costs?

No.

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Q. How active is the Court costs management? Are cost budgets required?

The Court's cost management is very limited. Cost budgets are not required.

Q. Is Third Party Funding of disputes available?

No, although there is no bar to such funding. To this date there is no developed or developing market for Third Party Funding in Chile, but we are aware of Third Party Funding being increasingly applied in international arbitrations in Latin America.

Q. Is there any applicable code of conduct /regulation for Third Party Funders?

No.

Q. Is insurance for legal costs available?

No. The reason that perhaps explains the nonexistence of such insurance in Chile is, as already noted above, that costs granted by courts to the winning party almost never cover the real costs incurred either by the claimant or the defendant. Costs in Chile are almost "symbolic".

Q. Are any other claim financing / insurance arrangements available to a Claimant?

Not presently.

Q. How technologically equipped is your Court system e.g. paperless / live transcripts / touch screen technology etc?

Criminal and other specialized courts have the lead on technology use in Chile.

However, Law No. 20.886 (published in December 2015) introduced the electronic processing and submission of claims and documents in civil courts (which handle civil and commercial trials), allowing the digital filing of briefs and documents; the on-line authorization of powers of attorney; electronic signature; and digital notifications (using geographical and time references). This law also amended some outdated proceeding requirements established in the Code of Civil Procedure.

Q. Are any or all of the following available: e-filing; on-line access to the court docket/file; smart-phone applications to assist court interactions?

There are no smartphone apps. E-filing is available for claims, appeals, and documents. Attorneys must be registered in the courts' electronic database. This database works for civil, commercial, criminal, labour and family courts. As a general rule, online access to docket and files is available to parties and to non-parties. Exceptionally, some proceedings (such as criminal trials) might be declared confidential. Confidentiality of dockets and/or files must be provided by law or declared by the judge.

Q. Are Judges available 24/7?

No. Only criminal judges are available 24 hours a day 7 days a week (according to their respective shifts).

Q. Are interim/interlocutory hearings heard by telephone conference / Skype / Video conference ?

Only in special proceedings (i.e. criminal issues).

Q. Is evidence at trial capable of being by Skype / Video conference ?

Only in special proceedings (i.e. antitrust or criminal issues).

Q. What are your court's views on the use of e-disclosure technology?

None in civil and commercial proceedings. It is not presently used.

Q. How widespread is the use of technology aided review tools such as predictive coding?

In civil and commercial proceedings it is not presently used.

Cyprus

Contributors: Stavros Pavlou and Theodoros Symeonides - Patrikios Pavlou & Associates LLC

Q. Are lawyers able to enter into contingency / damages sharing agreements with clients?

No. The issue of contingency fees has not been examined before the Cyprus courts yet, but the prevailing position is that contingent/success/damages sharing agreements are prohibited in Cyprus as they offend the principle against champerty.

Q. Recoverability of client costs and/or success fees?

The general rule in litigation proceedings is that costs follow the outcome, so that the losing party usually bears all or part of the costs of the proceedings. However, the court has wide discretionary powers to issue various costs orders depending primarily on the specific facts of each case as well as the conduct of the litigants. Also it should be noted that, irrespective of whether or not there is a special engagement agreement in place, the recoverable amount depends on the court scale of the proceedings and the fixed-fee rules of the Court as determined by the Registrar of the Court. This means that only a small part of the client's actual legal costs and disbursements may be recovered, especially in complex commercial cases where the value of the claim is very high. As far as

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arbitration proceedings are concerned, in the absence of an agreement to the contrary, the arbitrator may award the costs reasonably incurred by the successful party to be paid by the unsuccessful party in whole or part.

Q. Can a Defendant obtain an order for security for costs?
Yes, at any stage of the proceedings. Typically, the amount of security that may be ordered is the amount of costs expected to be incurred in defending the action. As prerequisites to obtaining an order for security of costs, the claimant must be domiciled outside the EU and must have insufficient assets within Cyprus to satisfy any costs order that may be made against him. However, the Cyprus Companies Law, Article 182, also extends this possibility to companies which are registered in Cyprus.

Q. How active is the Court costs management? Are cost budgets required?
The courts themselves do not examine or enter into management of the parties' costs. The usual practice is for the court to make an award as to the costs and direct the costs to be assessed by the Registrar of the Court. In cases where the court scales apply, at the end of proceedings the lawyer has to file a bill of costs which will be scrutinized by the Registrar with reference to the rules of the Court.

Q. Is Third Party Funding of disputes available?
As per the above, Third Party Funding is uncommon and probably not practically available in Cyprus for either litigation or arbitration. The main objections against Third Party Funding relate to public policy grounds as well as the application of the equitable principles of champerty and maintenance. Nevertheless, the matter has not been regulated nor examined by the Cyprus courts as yet.

Q. Is insurance for legal costs available?
Yes, however uncommon. Given the fact that the Law on Insurance and Reinsurance and Other Related Matters only recently came in force, around 2016, as of now such arrangements are not common and almost non-existent in Cyprus. However, the enactment of the above legislation provides room for further development in this area. Section 238 of Law 38(I)/2016 provides that such insurance is available in relation to court proceedings of either a civil or criminal nature, or out of court settlement. The law does not specify whether such insurance is available for alternative dispute resolution such as arbitration.

Q. Is there any applicable code of conduct /regulation for insurers?
No.

Q. Are any other claim financing / insurance arrangements available to a Claimant?
Yes. Legal Protection Insurance is provided according to section 238 of law 38(I)/2016, in particular with a view to: (A) covering the loss or damage suffered by the insured party either through out-of-court settlement or through civil or criminal proceedings; and (B) the defense or representation of the insured person in any judicial proceedings brought against him. Subparagraph (A) of section 238 of Law 38(I)/2016 refers to the loss of the insured party. In our opinion this covers both the Claimant and Defendant in a court proceeding. The fact that subparagraph (B) refers particularly to the defense, therefore creating a separate provision for the Defendant, supports the above position.

Q. How technologically equipped is your Court system e.g. paperless / live transcripts / touch screen technology etc?
Cyprus Courts are poorly equipped at the moment. Perhaps the only recent changes on the technology side in the courts of Cyprus are the increasing use of stenotype when taking minutes during hearings and the availability of giving evidence via skype/video-conference.

Q. Are any or all of the following available: e-filing; on-line access to the court docket/file; smart-phone applications to assist court interactions?
No.

Q. Are Judges available 24/7?
Judges are available on call for the purposes of issuing arrest warrants in urgent cases.

Q. Are interim/interlocutory hearings heard by telephone conference / Skype / Video conference ?
No.

Q. Is evidence at trial capable of being by Skype / Video conference ?
Yes, under certain circumstances.

Q. What are your court's views on the use of e-disclosure technology?
E-disclosure technology is not available yet but we expect that it will be introduced soon.

Q. How widespread is the use of technology aided review tools such as predictive coding?
Presently it is not used.

Ecuador

César Coronel Jones - Coronel & Perez Abogados

Q. Are lawyers able to enter into contingency / damages sharing agreements with clients?
Yes, such arrangements are not unusual.

Q. Recoverability of client costs and/or success fees?
The court should rule specifically on this matter. If the losing party has litigated with bad faith the court must order that party to pay the other party cost including his lawyer fees.

Q. Can a Defendant obtain an order for security for costs?
Yes, but only in precautionary measures cases.

Q. How active is the Court costs management? Are cost budgets required?
It is unusual to see a Court taking an active role in the management of costs.

Q. Is Third Party Funding of disputes available?
Third Party Funding is available for arbitration claims.

Q. Is it necessary to notify an opponent of any Third Party Funding arrangements?
No.

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Q. Is there any applicable code of conduct /regulation for Third Party Funders?
No.

Q. Are Third Party Funders at risk of costs awards in the event a funded claim is unsuccessful?
No.

Q. Is insurance for legal costs available?
No, for both litigation and arbitration claim.

Q. Is there any applicable code of conduct /regulation for insurers?
No.

Q. How technologically equipped is your Court system e.g. paperless / live transcripts / touch screen technology etc?
New procedures have been recently issued/are about to be issued by our courts/tribunals to promote the use of technology.

Q. Are any or all of the following available: e-filing; on-line access to the court docket/file; smart-phone applications to assist court interactions?
No to e-filing and smart-phone apps. On-line access to court matters is available but only insofar as court decisions.

Q. Are Judges available 24/7?
Yes. But only emergency judges in criminal matters.

Q. Are interim/interlocutory hearings heard by telephone conference / Skype / Video conference ?
No.

Q. Is evidence at trial capable of being by Skype / Video conference ?
Yes.

Q. What are your court's views on the use of e-disclosure technology?
No particular view is held.

Q. How widespread is the use of technology aided review tools such as predictive coding?
It is presently not used.

Egypt

Contributors: Dr. Mohamed S. Abdel Wahab - Zulficar & Partners

Q. Are lawyers able to enter into contingency / damages sharing agreements with clients?

Yes, such arrangements are not unusual. According to Article 82 of the Advocacy Law No.17 of 1983, a maximum limit of 20% of the value of the claim is the cap on the lawyer's fees.

Q. Recoverability of client costs and/or success fees?

In our courts, these costs would not be recoverable; courts only award very nominal counsel fees (less than a few hundred dollars). In international arbitration seated in Egypt, counsel fees can be recovered subject to a reasonableness test and the loser pays rule is common practice subject to the arbitral tribunal's discretion and possible adjustments depending on the parties' conduct in the proceedings and their relative successes and failures in their claims and defences. Finance fees are rarely, if at all, recoverable. The determining factor is whether they were foreseen, reasonable and notified in advance. Success fees are very unlikely to be recoverable. In domestic arbitrations seated in Egypt, counsel fees can be recovered, but domestic tribunals tend not to grant

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them and tend to split costs. Finance and success fees are not recoverable in domestic arbitration proceedings as a matter of practice.

Q. Can a Defendant obtain an order for security for costs?
Yes. In the case mentioned below, a third party funder (TPF) offered an indemnity. However, insurance for this type of coverage is in practice not yet available in the jurisdiction.

Q. How active is the Court costs management? Are cost budgets required?
Not at all.

Q. Is Third Party Funding of disputes available?
Third Party Funders that do fund claims in Egypt are based abroad. The market has not yet matured as to the business of Third Party Funding and such arrangements are uncommon. Third party funding is available for international arbitration claims, but remains an unregulated practice.

Q. Is it necessary to notify an opponent of any Third Party Funding arrangements?
As a matter of practice, this is highly advisable for conducting the necessary conflict checks for arbitral tribunals as well.

Q. Is there any applicable code of conduct /regulation for Third Party Funders?
No.

Q. Are Third Party Funders at risk of costs awards in the event a funded claim is unsuccessful?
In international arbitrations seated in Egypt, international practice and principles would apply. In one case seated in Egypt, the claim was funded by a TPF and the Claimant was in liquidation. The TPF was found to be liable for the costs of the arbitration upon dismissal of the claims. A prior security for costs order had been passed given the existence of a credible counterclaim and the liquidation status of the funded Claimant.

Q. Is insurance for legal costs available?
No, even though there is no bar/ prohibition to such insurance arrangements.

Q. Is there any applicable code of conduct /regulation for insurers?
No.

Q. Are any other claim financing / insurance arrangements available to a Claimant?
Loan, as a form of financing, is a possibility to cover issues of fees, unless legal counsel is willing to exclusively work on the basis of a success fee arrangement. However, this is not a common practice.

Q. How technologically equipped is your Court system e.g. paperless / live transcripts / touch screen technology etc?
Courts are not technologically equipped in general. Courts are not equipped with these systems but certain pilot projects to automate certain courts are being considered.

Q. Are any or all of the following available: e-filing; on-line access to the court docket/file; smart-phone applications to assist court interactions?
Recently, the Court of Cassation carries out its e-services in cooperation with the Ministry of Communications and Information Technology. The Court of Cassation offers four e-services, such as SMS, email, SMS plus email and online access to court dockets. The value of the subscription varies from an e-service to another, mainly less than two hundred Egyptian pounds per year for each service. However, pilot projects for e-filing are being considered in some courts, but not yet implemented.

Q. Are Judges available 24/7?
No.

Q. Are interim/interlocutory hearings heard by telephone conference / Skype / Video conference ?
No.

Q. Is evidence at trial capable of being by Skype / Video conference ?
No.

Q. What are your court's views on the use of e-disclosure technology?
In international arbitration, e-disclosure technology solutions can be used, but courts are not familiar with e-disclosure, especially that document disclosure has very limited application as a matter of law.

Q. How widespread is the use of technology aided review tools such as predictive coding?
These are not used.

England & Wales

Contributors: Christian Toms and Francesca Dalla Volta – Brown Rudnick LLP

Q. Are lawyers able to enter into contingency / damages sharing agreements with clients?
Yes. Conditional fee agreements (CFAs) have been permitted since the 1990s, Damages Based Agreements (DBAs) since 2013. For a CFA - some or all fees are put at risk, conditional on success. Nothing is payable if client loses. On a win, 100% of fees are paid to the lawyer plus a 'success fee' uplift, capped at the amount of the 'at risk'/conditional fees. For a DBA – fully contingent. No fees are payable unless the case succeeds. A lawyer's fee is calculated as a percentage (capped at 50% in commercial cases) of the financial benefit obtained by a client. While CFAs are common, DBAs are less so in large part due to the unlawfulness of hybrid deals (part paid fee, part contingency).

Q. Recoverability of client costs and/or success fees?
The typical rule is a successful party may recover its reasonable costs from the loser. However, since 1 April 2013 success fees are not recoverable (NB:// for CFAs prior to 1 April 2013 (or 1 April 2016 in Insolvency matters) success fees may still be recoverable). In arbitration, per the 2016 case of Essar Oilfields Services Ltd v Norscot Management Pvt Ltd it is within

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an arbitral tribunal's discretion to award a claimant its costs of third-party funding, including success uplift. This arguably may also extend to lawyer success fees.

Q. Can a Defendant obtain an order for security for costs?
Yes, although it remains a discretionary remedy of the Court. Key considerations that may be taken into account include where the Claimant resides out of the jurisdiction; the Claimant is acting as a representative claimant; and/or the Claimant has taken steps in respect of its assets, all or any of which might make enforcement of orders more difficult. An order may be made at the Court's initiative as well as upon an application, and usually requires the opponent to pay money into court, but security can be provided by other means - mortgage, bank guarantee, bond, insurance policy.

Q. How active is the Court costs management? Are cost budgets required?
This is increasingly a feature of litigation (particularly commercial) with the Court seeking to manage case costs. In general terms the rules apply, and therefore costs budgets are to be filed, approved and monitored, in matters worth up to £10 million. The Court however retains the power to order costs management in any matter. This does not apply to Litigants in person or to appeals.

Q. Is Third Party Funding of disputes available?
While historically third Party funding was prohibited as it was deemed "Maintenance" and "Champerty", third-party litigation funding is now broadly embraced by litigants and the judiciary. Funders are still not permitted to 'control' litigation, and their return on funding must be proportionate to any recovery, but funders are still able to play a significant role in litigation and are usually kept closely informed on developments and key strategic decisions. There is accordingly a growing and maturing market for this type of service.

Q. Is it necessary to notify an opponent of any Third Party Funding arrangements?
There is no clear requirement to do so under English law. However, it may be possible in certain circumstances for one party to seek a court order requiring disclosure of the identity of a funder - typically in security for costs applications.

Q. Is there any applicable code of conduct /regulation for Third Party Funders?
A Code of Conduct was published by the Civil Justice Council in November 2011. This sets out standards of practice and behaviour for members of the Association of Litigation Funders (ALF) e.g. ensuring capital adequacy, the limited circumstances where a funder may withdraw from a case, and the roles of funders, litigants and their lawyers. ALF membership is voluntary but a majority of professional funders are ALF members.

Q. Are Third Party Funders at risk of costs awards in the event a funded claim is unsuccessful?
Yes, in litigation, although there is still the 'Arkin' cap (Arkin v Borchard Lines, 2005) to be considered, which was originally deemed to limit a funder's total liability to the value of its total investment. However, it has increasingly been argued to be unjust that a commercial funder should be protected from full costs liability if an action fails, and the protection of the Arkin cap has accordingly been significantly eroded in recent years, including in 2019 through the case of Davey v Money & Anor 2019. Prior to Davey the application of the 'cap' had already been tweaked significantly (both in terms of courts finding it correct to take the aggregate of any costs security provided and invested funding so as effectively to increase the applicable 'cap' in a given matter; and in terms of ruling that security for costs orders imposed earlier in a case are not impacted by any concept of an Arkin cap). Davey has seen the courts continue this progression of reasoning with a finding that it was inappropriate for the cap automatically to be applied in all cases involving commercial third party funders. The stark consequence of this in Davey was that the funder was found liable for all the costs awarded against the funded party in the litigation.

Q. Is insurance for legal costs available?
Yes, ATE (after the event) is both permitted and common, and there is a well-established and competitive market in both litigation and arbitration. Given London's prominence in the global insurance market, unsurprisingly there are numerous insurance products available, including insurance for lawyers acting on CFA (covering lawyers' fees in the event of a loss), and judgment default insurance (covering the risk that a defendant does not comply with a judgment).

Q. Is there any applicable code of conduct /regulation for insurers?
No, but insurers are nevertheless similarly constrained as funders, and may only have a limited influence/role.

Q. Are any other claim financing / insurance arrangements available to a Claimant?
There are options a litigant might explore. Besides loans, insurance and mortgages, some providers are now treating litigation as a new asset class to raise finance against, as opposed to purely claim funding.

Q. How technologically equipped is your Court system e.g. paperless / live transcripts / touch screen technology etc?
There is still work to be done both in terms of Court investment as well as users' buy-in, but paperless trials are now possible and do take place. Live transcripts are also regularly used in larger Commercial cases.

Q. Are any or all of the following available: e-filing; on-line access to the court docket/file; smart-phone applications to assist court interactions?
Since 25 April 2017 E-filing is compulsory in the High Court. Lawyers with a registered account also have access to all publicly available documents on any online case file. No smartphone apps are in use yet.

Q. Are Judges available 24/7?
Yes, for very urgent matters.

Q. Are interim/interlocutory hearings heard by telephone conference / Skype / Video conference?
Yes, but this is still the exception as opposed to regular/common practice.

Q. Is evidence at trial capable of being by Skype / Video conference?
Yes. Video conference evidence is available where key witnesses are unable to attend in person.

Q. What are your court's views on the use of e-disclosure technology? How widespread is the use of technology aided review tools such as predictive coding?
Supportive. In the 2016 cases of Pyrrho and BCA Trading the Court expressly recognised the benefits (in time and cost) of such technology, and its use is becoming increasingly widespread. Regulators/Law enforcement are also embracing it (e.g. the SFO and its recent Rolls Royce investigation). A 2019 High Court disclosure pilot is also actively encouraging the use of technology in disputes.

France

Contributor: Hervé Le Lay – Brown Rudnick LLP

Q. Are lawyers able to enter into contingency / damages sharing agreements with clients?
Yes, in part, but 100% contingency fees arrangements with lawyers are prohibited. Success fees can only cover a portion of the overall lawyer fee. Typically lawyers would have a partial contingency fee combined with reduced rates or fixed fees. Such arrangements are, however, very unusual in litigation before State courts, but not unusual in arbitration.

Q. Recoverability of client costs and/or success fees?
Yes in arbitration. Before State courts only limited amounts are usually granted to cover costs of the prevailing party. Practice varies from court to court but this may often result in very limited amounts being granted.

Q. Can a Defendant obtain an order for security for costs?
Theoretically yes but there are no significant State Court examples. Costs are usually not a significantly addressed issue before State courts. It is more possible before arbitral tribunals. ATE as a form of security is not likely as such insurance is not really part of the French legal market.

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Q. How active is the Court costs management? Are cost budgets required?
Such matters never come before State Courts. It is though usual in arbitration.

Q. Is Third Party Funding of disputes available?
Yes, but while it is not unusual in arbitration it is highly uncommon in State court litigation. In practice Third Party Funding is almost only provided in arbitration. Except for fiscal/tax disputes, there is not really Third Party Funding for State court litigation. There is though a developing market for Third Party Funding in the jurisdiction.

Q. Is it necessary to notify an opponent of any Third Party Funding arrangements?
There is no applicable regulation/legislation/case law on this point.

Q. Is there any applicable code of conduct /regulation for Third Party Funders?
The Paris Bar has noted the absence of any legal or regulatory restrictions. There is presently no regulation, but in principle the lawyer must remain independent. Third party funders presently do tend to avoid State litigation.

Q. Is insurance for legal costs available?
Yes but only typically in international arbitrations. Again there is no specific bar or prohibition.

Q. Is there any applicable code of conduct /regulation for insurers?
There is no code of conduct.

Q. Are any other claim financing / insurance arrangements available to a Claimant?
In theory clients may seek loans from parent company or banks.

Q. How technologically equipped is your Court system e.g. paperless / live transcripts / touch screen technology etc?
The courts in general are poorly equipped in terms of technology.

Q. Are any or all of the following available: e-filing; on-line access to the court docket/file; smart-phone applications to assist court interactions?
There are no smartphone apps or online access to the docket. In front of courts using the RPVA system, e-filing is mandatory. Yet, physical filing is compulsory for initiation of proceedings and filing of the pleading file.

Q. Are Judges available 24/7?
Yes, depending on the jurisdiction/matter at hand.

Q. Are interim/interlocutory hearings heard by telephone conference / Skype / Video conference ?
No.

Q. Is evidence at trial capable of being by Skype / Video conference ?
Yes. Though it is practically unlikely except in arbitration.

Q. What are your court's views on the use of e-disclosure technology?
There is no discovery under French law. This is though a feature of arbitrations.

Q. How widespread is the use of technology aided review tools such as predictive coding?
Again this is not applicable under French law but may become a feature of arbitration.

Georgia

Contributor: Zaza Bibilashvili - BGI Legal

Q. Are lawyers able to enter into contingency / damages sharing agreements with clients?

Yes, these arrangements are very common. The Georgian Code of Ethics for Lawyers adopted by the Georgian Bar Association does not restrict contingency fee arrangements. The major requirement here is that the client should be duly informed in advance about rates and rules of calculation of remuneration of lawyers. Accordingly, Georgian lawyers should be able to enter into contingency fee arrangements provided that such arrangements are agreed with the client in advance.

Q. Recoverability of client costs and/or success fees?

As a matter of principle a successful client's costs can be recovered from an opponent. If you succeed on part of a claim, costs will be allocated between the parties on a pro rata basis. Attorney fees are also recoverable provided that they are reasonable. In any event, recoverable attorney fees cannot exceed 4% of the value of the subject matter of the dispute, or GEL 2000 in case of non-pecuniary claims.

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Q. Can a Defendant obtain an order for security for costs?

Under the Georgian Civil Procedure Code, a defendant cannot require an amount to be paid into court by way of security for its costs. A claimant may however be required to post security if procedural actions requested by it (for example, interim measures such as attachment of defendant's assets) may cause damages to the defendant and the security is sought to secure such possible damages. Most common forms of security that can be posted in that case would include the deposit of cash or securities. By way of exception, a bank guarantee may also be accepted by the court.

Q. How active is the Court costs management? Are cost budgets required?

Georgian courts usually do not manage/consider cost related matters unless this is requested by a party, provided, however, that the statutorily prescribed court fees would ultimately be allocated between the parties depending on the outcome of the court proceedings. Further, costs will be reimbursed only to the extent that the relevant evidence confirming that specific cost has been incurred is submitted to the court (e.g. contract on legal service/engagement letter, invoices and payment orders).

Q. Is Third Party Funding of disputes available?

No. While there is no bar, and such arrangements occur occasionally for both litigation and arbitration, this is not common. Currently, there is no developed market for Third Party Funding in Georgia, and there are no specialists offering litigation finance services in exchange for a share of the case proceeds/ recovered damages.

Q. Is insurance for legal costs available?

No. Insurance companies do not currently offer such insurance products for either arbitration or litigation. While civil liability can be insured on a general basis, covering, inter alia, court expenses related to the relevant insurance event should such event occur, there is no separate insurance cover available for costs of litigation only. Arguably, even if local insurance companies will consider developing this product in future (depending on the market appetite), this is likely to be a costly product. Needless to say, insurance companies will also need to make respective arrangements with the reinsurance companies before making decision on whether to offer such services to local customers.

Q. Are any other claim financing / insurance arrangements available to a Claimant?

Socially unprotected individuals who cannot afford to hire an attorney may be assigned an attorney at the expense of the state budget in cases provided by the law (criminal cases, and also civil and administrative cases if complexity and importance of the dispute mandates involvement of the legal representative). If such person wins the case in a civil/ administrative dispute, legal fees incurred will be reimbursed by the opponent.

Q. How technologically equipped is your Court system e.g. paperless / live transcripts / touch screen technology etc?

The courts tend to lag behind in this area. Proceedings are mostly paper based. Only basic technologies are used, such as power point presentation facilities, microphones, automatic recording facilities which are used to record hearings and producing protocols, computers for presenting evidence in form of audio and video recordings.

Recently, a portal has been introduced to allow electronic access to the court files. Access is granted only to the parties who can log in using assigned usernames and passwords. However, this facility is available at the level of courts of first instances only.

Q. Are any or all of the following available: e-filing; on-line access to the court docket/file; smart-phone applications to assist court interactions?

General e-filing is not available, although there is now a pilot version providing an online platform for filing lawsuits/claims at the level of the courts of first instance. it is though not yet widely used in practice and is still supplementary to the paper based filing (i.e. filing of

most documents would be required in hard copy format anyway) - see http://ecourt.ge/. Documents (including statement of claims) are therefore still to be submitted in paper form. However, upon submission, hard-copy materials are scanned by the court clerks and uploaded on www.info.court.ge. While e-filing also may be available (through authorized users) in certain specific sectors (for example, registration of security etc.) there being developed electronic registries as far as land and security registrations are concerned, the court system continues to be largely paper based. Parties are usually summoned to the court room by written notice. It is also possible to summon parties via telephone communication, fax and other technical means. An online docket is generally available in some form at the level of courts of various instances. It is, however, neither systemized, nor centralized nor well–organized. Generally speaking, certain information about current sessions and hearings scheduled within the next couple of months can be obtained online.

Q. Are Judges available 24/7?

Judges are available only on scheduled hearings. Outside courtroom there is hardly any communication directly with judges. It is however possible to contact assistants during working hours in respect of procedural and organizational matters.

Q. Are interim/interlocutory hearings heard by telephone conference / Skype / Video conference?

No.

Q. Is evidence at trial capable of being by Skype / Video conference ?

Witnesses can be interrogated by skype/video conference.

Q. What are your court's views on the use of e-disclosure technology?

Not much technology is typically in use. The courts accordingly have no specific view on such tools.

Guatemala

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Q. Are lawyers able to enter into contingency / damages sharing agreements with clients?

The Code of Professional Ethics considers that the professional services rendered by attorneys, in all activities, must be directed to achieving the just, peaceful, harmonic and functional coexistence of the social conglomerate, and must be rendered according to clear ethical and moral standards. According to article 8 of this Code, given the high finalities of justice that attorneys pursue in exercising their profession, they should refrain from agreeing to any participation in the outcome of any trial or matter (*pactum of quota litis*), therefore, a quota-litis agreement is censurable. Notwithstanding, with regards to professional services, article 2027 of the Civil Code states that lawyers and their clients can agree in the fees and conditions that professional services shall be paid. Therefore, specific circumstances have to be reviewed on a case-by-case basis.

Fees or tariffs for attorneys and other professionals were approved by the Congress of the Republic through Decree Number 111-96 of 1996 (previous dated from 1975). According to article 1 of these provisions,

attorneys and the persons requiring their professional services are free to agree the corresponding fees and conditions of payment, but in no case may these be agreed under the amounts provided by law. Upon absence of an agreement, the fees will be regulated according to this Decree.

Q. Recoverability of client costs and/or success fees?
Yes, although the amount depends on the nature of the case and has to be reviewed on a case by case basis. We have particularly seen this in negotiated settlements. The costs are usually negotiated in arbitration cases and/or out of court negotiation. In civil and commercial matters, each party is directly responsible for the expenses caused by their acts in the process. Nevertheless, article 22 of Decree Number 111-96 (Lawyers tariff) states that in case of conviction in costs, the sentenced party shall indemnify the other party for all the expenses that the party incurred during trial. In civil and criminal matters, the Civil and Commercial Procedure Code and the Criminal Code also provide that sentences may include the payment of legal interests, costs and expenses.

Q. Can a Defendant obtain an order for security for costs?
Yes, in specific circumstances. For instance, article 117 of our Civil and Commercial Procedure Code states that if the claimant is foreign, the defendant may request it to place a bond to guarantee the costs of the proceeding. Furthermore, article 533 of the same Code states that in any case in which precautionary measures are applicable, the defendant may obtain an order of security for damages and costs. Also, according to article 123 of the Criminal Procedure Code, whomever pretends to constitute as joint accuser and is domiciled abroad, must, upon request of the accused party, provide sufficient security to respond for the costs provoked to the adversary part, amount and term will be fixed by a Judge.

Q. How active is the Court costs management? Are cost budgets required?
As noted above the client and the attorney usually negotiate legal costs. If the court issues a judgement on costs the final amount has to be approved by the court based on Decree number 111-96 (Lawyers tariff) Usually the cost calculation based on Decree 111-96 is much lower than the actual fees incurred.

Q. Is Third Party Funding of disputes available?
Generally yes, for both litigation and arbitration, however it is uncommon.

Q. Is it necessary to notify an opponent of any Third Party Funding arrangements?
No, it's not necessary because there is no law in Guatemala that regulates Third Party Funding.

Q. Is there any applicable code of conduct /regulation for Third Party Funders?
No, we don't have a code of conduct that regulates Third Party Funders.

Q. Are Third Party Funders at risk of costs awards in the event a funded claim is unsuccessful?
No, unless they agree to absorb costs in the funding agreement.

Q. Is insurance for legal costs available?
No, the insurance for litigation and arbitration is not developed in Guatemala.

Q. Are any other claim financing / insurance arrangements available to a Claimant?
No.

Q. How technologically equipped is your Court system e.g. paperless / live transcripts / touch screen technology etc?
The Courts' use of technology is presently very limited, but this is changing and they are incorporating more technology. Criminal Courts have recently incorporated witness testimony through videoconference.

Q. Are any or all of the following available: e-filing; on-line access to the court docket/file; smart-phone applications to assist court interactions?

Not in general; there is a regulation for e-service of certain court resolutions but the use is limited

Q. Are Judges available 24/7?

Yes, but through specific courts for specific matters. Criminal judges are available 24 hours every day of the year.

Q. Are interim/interlocutory hearings heard by telephone conference / Skype / Videoconference?

Yes, but only on criminal cases.

Q. Is evidence at trial capable of being by Skype / Video conference?

Depends on the type of matter. Our civil and commercial matters are written matters, which require considerable formalities, Skype/Videoconference are not accepted. In criminal matters, Article 365 of our Criminal Procedure Code allows for witness statement through videoconference.

Q. What are your court's views on the use of e-disclosure technology?

The technology is not presently used.

Guernsey

Contributors: Christopher Edwards and Tim Richards - Mourant Ozannes

Q. Are lawyers able to enter into contingency / damages sharing agreements with clients?

No. The terms of the Guernsey bar code of conduct do not make it possible for Guernsey advocates to enter into conditional fee agreements with clients.

Q. Recoverability of client costs and/or success fees?

Typically a successful party can expect to recover about 50-60% of their costs from an unsuccessful party.

Q. Can a Defendant obtain an order for security for costs?

Yes. A defendant can apply for security for costs at any point in proceedings. The Royal Court has a broad discretion as to whether to make such an order. Considerations may include: (i) whether the Plaintiff has assets or funds available to satisfy any costs order; and (ii) the difficulty of enforcing a costs order against the Plaintiff. It is possible for an insurance/indemnity to be deemed an acceptable form of security.

Q. How active is the Court costs management? Are cost budgets required?

The extent to which the Court seeks to manage the parties' costs in cases tends to depend on the judge assigned. There is no requirement to file costs budgets in advance.

Q. Is Third Party Funding of disputes available?

Yes, both for litigation and arbitration. Such arrangements are not unusual, and are most commonly used in substantial commercial cases. There is already a developed market for such type of funding in Guernsey.

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Q. Is it necessary to notify an opponent of any Third Party Funding arrangements?

No.

Q. Is there any applicable code of conduct /regulation for Third Party Funders? How involved are funders permitted to become with a funded case?

There is no code of conduct. Third Party Funders can control the case to a limited extent, but must be careful of allegations that their relationship is champertous. In order to determine this issue, a Court would look at the amount of control that the funder has over the litigation.

Q. Are Third Party Funders at risk of costs awards in the event a funded claim is unsuccessful?

Yes, in theory. Third party funders may be at risk of paying the other party's costs in the event a funded claim is unsuccessful, although whether such a claim was successful would depend on the facts of the case.

Q. Is insurance for legal costs available?

Yes, for litigation and arbitration. This though tends to be relatively uncommon by reason of the high upfront premiums required. Premiums can also sometimes be partly deferred. Insurers have less control over litigation than a funder, but they will still expect to be kept informed as to any developments in the underlying claim.

Q. Is there any applicable code of conduct /regulation for insurers?

No.

Q. Are any other claim financing / insurance arrangements available to a Claimant?

No.

Q. How technologically equipped is your Court system e.g. paperless / live transcripts / touch screen technology etc?

Getting there. Live transcripts are frequently used in larger cases. Digital audio recording systems are operated in all Courtrooms. These systems record all court sessions, which are then stored on a secure networked device.

Q. Are any or all of the following available: e-filing; on-line access to the court docket/file; smart-phone applications to assist court interactions?

No.

Q. Are Judges available 24/7?

Yes. If a matter is urgent enough it should always be possible to find a judge.

Q. Are interim/interlocutory hearings heard by telephone conference / Skype / Video conference?

Yes, although unusual.

Q. Is evidence at trial capable of being by Skype / Video conference?

Yes, although unusual.

Q. What are your court's views on the use of e-disclosure technology?

The Court has not as yet expressed a view, but it would be open to ordering the use of e-disclosure solutions in an appropriate case.

Q. How widespread is the use of technology aided review tools such as predictive coding?

As yet the jurisdiction has a limited experience of TAR, however clients and other parties would no doubt embrace it in an appropriate case. We are not presently aware of law enforcement or regulators in Guernsey using TAR.

Hungary

Contributors:Tamas Eless and Istvan Gass - Oppenheim Law Firm

Q. Are lawyers able to enter into contingency / damages sharing agreements with clients?
Yes. These arrangements are not unusual. The contingency fee, as a special form of attorney's fee, is allowed in Hungary on the basis that according to the relevant statutory provisions and prevailing court practice, the attorney's fee is subject to free negotiations between the attorney and the client. However, the Hungarian Parliament has passed a new act (Act No LXXVIII of 2017), which entered into force on 1 January 2018 and contains some restrictions. According to this act, claims for the payment of contingency fee may not be pursued in front of a court if the amount thereof is more than 2/3 of the attorney's fee.

Q. Recoverability of client costs and/or success fees?
Yes. The costs to be paid by a party to a civil procedure consist of the following elements: (i) duty of the civil procedure, the amount of which is 6% of the amount in dispute and not more than HUF 1,500,000; (ii) the advance of costs of taking of evidence (witness fees, expert fees, the fees of interpreters, the cost of remote hearings and inspections, etc.), which costs shall be advanced by the party who submits the motion for evidence; and (iii) the expenses and fees of attorneys providing representation to the parties. These costs will be borne by the losing party at the

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end of the procedure, but of course, have to be advanced by the party represented by the given attorney. In case of partial success (i.e. when the parties are losing and prevailing at the same time) the court decides on the costs of litigation, taking into consideration the proportion of success and the costs advanced by the parties. If the difference between the proportion of winning and losing and between the amounts advanced by the parties is not significant, the court may decide that the parties bear their own costs. It is to be noted that courts shall decide on the reimbursement of the costs of litigation automatically, ex officio, i.e. even in the absence of relevant requests. The court does not decide on the payment of the costs of litigation if the prevailing party expressly requests the court not to render such resolution.

Q. Can a Defendant obtain an order for security for costs?
Yes. A defendant may request the court to order a plaintiff whose residence, registered office or habitual residence is not in any Member State of the European Union, in a Member State that is a party to the Agreement on the European Economic Area, or in any other State having similar treatment under an international agreement, to provide security covering the defendant's legal costs. The plaintiff is exempted from the obligation to provide security if a) an international agreement to which the Hungarian State is a party provides otherwise; b) the plaintiff was granted individual cost exemption; or c) the plaintiff's claim recognized by the defendant, or any piece of real estate located in Hungary or other asset registered in a public register provides sufficient cover for the defendant's costs. If the court grants the defendant's application, it brings an order specifying the amount of the security and obliging the plaintiff to deposit it on a court escrow account.

Q. How active is the Court costs management? Are cost budgets required?
Some Courts are more active than others. A decree (32/2003 (VIII. 22)) of the Minister of Justice determines the amount of the costs of an attorney that can be awarded (e.g. if the amount in dispute is HUF 10 million, HUF 500,000 will be awarded) or the parties may claim costs based on their agreement with their attorneys; however, the court may reduce the requested costs. It is quite common that parties request the court specify the amount of legal costs based on the mandate agreement between the client and the attorney. In such case, parties are obliged to submit a cost budget on the costs that had been paid by the client. According to our experience, however, courts usually find the attorney's fees stipulated in the mandate agreement excessive compared to the case value and they tend to reduce it.

Q. Is Third Party Funding of disputes available?
No. Although Third party funding is theoretically possible (there is no bar or statutory prohibition in this respect), in practice, on a commercial level, it is not used. It seems also that there is no developing market for Third Party funding in Hungary.

Q. Is there any applicable code of conduct /regulation for Third Party Funders?
There are no rules in Hungary regarding cost funding.

Q. Is insurance for legal costs available?
No. Although there is no express prohibition to it, insurance is available for litigation costs only as a part of liability insurance.

Q. How technologically equipped is your Court system e.g. paperless / live transcripts / touch screen technology etc?
The courts are lagging behind. New procedures have, however, recently been issued by the Hungarian courts to promote the use of technology. The Hungarian Code on Civil Proceedings has introduced the so-called "electronic lawsuit": as of 1 July 2016 it is mandatory to conduct court proceedings by means of exchange of electronic documents if the party acts through a legal counsel, as well as in cases when the party / at least one of the parties is a company.

Q. Are any or all of the following available: e-filing; on-line access to the court docket/file; smart-phone applications to assist court interactions?
Yes. E-filing is available in Hungary for all submissions and motions of evidence of the parties and all decisions of the court (judgments, orders, injunctions, etc.). It is necessary to pre-register, by creating an account, on the "client gate" ("ügyfélkapu" in Hungarian) operated by the Government. However, online court docket/file is not available for parties / non- parties. Also, smart applications for android and/or Apple phones are not available before the Hungarian courts.

Q. Are Judges available 24/7?
Judges work 5 days a week (from Monday to Friday). However, judges do not hold hearings every day but on specific days of the week. Normally, judges of first instance courts have hearing days twice a week while judges of upper courts (including the Curia, the highest court in Hungary) have one hearing per week.

Q. Are interim/interlocutory hearings heard by telephone conference / Skype / Video conference ?
The Hungarian Act on Civil Proceedings provides the option for the court, either upon the proposal of a party or acting on its own initiative, to hear a party, other participants in the court proceedings or an expert, or to interrogate a witness, via a closed-circuit telecommunications network. This is particularly appropriate in cases where such a hearing can speed up the proceedings or where an interrogation at the venue where the case is heard would be considerably difficult to organise or very costly.

Q. Is evidence at trial capable of being by Skype / Video conference ?
Yes, however, it is not frequently used by civil courts.

Q. How widespread is the use of technology aided review tools such as predictive coding?
Generally, predictive coding technology assisted review is not used. That said, Clients do tend to use technology assisted review systems, but even so only in a limited number of cases (such as in anti-trust proceedings).

Indonesia

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Q. Are lawyers able to enter into contingency / damages sharing agreements with clients?

No specific stipulation under the laws of Indonesia exists on this particular matter. Based on the Indonesian Advocate Act and the Indonesian Lawyers Code of Ethics 2002, the parties (lawyers and clients) are free to agree on the legal fee arrangements to be paid by the client to its lawyers (freedom of contract), including contingency fees and damages sharing agreements with clients. The contract for the provision of the legal fees can be made either verbally or in writing. The Indonesian Advocate Act only requires that the amount of the legal fee must be agreed based on the fairness principle, which means that the determination of the legal fees should consider the risk, time, capability and interest of the client. Article 4 of the Indonesian Lawyers Code of Ethics 2002 only stipulates that in determining the legal fee, lawyers must consider the client's ability to pay, and lawyers cannot impose unnecessary expenses on their clients.

In practice, advocates (barristers) usually charge a fixed flat fee for each level of litigation with or without

a combination of the success fee. In some case, it is not uncommon that the contingency fee is also offered by the Indonesian barristers. For large and complex litigation cases, the reputable law firms in Indonesia commonly charge based on hourly billing arrangements. In practice, damage sharing agreements are rarely found to be agreed upon by Indonesian lawyers.

Q. Recoverability of client costs and/or success fees?

Please see our explanation above.

Q. Can a Defendant obtain an order for security for costs?

It is required that the plaintiff/claimant must pay a registration fee when registering a suit to the District Court. Each of the relevant District Court, the High Court and the Supreme Court, has its own official rate as to the administrative court costs applicable to it.

Basically, the total claim amount requested in a suit does not impact or escalate the total administrative court costs, but the total number of the defendants and plaintiffs to be summoned will be the factor in escalating the total court costs, for the reasons that additional disputing parties causes additional costs to be incurred by the court for effectuating the service of court notices.

The losing party bears the administrative court costs, but it is important to note that in practice the winning party cannot recover attorney litigation fees. The parties are responsible for paying their own litigation costs (unless liability for this costs component has otherwise been contractually agreed between the disputing parties), and therefore Indonesian courts do not award litigation/legal costs in civil proceedings. The Indonesian jurisprudences affirm that this is for the reason that there exists no statutory requirement that a party to a lawsuit must be represented by a lawyer; therefore a request for recovery of the litigation fee would not be granted by the courts.

Q. How active is the Court costs management? Are cost budgets required?

Please see our explanation above.

Q. Is Third Party Funding of disputes available?

It is not uncommon in practice that the litigation funding be facilitated by a disinterested third party. However, there are no specific prohibitions on how parties concluding funding or financing for litigation cases.

Q. Is insurance for legal costs available?

The insurance market in Indonesia is still not familiar with a particular insurance product for covering all or part of a party's litigation costs. The rule of law and the reliability of the judicial system, including the Indonesian court system, are still developing. As the consequence thereof: (a) there are many factors that may inevitably lead to some element of uncertainty for any litigation process and there is relatively little certainty as to the likely outcome of a case; and (b) execution of any judgment in Indonesia is often cumbersome and problematic. The above factors may lead to the non-availablity of the specific insurance product covering for the litigation costs. Notwithstanding the above, in practice, general insurance policies may also cover legal costs under the general terms and conditions.

Q. Are any other claim financing / insurance arrangements available to a Claimant?

Please see our explanation above.

Q. How technologically equipped is your Court system e.g. paperless / live transcripts / touch screen technology etc?

Based on Law No. 14 of 2008 regarding the Public Information Disclosure in conjunction with (i) Supreme Court Decision No.1-144/KMA/SK/I/2011 regarding Court Information Service and (ii) Supreme Court Decision No.026/KMA/SK/II/2012 regarding Standard of Court Services, all judgments of the Indonesian courts can be opened to public. However, in relation to the evidence/documents submitted in the case, it is not uncommon that courts are reluctant to release any copy of such document to the public without prior approval from the relevant parties to the case.

Q. Are any or all of the following available: e-filing; on-line access to the court docket/file; smart-phone applications to assist court interactions?

Yes. In 2018, the Indonesian Supreme Court launched an electronic court system called "e-court" which enables the Plaintiff/Claimant to register e-summon, e-payment and e-filing of a lawsuit in front of all first level of District Courts in the territory of Indonesia. This e-court system can be accessed through <ecourt.mahkamahagung.co.id>. To use the e-court system, the Advocate must register an email and/or telephone number which will be deemed as the electronic domicile of the Plaintiff. Through this e-court, the filing will be submitted and the court fee will be paid online. The e-summons are available only if both Plaintiff and Defendant have agreed to use e-court. In addition to the e-court, the judgements of the court are also available online through different online systems, i.e. Case Information Tracking System (Sistem Informasi Penelusuran Perkara – "SIPP"). Therefore, evidence, witness testimony, statements or any other documents filed in court are not available online.

Q. Are Judges available 24/7?

In general, no. The judges will be available during the normal office hours of the courts.

Q. Are interim/interlocutory hearings heard by telephone conference / Skype / Video conference ?

Generally, all trials and hearings are conducted in open court, with the exceptions including matters relating to family law, juvenile and adultery cases as well as pretrial court mediation process, which are not open to the public. Telephone conference and/or video conference have not been used in the court hearings or trials.

Q. Is evidence at trial capable of being by Skype / Video conference ?

The general rules on evidence of civil procedure could be found in the Civil Procedure Law and Article 1866 up to and including Article 1993 of the Civil Code. Indonesian courts hold a strong preference for original evidence and documentation, but authenticated duplicates are acceptable. In practice, the courts will accept copies of documents, provided that they conform to the originals as verified before the court.

Article 1866 of the Civil Code and Article 164 of the HIR define that evidence consists of written evidence (including electronic information or documents – based on Law No. 11 of 2008 regarding Information and Electronic Transaction), testimony of witnesses in front of the court (in the event that a witness is distantly located from the District Court where the case is presiding, the court may delegate its power to another District Court where the witness presides to conduct an examination of that witness and send the witness' testimony), inference, acknowledgements and oath. Civil procedural law does not formally recognise an affidavit as a form of evidence, however, documentary evidence supporting a witness's statement or testimony (e.g. an expert witness's report) may be presented during the hearings. Indonesian law distinguishes between authentic written evidence and privately made written documents. Authentic written evidence in the form as prescribed by the laws and made before the government official is considered as the strongest evidence (*prima facie* evidence).

In practice, the following are some relevant issues in relation to the evidence in the proceedings: (i) all documents submitted to the courts must be affixed with a stamp duty of Rp. 6.000,- Indonesian Rupiah, (ii) documents that are not written in Indonesian language must be translated into Indonesian by a sworn translator, (iii) in Indonesian proceedings, the disputing parties have the rights to examine evidence submitted during the evidence hearings. During the evidence hearings, each of the disputing parties has the right to question the origins and legality of written evidence submitted by the opposing parties, and based on this procedures, the judges will play an active role to examine and determine in their judgment whether the documents, the legality of which is being questions, may or may not be used as evidence and they have the discretionary power to call for or reject direct or expert testimony. Therefore, the ability to require testimony and the production of documents and to examine the witnesses is entirely within the court's discretion, and (iv) the court retains no *verbatim* transcript. The clerk takes notes of the testimony and of any cross-examination that takes place.

Frequently, these notes are incomplete and inaccurate, particularly if the subject matter is technical and new to the appointed clerk. This record forms the basis of the court's decision on factual matters. Copies are not made available to the appointed advocates either during the trial or at the appellate stage. Although the appointed advocate may review and has access to such records at the clerk's office, neither advocate nor the party to the action may officially take copies.

Q. What is your court's views on the use of e-disclosure technology?

Please see our explanation above. In addition to the above, Indonesian procedural law follows the tradition of a civil law system, and it does not commonly acknowledge the disclosure of documents and other disclosure or discovery. There is no mechanism to enforce any order relating to disclosure or discovery in the Indonesian courts. Therefore, the Indonesian civil procedural laws do not recognise the concept of a pre-trial discovery procedure. Parties are expected to prove its case by giving upfront disclosure, i.e. as of the commencement of the proceeding and thereafter during the trial, and to list in their initial pleadings all documents on which they based their argument or case. In the proceedings, the disputing party does not have any right to request the other disputing party to disclose documents or additional documents, and the judges do not have the authority to request the disputing parties submit evidence. Even though there is no pre-trial discovery process in Indonesian proceedings, the civil procedural laws has applicable procedures that enable a party to obtain evidence that is in the possesion of an opposing party or a third party. A disputed party may file a request with the court to order the opposing party to submit or present specific documents and evidence owned and controlled by them that are related to the case, and if the other party refuses to disclose such documents, the presiding judges may draw whatever inference they deem appropriate from such non-disclosure and may draw a conclusion that such evidence is not favourable to the party that refused to produce it.

Q. How widespread is the use of technology aided review tools such as predictive coding?

This technology has not been used in the Indonesian trial system.

Ireland

Contributor: Paul Convery – William Fry

Q. Are lawyers able to enter into contingency / damages sharing agreements with clients?
No, there is a statutory bar to fee sharing arrangements. Section 68(2) of the Solicitors (Amendment) Act of 1994 restricts solicitors from calculating fees as a percentage of awards in contentious matters (apart from debt collection proceedings). "No foal, no fee" or "no win, no fee" arrangements are sometimes offered but Irish lawyers are expressly prohibited from charging fees by reference to the damages awarded in commercial litigation (again it is different for pure debt collection matters). It should be noted that, when commenced, section 5 of the Legal Services Act 2015 will repeal section 68 of the Solicitors (Amendment) Act of 1994. However, as section 5 of the Legal Services Act 2015 has not yet commenced, the above restriction remains.

Q. Recoverability of client costs and/or success fees?
Usually costs follow the award. However, that is typically where costs are payable by one party to another. In essence, damages are awarded to the successful litigant as compensation for the expense one has suffered by reason of the litigation. The Court also takes into account open settlement offers

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including lodgments or without prejudice save as to costs offers

Q. Can a Defendant obtain an order for security for costs?
Yes. The Court has discretion to make a "security for costs" order under Order 29 of the Rules of the Superior Courts or Order 58 Rule 17 of the Rules of the Superior Courts in the case of an appeal to the Supreme Court or Section 52 of the Companies Act 2014.

Q. How active is the Court costs management? Are cost budgets required?
Statutory Instrument Number 255/2016 in relation to pre-trial procedures in the Superior Courts and Statutory Instrument Number 2/2004 in relation to case management in the Commercial Courts seek to manage party costs. These state, among other things, that there is no need to file cost budgets nor is there an independent legal costings process which operates in some circumstances to manage costs. In addition to the above, and whilst there are no formal rules in respect of costs budgeting, a letter must be sent to the proposed client which sets out a fee estimate of the work and highlights the client's liability to pay the other party's costs where litigation is unsuccessful.

Q. Is Third Party Funding of disputes available?
No. It is both prohibited by statutory and by court precedent. In Persona Digital Telephony Limited & Another v Minister for Public Enterprise [2017] IESC 27, the Supreme Court upheld the torts of maintenance and champerty and as a result third party litigation funding is not currently available in Ireland. However, Third Party Funding may be available for arbitration claims although the impact of any such financing has not yet been challenged in an Irish court.

Q. Is there any applicable code of conduct /regulation for Third Party Funders?
Yes. UK based funders can follow a voluntary code of conduct

Q. Is insurance for legal costs available?
Yes. A developing market has emerged since the decision in Greenclean Waste Management Ltd v Leahy p/a Maurice Leahy & Co. Solicitors [2015] IECA 97 but it is at a very early stage. Typical arrangements that are offered by insurers are "ATE Insurance" which provides cover for potential exposure to an opponent's legal costs if the Plaintiff loses litigation/arbitration and is ordered to pay for the opponent's case. The premium is usually only payable if the Plaintiff is successful. As with any developing market the process is evolving to fit particular circumstances.

Q. Is there any applicable code of conduct /regulation for insurers?
No.

Q. Are any other claim financing / insurance arrangements available to a Claimant?
This is an evolving market with various niche arrangements coming on stream but, at this stage, ATE Insurance appears to be the most prevalent.

Q. How technologically equipped is your Court system e.g. paperless / live transcripts / touch screen technology etc?
An eCourt app, which allows for paperless activity, was piloted in 2016 and highlighted as a success by the presiding judge. Various programmes to advance the use of technology are in train. Additionally, the Criminal Courts, which opened in January 2010, are enabled for the use of various technologies as are various other court buildings. Furthermore, the Courts Service of Ireland is implementing a Strategic Plan to promote the increased use of electronic display evidence.

Q. Are any or all of the following available: e-filing; on-line access to the court docket/file; smart-phone applications to assist court interactions?
While some online access is available, only parties to the action can view the documents. Non-parties can only see the progression of the case (i.e. the stage the proceedings are at) and details such as documents filed and Court orders made. That said, as regards e-filing the Supreme Court is currently piloting an e-filing optional scheme so this is an issue that is likely to see some developments in the near term.

Q. Are Judges available 24/7?
Available at any time for Habeas Corpus applications but not for commercial matters.

Q. Are interim/interlocutory hearings heard by telephone conference / Skype / Video conference?
Not at this stage.

Q. Is evidence at trial capable of being by Skype / Video conference?
Yes.

Q. What are your court's views on the use of e-disclosure technology?
The Irish courts have approved the use of these technological solutions in respect of discovery in particular and have recognised their efficiency in reducing disproportionate costs and time impact.

Q. How widespread is the use of technology aided review tools such as predictive coding?
The use of TAR and predictive coding methods was specifically approved in the case of IBRC v. Quinn [2015] IEHC 175.

Italy

Contributor: Vittorio Allavena and Valentina Frignati - BonelliErede

Q. Are lawyers able to enter into contingency / damages sharing agreements with clients?
No. Contingency fee agreements (i.e. whereby payment of the lawyer's fee is entirely dependent on the successful outcome of the case, so called "patto di quota lite") are prohibited. However, lawyers are permitted to agree a success fee in addition to the fees that a client has to pay irrespective of the outcome of the dispute (so called "palmario"). Contingency fee agreements aside, lawyers are free to enter into any type of fee agreement with clients provided that: (i) the agreement is in writing and the fees are proportional to the work performed (Art. 2233, paras. 2-3 of the Italian Civil Code) and/or; (ii) the agreement does not involve assignment of the rights in dispute (Art. 1261 of the Italian Civil Code) nor a share of the goods or rights in dispute (Art. 13, para. 4 of Law No. 247/2012 and Art. 25, para. 2 of the Code of Professional Conduct for Italian lawyers). Lawyers usually offer fee agreements based on hourly rates or on a flat-rate (e.g. a percentage of the value of the dispute, regardless of its outcome).

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Q. Recoverability of client costs and/or success fees?
Yes. Italian courts usually apply the rule that costs follow the event, with the losing party thus being ordered to pay the winning party's costs. However, costs are usually calculated by courts based on the parameters set out in Ministerial Decree No. 55/2014 rather than on the actual costs that the winning party incurred. The judge may decide to set off costs if: (i) both parties are ultimately losing parties; (ii) the winning party's costs are considered excessive and superfluous; (iii) the question of law decided on was absolutely new; or (iv) a shift in the relevant case-law occurred (Art. 92 of the Italian Code of Civil Procedure).

Q. Can a Defendant obtain an order for security for costs?
No, under Italian law, claimants are not required to provide security for the defendant's costs, thus defendants cannot obtain an order for one.

Q. How active is the Court costs management? Are cost budgets required?
Italian courts do not manage the parties' costs and parties are not required to file cost budgets.

Q. Is Third Party Funding of disputes available?
Yes. Third Party Funding is not prohibited by law, but is still uncommon in litigation. Third Party Funding is far more often used in international arbitration.

Q. Is there any applicable code of conduct /regulation for Third Party Funding?
No. There are no specific rules regarding Third Party Funding in Italy.

Q. How technologically equipped is your Court system e.g. paperless / live transcripts / touch screen technology etc.?
Since the enactment of new statutes to encourage the digitization of proceedings, Italian courts have made great efforts to keep up with new technologies. The actual level of technological equipment varies from court to court.

Q. Are any or all of the following available: e-filing; on-line access to the court docket/file; smart-phone applications to assist court interactions?
E-filing is available for briefs and other documents in civil, tax and administrative proceedings. Paper filing is still required in criminal proceedings and in proceedings before the "Justices of the Peace" (giudici di pace) and the Supreme Court (Corte di Cassazione). To use e-filing, the lawyer must open an account and then receives the token necessary to digitally sign and electronically file briefs and other documents. As to court dockets, the parties to the dispute and their lawyers have on-line access. Other parties may retrieve information only concerning civil proceedings that they know the docket number of or the date of the first hearing from the website of the Ministry of Justice called Portale dei Servizi Telematici (PST). In this case, privacy is protected by making available to the public only the initials of the parties' names and the stages of the ongoing proceedings in question, while briefs, other documents and court orders are not available to the public. Smart applications for android and Apple phones are not available.

Q. Are Judges available 24/7?
No. Civil judges are available only on certain days and at certain times depending on their schedule. Lawyers are generally not allowed to directly contact judges: requests to speak with a judge must go through a court clerk.

Q. Are interim/interlocutory hearings heard by telephone conference / Skype / Video conference?
Generally no, but the use of Skype/video conference calls may be allowed by judges on a case-by-case basis.

Q. Is evidence at trial capable of being by Skype / Video conference ?
Generally no, but it may be allowed by judges on a case-by-case basis.

Q. What are your court's views on the use of e-disclosure technology?
They do not have a view since no duty of disclosure exists under Italian law. Disclosure can be ordered only for specific documents if requested by one of the parties and under certain conditions (Art. 210 of the Italian Code of Civil Procedure).

Q. How widespread is the use of technology aided review tools such as predictive coding?
Predictive coding and TAR tools in general are used only to assist clients in internal corporate investigations and criminal proceedings where a large volume of documents has to be reviewed.

Japan

Contributors: Teruhisa Toyama and Naoki Kanehisa - Atsumi & Sakai

Q. Are lawyers able to enter into contingency / damages sharing agreements with clients?

Yes. In disputes matters it is common to enter into a compensation agreement containing contingent fee provisions. However, it is very rare to enter into so-called "no win, no fee" contingency arrangements. Outside of disputes it is uncommon to have contingency agreements.

Q. Recoverability of client costs and/or success fees?

In civil actions the general rule is for each party to bear their own costs irrespective of success/loss. However, in tort cases it is sometimes possible that an award may be made on account of the legal costs incurred by a successful plaintiff. However, this is at the discretion of the court and will not be the amount actually paid by a plaintiff. Typically the amount is in the region of 10% of the amount of the claim recognised by the court.

Q. Can a Defendant obtain an order for security for costs?

Yes. In some cases, to prevent an abuse of process, an order to provide a security deposit can be made

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against a plaintiff at the request of a defendant. Similarly, in an action filed by a non-resident (including a corporate) against a resident defendant, an order to provide security may be issued at the request of the defendant.

Q. How active is the Court costs management? Are cost budgets required?

It is unusual to see the Court involved in such matters.

Q. Is Third Party Funding of disputes available?

It is strictly prohibited by the Attorney Act and rules of bar associations for non-lawyers and non-lawyer associations to procure legal work and litigation, etc. for lawyers for profit. As interest, dividends and other profits to be collected by so-called litigation funders are likely to be viewed as consideration for procuring legal work and litigation for lawyers, litigation funding is not permitted in Japan. However, these rules only apply in Japan and to Japanese individuals and entities. Accordingly, a foreign party to Japanese litigation may be able to take advantage of litigation funding if it is arranged offshore; there has been a gradual increase in the number of such cases. However, arbitration is not common in Japan, and there will be very few (if any) cases where a litigation fund has been involved in an arbitration case in Japan.

Q. Is there any applicable code of conduct /regulation for Third Party Funders? How involved are funders permitted to become with a funded case?

Under the Attorney Act and the rules of bar associations only lawyers may conduct litigation. Litigation funders can be involved in the preparation and conduct of a case through their clients but not otherwise.

Q. Is insurance for legal costs available?

Yes for litigation, but on the basis of D&O insurance policies which are common in Japan. There is though typically a special condition applied in such policies which exempts insurer liability in the event of gross negligence, or makes the application in the case of derivative action optional.

Q. Is there any applicable code of conduct /regulation for insurers?

No. Where D&O is called upon and an insurer may be in line to pay out monies, there are cases (limited to road traffic matters and directors and officer liability matters) where the insurer participates in proceedings. This may be either directly as a party or in support of an existing party.

Q. Are any other claim financing / insurance arrangements available to a Claimant?

Yes. Although not yet common, there are damages insurance products for attorney's fees available for the filing of an action.

Q. How technologically equipped is your Court system e.g. paperless / live transcripts / touch screen technology etc?

They are lagging behind. There are a few cases where such facilities are used in court trials, but the court procedure law reforms are far behind technical innovation. The government is considering the introduction of an e-court starting in approximately 2022, and then e-filing and e-case management thereafter.

Q. Are any or all of the following available: e-filing; on-line access to the court docket/file; smart-phone applications to assist court interactions?

Claims for payment of unpaid rent, loaned money, compensation payments, purchase payments, communications fees or lease fees can be e-filed.

Q. Are Judges available 24/7?

No. Other than criminal procedural matters in which judges are involved, including issuing arrest or search warrants etc., courts are not available Saturdays, Sundays or national holidays.

Q. Are interim/interlocutory hearings heard by telephone conference / Skype / Video conference ?

Yes, but only telephone conference hearings using fixed telephone lines and video conferencing are used.

Q. Is evidence at trial capable of being by Skype / Video conference?

Yes. For an examination of a witness, or a statement of opinion by an expert, video conferencing is allowed if such witness or expert resides in a remote area or certain other conditions are met.

Q. What are your court's views on the use of e-disclosure technology?

No view.

Q. How widespread is the use of technology aided review tools such as predictive coding?

TAR is not officially introduced to law enforcement /regulators. While private companies collect and analyse evidence efficiently using these technologies, there are few cases where the results of these technologies are actually submitted to the court. It is, for example, common to use TAR for internal investigations (forensic) in corporate scandal cases. If TAR becomes approved for use in litigation it likely will be in great demand.

Jersey

Contributors: Nick Williams and Tom Harbord - Ogier

Q. Are lawyers able to enter into contingency / damages sharing agreements with clients?

No. The Law Society of Jersey prohibits a conditional fee arrangement where the lawyer is entitled to a success fee or uplift on their normal fees. This would include a share in damages. Nevertheless, it is permitted to act on a "no win, no fee" basis so long as only the normal or standard rates are applied if successful. This is based on court precedents and long-standing prohibitions on champerty (NB:// there are some carve outs for Third Party Funding).

Q. Recoverability of client costs and/or success fees?

A successful party is able to recover its (standard) fees against the unsuccessful party.

Q. Can a Defendant obtain an order for security for costs?

Yes, although such orders are in the absolute discretion of the Court. Relevant factors include whether the plaintiff is resident overseas, whether it is a corporate, and the balance of risk between the defendant having no recourse for costs even if it succeeds, against the risk of stifling the plaintiffs access to the court.

Q. How active is the Court costs management? Are cost budgets required?

It is unusual to see Court involvement in active cost management, and cost assessments are typically left to the end and a taxation process. There is therefore currently no requirement to file a costs budget. Nevertheless, we do understand that the Master is considering introducing practice directions to this effect in the near future. It is also correct to say that Jersey sees a lot of representations regarding trusts, and where costs are paid from trust assets it is common for the courts to oversee such costs on an ongoing basis, including by Beddoe applications.

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Q. Is Third Party Funding of disputes available?

Yes, although it is still relatively uncommon. The market is still developing as it was only approved as permissible by the courts in the last 5-7 years.

Q. Is it necessary to notify an opponent of any Third Party Funding arrangements?

No. There would appear to be no statute or case law specifying that such a disclosure is necessary. Nevertheless, given that the Jersey Court has indicated that funding agreements may be deemed champertous in certain circumstances, we do not exclude the possibility of this changing.

Q. Is there any applicable code of conduct /regulation for Third Party Funders? How involved are funders permitted to become with a funded case?

There is no code of conduct, and they are permitted not insignificant involvement in the claims they fund.

Q. Are Third Party Funders at risk of costs awards in the event a funded claim is unsuccessful?

Yes. The leading Jersey case (Barclays v Equity Trust, 2013) notes that even where a funding agreement was ultimately deemed champertous and unenforceable (on the particular facts), it was envisaged that the Court would not prejudice the opposing party and would still make a costs order directly against the funder.

Q. Is insurance for legal costs available?

Yes, but again this is relatively uncommon.

Q. Is there any applicable code of conduct /regulation for insurers?

No.

Q. How technologically equipped is your Court system e.g. paperless / live transcripts / touch screen technology etc?

Getting there. The Crociani v Crociani trial (2017) was the first paperless trial in Jersey, using a commercial electronic trial bundle system.

Q. Are any or all of the following available: e-filing; on-line access to the court docket/file; smart-phone applications to assist court interactions?

Yes to e-filing. Everything must now be e-filed alongside paper filings (unless an electronic trial bundle is approved).

Q. Are Judges available 24/7?

No.

Q. Are interim/interlocutory hearings heard by telephone conference / Skype / Video conference ?

No.

Q. Is evidence at trial capable of being by Skype / Video conference ?

Yes.

Q. What are your court's views on the use of e-disclosure technology?

E-disclosure is encouraged by the Court. Practice Direction RC17/08 requires that parties consider and agree on the use of different e-discovery technologies as soon as parties have filed their pleadings.

Q. How widespread is the use of technology aided review tools such as predictive coding?

Clients and parties are increasingly embracing its use.

Kazakhstan

Contributors: Valikhan Shaikenov and Ardak Idayatova - Aequitas

Q. Are lawyers able to enter into contingency / damages sharing agreements with clients?
Yes. Although, while there is no prohibition to any contingent / damages sharing agreements, it is uncommon for lawyers to enter into such arrangements. This may be due to the fact that the outcome of the courts' decisions is not predictable. The legal system in Kazakhstan is based on civil law and the rule of law is not as well ensured by Kazakh courts. Lawyers may offer fixed fee, capped fee, hourly rates. Fixed fee is the most common arrangement.

Q. Recoverability of client costs and/or success fees?
Yes. A client's costs are recoverable from an opponent in the event of a win at a court trial, but these are capped at 10% of the amount of any claim, and the Court also has the discretion to award significantly reduced amounts of costs. In arbitration, the costs are allocated by a tribunal according to the parties' arrangement. In the absence of an arrangement between the parties, the tribunal allocate the costs proportionally to the awarded amounts. Kazakh law does not provide for an exhaustive list of costs to be awarded. While in practice courts normally award

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compensation of only those costs that have been incurred before a judgment is rendered, we believe that there are theoretical grounds to argue that a success fee could be awarded by the court or the tribunal to the winning party. As far as finance fees are concerned, it is quite unlikely that such fees will be awarded in practice, but furthermore, even from a theoretical perspective, it is quite disputable whether such fees are allowed for compensation by the current legislation. However, since success / finance fee arrangements are not commonly used in Kazakhstan, there is no court practice in this regard.

Q. Can a Defendant obtain an order for security for costs?
In Kazakhstan 'security for costs' (being a guarantee of payment in the event the claimant party loses and has to pay costs) is available only in arbitration proceedings and not Court proceedings. However, Kazakh law does provide for a 'security for damages' to be given by a claimant against possible damages of a defendant incurred as a result of an injunction and subsequent denial of the claimant's claim, and this must be met through a deposit of money.

Q. How active is the Court costs management? Are cost budgets required?
Not at all. We have never experienced Court costs management and we are not aware of any cases where the court / tribunal have sought to manage the parties' costs.

Q. Is Third Party Funding of disputes available?
No. Although Third Party Funding is not prohibited, there are no institutions which offer it and there is not a developing market for it yet. Third Party funding would in theory be available for arbitration claims, but again there is no market as yet.

Q. Is it necessary to notify an opponent of any Third Party Funding arrangements?
No.

Q. Is there any applicable code of conduct /regulation for Third Party Funders?
No. There are no regulations and/or requirements. Since there are no regulations in respect of Third Party Funding in Kazakhstan, any restrictions to Funders may depend on their particular arrangements with claimants.

Q. Are Third Party Funders at risk of costs awards in the event a funded claim is unsuccessful?
No.

Q. Is insurance for legal costs available?
Yes. However, this market is still developing and litigation insurance is not commonly used. Of the c.30 insurance companies in Kazakhstan only one currently provides litigation insurance - Risk Expert LLP (http://riskexpert.kz/). Under Kazakh law premiums are to be paid according to arrangements between the client and the insurance company (installments are allowed). Insurance is not available for arbitrations as, according to the Law on Insurance Activity, Litigation insurance applies only to costs incurred within trial.

Q. Is there any applicable code of conduct / regulation for insurers?
No. There is no specific code of conduct / regulation or similar regime in respect of litigation insurance. The Law on Insurance Activity provides only a definition for 'litigation insurance'. There are no substantive restrictions in this regard and the issues on involvement may be resolved by way of agreement between the insurer and the client. Also, there are no restrictions as to what type of cases can have litigation insurance.

Q. Are any other claim financing / insurance arrangements available to a Claimant?
Yes. Insurance is also available for a Claimant to insure their own legal fees in the event a claim is unsuccessful. Another form of financing available to a Claimant is to finance their claim by way of a loan.

Q. How technologically equipped is your Court system e.g. paperless / live transcripts / touch screen technology etc?
The courts are lagging behind.

Q. Are any or all of the following available: e-filing; on-line access to the court docket/file; smart-phone applications to assist court interactions?
E-filing is available, including on Android and iOS apps. All documents relating to civil, criminal and administrative court proceedings can be e-filed, with on-line access to court procedural documents available to parties only. As regards non-parties, they have an open access to a public database of judicial acts; however, the searchability of that database is very limited and technically complicated: one can hardly find judicial acts by context or subject. There is also a private database with some (random) court judgements and other procedural documents available to all users of the database and searchable by context and other criteria. Where judicial acts are publicly available, whether through the public or private database, they are available unedited containing full names and other personal data of parties to dispute.

Q. Are Judges available 24/7?
No. Officially, Judges are available 8 hours per day (Monday to Friday) according to the Kazakh Labor Law.

Q. Are interim/interlocutory hearings heard by telephone conference / Skype / Video conference ?
No. Hearings heard by telephone conference / Skype / Video conference are not allowed at trial. This may be allowed in arbitration proceedings depending on the format of hearings allowed by the relevant arbitration rules.

Q. Is evidence at trial capable of being by Skype / Video conference ?
No. The only option available is that court hearings can be video-recorded and the disk is kept within the court materials.

Q. How widespread is the use of technology aided review tools such as predictive coding?
E-disclosure is not used at trial. Its use may be possible in arbitration, if the arbitration rules allow it. Equally, 'predictive coding' technology assisted review ("TAR") is not used at trial but could be possibly used in arbitration. We are not aware of any TAR's use by enforcement officers or regulators.

Latvia

Contributors: Daiga Zivtiņa and Anete Dimitrovska - Ellex Kļaviņš

Q. Are lawyers able to enter into contingency / damages sharing agreements with clients?

Yes, these agreements are not unusual. However, typically lawyers would offer lower hourly rates that would be applicable if the case would result in an unsuccessful outcome, and full hourly rates or individually agreed hourly rates if the case would result in a successful outcome for the client.

Q. Recoverability of client costs and/or success fees?

Yes. As a general rule, costs are recoverable from an opponent in the event of a win at a court trial. However, for example in civil proceedings in the state courts there are applicable limitations set by the Civil Procedure Law that would only allow recovery of partial costs (for example, reimbursable expenses for paying for the assistance of an attorney in claims, which are financial in nature and the claim sum of which exceeds EUR 57,001.00 are in the actual amount thereof, but not exceeding 5% of the satisfied part of the claim). In regards to arbitration proceedings client's costs are recoverable from an opponent without limit.

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Q. Can a Defendant obtain an order for security for costs?
No. The standard procedure in regards to securing the claim can apply when there are reasonable grounds to believe that enforcement of the court judgment in the case may become problematic or impossible. Nevertheless, please note that pursuant to the Civil Procedure Law, the particular institute is more aimed at securing the general claim, also there is no case law in regards to this matter.

Q. How active is the Court costs management? Are cost budgets required?
Not at all.

Q. Is Third Party Funding of disputes available?
Third party funding is not regulated by any national laws and regulations and we are not aware of any precedents. It seems that there is not a developing market in this regard and we are not aware of any legal proceedings (in the state courts or arbitration) where the Third Party Funding has been applied. This would be available in Arbitration as it is not expressly prohibited.

Q. Is insurance for legal costs available?
No.

Q. Is there any applicable code of conduct /regulation for insurers?
No. Insurance for legal costs is not regulated in Latvia.

Q. Are any other claim financing / insurance arrangements available to a Claimant?
No. Although loans are available for paying fees, nevertheless, it is rarely used.

Q. How technologically equipped is your Court system e.g. paperless / live transcripts / touch screen technology etc?
The courts are getting there as new procedures have been recently introduced by the Latvian courts. The use of electronic signature, electronic mail and electronic filing system in regard to the court documents is currently being promoted the most. For example, pursuant to the Civil Procedure Law, judicial documents may be served to the designated e-mail address of the attorney at law, also electronic communication with the representatives of the court is allowed following the received consent from the respective attorney at law.

Q. Are any or all of the following available: e-filing; on-line access to the court docket/file; smart-phone applications to assist court interactions?
Yes. Almost all documents can be filed electronically, if they can be approved by an electronic signature. Nevertheless, in practice, the standard procedure is still used more than electronic filing. A person will need to register in order to receive an electronic signature. There is no need to register with any specific court electronic system, since, at the moment, the electronic filing is simply done through an e-mail designated by the respective court. Attorneys at law can access electronically some official case documentation, such as, submitted explanations, court decisions etc. Nevertheless, full access to the case files is only available at the court. As an attorney at law, electronically you will only be able to review some official case documentation in regards to the cases you will be registered as the participant of the case. Smartphone applications are not available.

Q. Are Judges available 24/7?
No.

Q. Are interim/interlocutory hearings heard by telephone conference / Skype / Video conference ?
Yes, but from the above mentioned, only the video conference regime is available.

Q. Is evidence at trial capable of being by Skype / Video conference ?
Yes.

Q. What are your court's views on the use of e-disclosure technology?
Courts do not have a view in this regard.

Q. How widespread is the use of technology aided review tools such as predictive coding?
Not used. There are several challenges in regards to the use of the respective technology, for example, the language. Please note that all documents submitted to the state court must be submitted in Latvian language or translated to Latvian language.

Lebanon

Contributor: Mohamed Alem - Alem & Associates

Q. Are lawyers able to enter into contingency / damages sharing agreements with clients?
Yes, this is very common. Typically you see agreement of a fixed fee in addition to a success fee, the latter being a percentage of the amount being litigated.

Q. Recoverability of client costs and/or success fees?
The Court usually orders the loser to pay all court fees and the officially recorded expenses of the successful party. Lawyers fees are, however, excluded from this arrangement. Therefore typically the Court orders payment of a symbolic amount to the successful party as lawyers' fees.

Q. Can a Defendant obtain an order for security for costs?
No.

Q. How active is the Court costs management? Are cost budgets required?
Not at all.

Q. Is Third Party Funding of disputes available?
Not for litigation, although it is not prohibited per se. Presently there is the concept of legal aid available to parties who cannot pay. They are exempted from court fees and a lawyer is appointed from the Bar

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Association to act in the matter. It is more of a possibility for arbitration, where there is no legal aid available.

Q. Is it necessary to notify an opponent of any Third Party Funding arrangements?
No

Q. Is there any applicable code of conduct /regulation for Third Party Funders? How involved are funders permitted to become with a funded case?
No. Funding agreements are not common but they are not prohibited by law. A funding agreement can provide certain rights to a Funder such as the right to control the litigation process as long as such control is in the benefit of the funded party.

Q. Are Third Party Funders at risk of costs awards in the event a funded claim is unsuccessful?
No.

Q. Is insurance for legal costs available?
No, although again it is not prohibited per se.

Q. Are any other claim financing / insurance arrangements available to a Claimant?
No.

Q. How technologically equipped is your Court system e.g. paperless / live transcripts / touch screen technology etc?
The courts tend to be poorly equipped.

Q. Are any or all of the following available: e-filing; on-line access to the court docket/file; smart-phone applications to assist court interactions?
No.

Q. Are Judges available 24/7?
No.

Q. Are interim/interlocutory hearings heard by telephone conference / Skype / Video conference ?
No.

Q. Is evidence at trial capable of being by Skype / Video conference ?
No.

Q. What are your court's views on the use of e-disclosure technology?
Courts do not presently have a view in this regard.

Q. How widespread is the use of technology aided review tools such as predictive coding?
Not presently used.

Lithuania

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Q. Are lawyers able to enter into contingency / damages sharing agreements with clients?

Yes, these arrangements are usual. Though regulation and case law in this regard is very limited, the Law on the Bar of the Republic of Lithuania states expressly that conditional fees allowing attorneys to get an upscale premium are permitted in civil proceedings provided that it does not contradict the principles governing the practice of attorneys such as the prohibition of quota litis agreement.

Q. Recoverability of client costs and/or success fees?

The general rule provides that legal costs are borne by the unsuccessful party to the litigation. However, when awarding legal costs against the losing party the state courts rely on the non-mandatory rules established by the Minister of Justice which set out the recommendations for the maximum amount of recoverable legal costs.

Q. Can a Defendant obtain an order for security for costs?

The Code of the Civil Procedure foresees security for

costs under certain circumstances. First, a party who acts unfairly, and there is a risk that this party will not cover the legal costs of the counterparty, may be obliged to pay security for costs. Second, in cases when the claimant's country of origin is not: (i) an EU Member state; (ii) a contracting state to the Convention of 1 March 1954 on civil procedure and; (iii) a contracting state to the Convention of 25 October 1980 on International Access to Justice - a defendant may request the court to order the claimant to provide security for costs. As to arbitration proceedings, the Law on Commercial Arbitration does not prohibit an arbitral tribunal from imposing measures such as security for costs.

Q. How active is the Court costs management? Are cost budgets required?

Not at all.

Q. Is Third Party Funding of disputes available?

Yes, for both arbitration and litigation. Third party funding is not prohibited by law but there is no practice yet. Recent Supreme Court of Lithuania case law may indicate that Third Party Funding is available as the court has expressly confirmed that the legal costs covered by the non-participating party are recoverable from the losing party. However, if a third party agrees to finance the legal costs, such a party would act only on a contractual basis and neither would be included (mentioned) in the court's final decision (therefore, the court's final decision will not have a res judicata effect for the third party), nor would it be able to claim from the losing party the expenses incurred.

Q. Is there any applicable code of conduct /regulation for Third Party Funders?

No.

Q. Are Third Party Funders at risk of costs awards in the event a funded claim is unsuccessful?

Only parties to civil proceedings may be obliged to cover the counterparties' costs. Therefore, in the event of a claim being unsuccessful, the court is not entitled to oblige third party funders to pay any awarded costs. However, it is not forbidden to agree that the third party funder will cover the other party's costs in the event of a loss.

Q. Is insurance for legal costs available?

Agreements only for insurance of legal costs do not exist in practice. Legal costs are usually covered by other types of insurance. Various types of civil liability insurance policies (general insurance of the civil liability, professional liability insurance, insurance of liability under the CMR Convention, etc.) usually by default covers the insured party's legal costs and the opposite party's legal costs in case they are awarded from the insured party. If the insurance covers legal costs, it does not differ between litigation and arbitration claims.

Q. Is there any applicable code of conduct /regulation for insurers?

No.

Q. Are any other claim financing / insurance arrangements available to a Claimant?

Loans are available for paying fees. It is however rarely used.

Q. How technologically equipped is your Court system e.g. paperless / live transcripts / touch screen technology etc?

The majority of courts are equipped with the conferencing equipment required for remote court sessions.

Q. Are any or all of the following available: e-filing; on-line access to the court docket/file; smart-phone applications to assist court interactions?

E-filing and online access to the court docket are available. There are no smartphone apps presently available.

Q. Are Judges available 24/7?

No, but the e-court system is accessible 24/7, thus the documents can be submitted at any time.

Q. Are interim/interlocutory hearings heard by telephone conference / Skype / Video conference ?

No.

Q. Is evidence at trial capable of being by Skype / Video conference ?

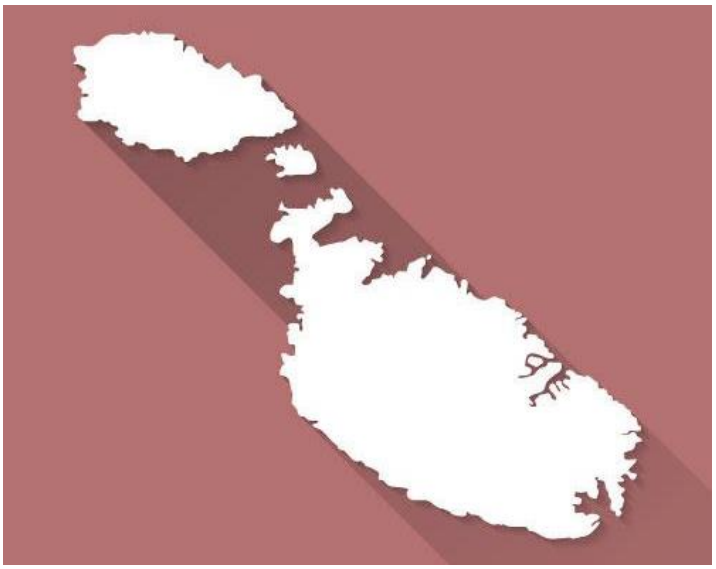
Yes. For example, if a party cannot attend court hearings because of illness or other important reasons, and/or there are residents of foreign countries – they can be heard through remote courtroom from home, medical or other institution.

Q. How widespread is the use of technology aided review tools such as predictive coding?

The view on the usage of e-disclosure technologies has not been settled yet. It is also unlikely that the view will be established in the near future since evidence is submitted in ordinary text, audio and visual formats. Nevertheless e-disclosure technologies are being used.

Malta

Contributor: Louis Cassar Pullicino - Ganado Advocates



Q. Are lawyers able to enter into contingency / damages sharing agreements with clients?

No. Lawyers are prohibited by law to enter into contingency / damages sharing agreements with clients. Most lawyers in Malta will therefore be paid according to hourly rates agreed with the client. Where court proceedings are involved there is a court tariff which applies to fees in respect of the judicial proceedings but the client and the lawyer can enter into an agreement to regulate the fees payable to the lawyer.

Q. Recoverability of client costs and/or success fees?

Yes. However this is restricted to the costs which are assessed by the Registrar of Courts in a taxed bill of costs issued in accordance with the official tariff referred to above, and will thus include court costs and legal fees assessed on the basis of this tariff.

Q. Can a Defendant obtain an order for security for costs?

No. It should be pointed out though that where a party is foreign or non-resident, there is a requirement that

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such party should be represented by a mandatory in the proceedings. The mandatory becomes personally liable for costs of the principal in respect of any costs or fees due to the other party if a costs order is issued against the principal. In practice an indemnity is given to the mandatory. If there are any 'security for costs' issues in Malta these cannot be dealt with by obtaining an insurance policy / third party funder indemnity.

Q. How active is the Court costs management? Are cost budgets required?

Not at all.

Q. Is Third Party Funding of disputes available?

No. Third Party Funding is not available in Malta, although it is not prohibited. There is currently no developing market for Third Party Funding and there are no specialist litigation funding companies operating in Malta.

Q. Is insurance for legal costs available?

It is unclear whether such insurance cover is actually available on the market at present, although it is not prohibited. The use of Insurance for legal costs will vary depending on the products available on the market. There are no specialist insurers operating in Malta and these remain uncommon arrangements although there is no express prohibition to it.

Q. Are any other claim financing / insurance arrangements available to a Claimant?

There are no specific products in the local market whether by way of financing or insurance cover which cater for such exposure in particular.

Q. How technologically equipped is your Court system e.g. paperless / live transcripts / touch screen technology etc?

As to the use of technology, Maltese courts are lagging behind. No new procedures have been recently issued to promote the use of technology. In some cases where Ganado have been involved, they have assisted the Court by introducing technology available at their Firm to assist the Judge during the conduct of the trial.

Q. Are any or all of the following available: e-filing; on-line access to the court docket/file; smart-phone applications to assist court interactions?

E-filing is not available in Malta. On-line access to the court docket / file is possible for all parties and non-parties as all proceedings are accessible to the public. Smart applications are also available. There is a service whereby the Court Registrar communicates with lawyers via text messaging and also by email about various aspects of the case, adjournments, decrees and orders issued by the Court etc.

Q. Are Judges available 24/7?

Yes. There is a system whereby a duty Judge is always available on a 24/7 system and this applies to urgent requests such as filing of attachment orders etc. Otherwise the Judges presiding over specific cases will deal with urgent applications in the time they deem appropriate if applications for in camera orders are required.

Q. Are interim/interlocutory hearings heard by telephone conference / Skype / Video conference ?

No. Interim/interlocutory hearings are so far only held to hear the evidence of witnesses residing abroad.

Q. Is evidence at trial capable of being by Skype / Video conference ?

Yes. our Courts are now equipped with equipment for the purposes of having witnesses testify over video conferencing or skype calls.

Q. How widespread is the use of technology aided review tools such as predictive coding?

It is not used at present.

Nigeria

Contributors: Babatunde Fagbohunlu, Ngo-Martins Okonmah, and Oladimeji Ojo – Aluko & Oyebode

Q. Are lawyers able to enter into contingency / damages sharing agreements with clients?
Yes, the Nigerian Rules of Professional Conduct (RPC) for legal practitioners provides that practitioners are able to bill on a contingency basis, however they are banned from acquiring an interest in the subject of the dispute (Rule 50 RPC). However, legal practitioners do not usually enter into contingent agreements with clients. The lengthy judicial proceedings as well as the uncertainty of judgments may be factors that discourage lawyers from entering into such agreements.

Q. Recoverability of client costs and/or success fees?
The award of costs or refusal to award costs is at the discretion of the court and the courts have held that this discretion should be exercised judicially and judiciously. Order 52 Rule 7 of the Federal High Court Rules 2004, for example, provides that in fixing the amount of costs the principles to be observed shall be that the party who is in the right shall be indemnified for the expenses to which he has been put in establishing his claim, defence or counterclaim but the court still may take into account all circumstances. In most instances, either party (claimant/defendant) may

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pray the court to give an order for the other party to pay the cost of the action. Where such a request is made by a defendant, the court is likely to make an order for costs where the case instituted against them is frivolous.

Q. Can a Defendant obtain an order for security for costs?
There are certain instances where parties may seek security for costs before the Courts. These are: a) where an offer of settlement made in the course of Case Management or Alternative Dispute Resolution is rejected by a party, and the said party eventually succeeds at trial but does not better the earlier offer of settlement – here the winning party would pay the costs of the losing party from the time of the offer of settlement up to judgment; b) a claimant ordinarily resident out of the jurisdiction (though he may be temporarily resident within the jurisdiction) may be ordered to give security for costs. Before arbitral tribunals, a defendant too can obtain security for costs unless otherwise agreed by the parties.

Q. How active is the Court costs management? Are cost budgets required?
There is no requirement to file cost budgets in advance with a court/tribunal.

Q. Is Third Party Funding of disputes available?
No, the Common Law Rules largely prohibit such Third Party Funding arrangements on public policy grounds which refers to it as champerty i.e. the maintenance of an action in return for a share of the proceeds.

Q. Is insurance for legal costs available?
Yes, for both litigation and arbitration, insurance companies in Nigeria offer insurance packages which provide for an indemnity of legal costs that may arise against such a person. However, these arrangements are not common in Nigeria, and premiums are usually paid up front.

Q. Are any other claim financing / insurance arrangements available to a Claimant?
Yes.

Q. How technologically equipped is your Court system e.g. paperless / live transcripts / touch screen technology etc?
The Courts are poorly equipped.

Q. Are any or all of the following available: e-filing; on-line access to the court docket/file; smart-phone applications to assist court interactions?
Only e-filing. In the High Court Lagos State, processes can be e-filed. However, this is only after the hard copies of the originating processes in those cases have been filed.

Q. Are Judges available 24/7?
Judges are available 5 times in a week excluding public holidays.

Q. Are interim/interlocutory hearings heard by telephone conference / Skype / Video conference ?
No.

Q. Is evidence at trial capable of being by Skype / Video conference ?
No.

Q. What are your court's views on the use of e-disclosure technology?
No particular view.

Q. How widespread is the use of technology aided review tools such as predictive coding?
Not used.

Singapore

Contributor: Nigel Perreira - Rajah & Tann

Q. Are lawyers able to enter into contingency / damages sharing agreements with clients?
No, it is prohibited. Typical arrangements proposed by lawyers are time-costs basis, fixed fee arrangements or application of fee caps for stages of work.

Q. Recoverability of client costs and/or success fees?
Yes in relation to reasonable and proportionate client costs. Generally, success/finance fees are not recoverable, although non-law professionals may sometimes be permitted to charge value-added fee elements. A client's costs may be recoverable from the opponent as party-and-party costs fixed by the Court (or arbitration tribunal), or taxed by the Registrar (or as permitted in the arbitration). Party-and-party costs may be assessed on an indemnity basis in specific circumstances, e.g., where indemnity costs are permitted by contract or applicable procedural rules. In general, recoverable costs must be reasonable and proportionate.

Q. Can a Defendant obtain an order for security for costs?
Yes. Parties may apply for security for costs and/or forfeiture of such security in specific circumstances: (i) as an undertaking by an applicant who seeks injunctive

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relief, to compensate the respondent for damages caused and costs incurred if the injunction ought not to have been granted; or (ii) security for a respondent's costs where the respondent subsequently succeeds; or (iii) where a claimant is ordinarily resident out of jurisdiction, or is a nominal claimant suing for the benefit of some other person and there exist reasons to believe that he will be unable to pay the costs of the respondent if ordered to do so, and security for costs would be necessary because the claimant may be unable to pay the respondent's costs.

Q. How active is the Court costs management? Are cost budgets required?
Some more than others. Certain court proceedings will require parties to provide cost indications to the Court, e.g., where an appeal to the Court of Appeal takes place, or in certain insolvency-type proceedings. Family Justice Courts and Magistrate's Courts are also concerned with costs and manage cases through a case management conference system. Procedural rules emphasise that costs should be reasonable, and that mediation is to be considered by parties in litigation as a means of saving costs.

Q. Is Third Party Funding of disputes available?
Yes, but limited to international arbitration under the Civil Law Act amended in 2017. Third Party funding is otherwise not allowed for domestic arbitration and litigation before the Singapore Courts. Funding for insolvency practitioner's fees, lawyer's fees, related disbursements, adverse costs, security for costs, costs of preliminary investigations, and costs of expert reports etc. are typical agreements offered by funders. These arrangements are not unusual and represent an emerging market, especially for arbitration and insolvency.

Q. Is it necessary to notify an opponent of any Third Party Funding arrangements?
Yes.

Q. Is there any applicable code of conduct /regulation for Third Party Funders?
No, however, there is subsidiary legislation for international arbitration funding.

Q. Are Third Party Funders at risk of costs awards in the event a funded claim is unsuccessful?
This would likely depend on the terms of the funding contract. The Singapore Institute of Arbitrators' guidelines provide that the funding contract should state whether the funder is liable to the funded party to meet any liability for adverse costs.

Q. Is insurance for legal costs available?
Yes, there are differences though between court litigation as opposed to arbitration claims. The SIARB guidelines provide that the funding contract should state whether the funder is liable to the funding party to pay any premium to obtain costs insurance.

Q. How technologically equipped is your Court system e.g. paperless / live transcripts / touch screen technology etc?
Generally court rooms are all fitted with technology support. The Supreme Court houses technology courts of varying sizes for use in (a) the hearing of any matter in open Court or in Chambers; or (b) for any other dispute resolution process that have specific technological needs. In this regard, parties have access to the latest audio-visual technology when utilising these court facilities.

Q. Are any or all of the following available: e-filing; on-line access to the court docket/file; smart-phone applications to assist court interactions?
All court papers and correspondence with the Court Registry can be e-filed. On-line access to the court docket/file is available to solicitors of parties in a particular case, subject to access controls. There are presently no smartphone apps.

Q. Are Judges available 24/7?
Yes, subject to a duty schedule and meeting procedural requirements in order to have access to Registrars and duty judges.

Q. Are interim/interlocutory hearings heard by telephone conference / Skype / Video conference ?
Hearings by telephone conference / Skype and/or Video conference are not usually conducted. Certain types of pre-trial conferences may be conducted via video-conference or telephone conference.

Q. Is evidence at trial capable of being by Skype / Video conference ?
This is subject to the Court's discretion and is considered for matters involving vulnerable witnesses in certain family and criminal proceedings. This may be permitted in civil proceedings for foreign witnesses in certain circumstances.

Q. What are your court's views on the use of e-disclosure technology?
E-discovery is a reality in Singapore Courts and directions have been given to encourage e-discovery/electronic document management.

Q. How widespread is the use of technology aided review tools such as predictive coding?
Technology assisted review (TAR) processes are available to support litigation and arbitration and can be affordably deployed.

South Africa

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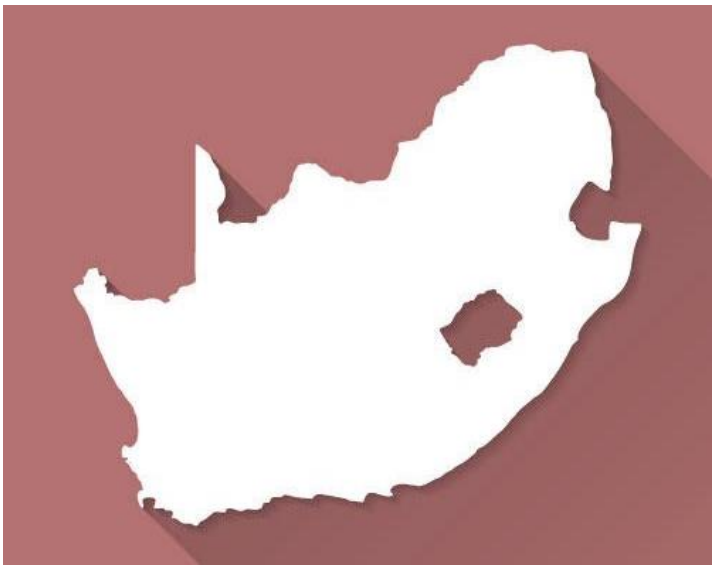

Q. Are lawyers able to enter into contingency / damages sharing agreements with clients?

Yes, however it is uncommon in general litigation. The Contingency Fees Act 66 of 1997 provides that contingency fees are lawful provided that the success fee does not exceed the attorney's normal fee by more than 100%. Additionally, in claims sounding in money, the total of the success fee may not exceed 25% of the total amount of the award, excluding costs. Normal fees are defined as the reasonable fees which may be charged by a practitioner for the work, if those fees are taxed or assessed on an attorney and own client basis in the absence of a contingency fees agreement.

Q. Recoverability of client costs and/or success fees?

The client's costs are recoverable from an opponent on a court tariff, but such tariff is substantially lower than the fees actually charged. Costs are awarded either on a party and party scale (lower scale) or attorney and client scale (higher scale) but even on the higher scale the successful party is likely to recover roughly one third of the actual costs.

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Q. Can a Defendant obtain an order for security for costs?

There is a limited right to require payment by way of security for costs, available particularly where the plaintiff is a foreign party with no assets in the jurisdiction. Security for costs is usually put up either by paying the amount to the registrar of the court, or by putting up a bank guarantee. An insurance policy or third party funder indemnity may be satisfactory provided that there are funds secured which are available to be attached in satisfaction of the costs.

Q. How active is the Court costs management? Are cost budgets required?

Not at all.

Q. Is Third Party Funding of disputes available?

Yes, for both litigation and arbitration. However the availability of Third Party Funding is extremely limited to the extent that these funding arrangements are very rare. There is a slowly developing market.

Q. Is there any applicable code of conduct /regulation for Third Party Funders?

No.

Q. Are Third Party Funders at risk of costs awards in the event a funded claim is unsuccessful?

Third party funding is very limited in this jurisdiction but there is case law to the effect that a third party funder might be at risk of paying the other party's costs if the claim is unsuccessful and the unsuccessful party is unable to settle the costs, a fact which was hidden from the opponent.

Q. Is insurance for legal costs available?

Yes for both arbitration and litigation. Insurance cover for potential legal costs is very common particularly for individuals. Insurance for the costs of a specific litigation matter is very uncommon. Premiums are paid upfront and there are limits of cover.

Q. Is there any applicable code of conduct /regulation for insurers?

There is no separate code of conduct for litigation insurers but the insurance industry is regulated and subject to codes of conduct.

Q. Are any other claim financing / insurance arrangements available to a Claimant?

In theory financing is available to a claimant in regard to its own fees but we think it unlikely that formal sources of funding would be prepared to entertain such an application given the risks.

Q. How technologically equipped is your Court system e.g. paperless / live transcripts / touch screen technology etc?

Court system is poorly equipped and mostly paper based.

Q. Are any or all of the following available: e-filing; on-line access to the court docket/file; smart-phone applications to assist court interactions?

No.

Q. Are Judges available 24/7?

An urgent judge is on duty 24/7 in each division of the High Court and the judge's registrar is available on a mobile number.

Q. Are interim/interlocutory hearings heard by telephone conference / Skype / Video conference ?

This would only be available for matters that are so urgent that they cannot be heard via the ordinary process. A hearing of this nature would be most unusual.

Q. Is evidence at trial capable of being by Skype / Video conference ?

In theory this is possible but it would require a special application to court and the circumstances would need to be exceptional.

Q. What are your court's views on the use of e-disclosure technology?

No particular view largely because there are no provisions yet regulating or facilitating e-discovery.

Q. How widespread is the use of technology aided review tools such as predictive coding?

It is not widely used as yet. There is significant pressure on fees in South Africa and there are a number of providers offering these tools with the likelihood that practitioners and clients will explore more efficient and cheaper modes of operation.

Spain

Contributors: Alfonso Iglesia and Paul Hitchings - Cuatrecasas

Q. Are lawyers able to enter into contingency / damages sharing agreements with clients?

Yes, these arrangements are not unusual. General arrangements proposed by lawyers are capped fees, additional fee in case of success (partial or full), full contingency fee arrangements calculated as a percentage of recovery (damages based assessment).

Q. Recoverability of client costs and/or success fees?

Only in arbitration. In Spanish court litigation, costs are not usually based on what the client in fact pays, and would not in principle include any contingency fee or success fee element. Historically, costs have been calculated by reference to local bar association parameters but these have been recently the subject of investigation under the competition rules.

Q. Can a Defendant obtain an order for security for costs?

No.

Q. How active is the Court costs management? Are cost budgets required?

Not at all.

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Q. Is Third Party Funding of disputes available?

Yes, for both litigation and arbitration, however it is uncommon. The market for funders is recent and is increasing quickly in Spain, but it is still at a fairly early stage. Arrangements include portfolio funding, or funding of specific cases, where the return will normally be calculated as a percentage of recovery or a multiple of the investment, or a mixture of the two.

Q. Is it necessary to notify an opponent of any Third Party Funding arrangements?

No.

Q. Is there any applicable code of conduct /regulation for Third Party Funders?

No.

Q. Are Third Party Funders at risk of costs awards in the event a funded claim is unsuccessful?

A funder is not at risk of being required by a court to pay the costs due from its funded party (although it may of course have a contractual obligation to reimburse that party).

Q. Is insurance for legal costs available?

Yes, for both litigation and arbitration, however it is uncommon.

Q. Is there any applicable code of conduct /regulation for insurers?

No.

Q. Are any other claim financing / insurance arrangements available to a Claimant?

Yes, but again funding litigation through some alternative form of financing is not very common.

Q. How technologically equipped is your Court system e.g. paperless / live transcripts / touch screen technology etc?

The capabilities of courts in the main cities vary considerably compared to courts in little towns.

Q. Are any or all of the following available: e-filing; on-line access to the court docket/file; smart-phone applications to assist court interactions?

No, save for e-filing which is available for submissions and documents.

Q. Are Judges available 24/7?

No.

Q. Are interim/interlocutory hearings heard by telephone conference / Skype / Video conference ?

No.

Q. Is evidence at trial capable of being by Skype / Video conference ?

In principle it should be possible, but in practice it is highly unusual.

Q. What are your court's views on the use of e-disclosure technology?

They have expressed no particular view.

Q. How widespread is the use of technology aided review tools such as predictive coding?

Presently it is not widely or commonly used. It is something which is starting however.

The Netherlands

Contributor: Albert Knigge - Houthoff

Q. Are lawyers able to enter into contingency / damages sharing agreements with clients?
No. These agreements are prohibited. We do see typical fee arrangements like agreed fee caps, blended rates, and lower or higher fees depending on the outcome of a case.

Q. Recoverability of client costs and/or success fees?
The court will order the losing party to pay an amount to the successful party, but this amount generally covers only a limited part of the real litigation costs.

Q. Can a Defendant obtain an order for security for costs?
Yes, but the court can only order a foreign party to provide security for costs if no treaty is applicable which allows to enforce a cost order in the country of residence of the claimant.

Q. How active is the Court costs management? Are cost budgets required?
Not at all.

Q. Is Third Party Funding of disputes available?
Yes, for both litigation and arbitration. These

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agreements are not unusual for claimants and are getting more and more common, in particular in mass claim actions. Companies are also increasingly obtaining Third Party Funding. It is more uncommon for defendants.

Q. Is it necessary to notify an opponent of any Third Party Funding arrangements?
No. However, in case of collective actions, the Claim Code 2019 (soft law) requires the representative organisation to publish on its website the fact that it arranged Third Party Funding, as well as a general outline of the fee arrangements. Furthermore, in collective actions the court could order a party to disclose its funding arrangements.

Q. Is there any applicable code of conduct /regulation for Third Party Funders? How involved are funders permitted to become with a funded case?
There is no code of conduct for funders. Funders are allowed a degree of involvement and control of claims, but they cannot act against the wishes of the funded party. In collective actions, legislation and soft law (Claim Code 2019) contain rules with regard to the independence of the claimant towards the funder.

Q. Are Third Party Funders at risk of costs awards in the event a funded claim is unsuccessful?
No, although, in collective actions courts tend to require a claim vehicle that will be able to pay an adverse cost award. This is normally done by providing security, often funded by the Third Party funder.

Q. Is insurance for legal costs available?
Yes, for both litigation and arbitration. This is particularly common for certain types of claims where professional liability and D&O cover exists. Premiums for cover are typically paid upfront.

Q. Is there any applicable code of conduct /regulation for insurers?
There is no code of conduct. Insurers usually supervise claims. They may also appoint lawyers, but not without the consent of the insured party.

Q. Are any other claim financing / insurance arrangements available to a Claimant?
We have seen cases in which as part of the funding arrangement, the claimant has entered into an after the event insurance, covering an adverse cost risk.

Q. How technologically equipped is your Court system e.g. paperless / live transcripts / touch screen technology etc?
The courts have screens for presentations, and video is usually available - but sometimes only upon advance request. The Netherlands Commercial Court has explicitly encouraged the use of technology in the court room and allows live transcripts.

Q. Are any or all of the following available: e-filing; on-line access to the court docket/file; smart-phone applications to assist court interactions?
E-filing is still in the early stages of development, and in litigation it is only available in the Netherlands Commercial Court, two district courts and some Supreme Court cases. In those cases, parties and their lawyers have online access to court dockets. No smartphone apps are presently in use.

Q. Are Judges available 24/7?
No, although Dutch courts normally show great flexibility in matters in which injunctive relief is sought.

Q. Are interim/interlocutory hearings heard by telephone conference / Skype / Video conference ?
Yes, although not often applied.

Q. Is evidence at trial capable of being by Skype / Video conference ?
Yes, although not often applied

Q. What are your court's views on the use of e-disclosure technology?
They have expressed no particular view.

Q. How widespread is the use of technology aided review tools such as predictive coding?
The use of TAR is growing.

United Arab Emirates

Contributors: Adrian Chadwick, Zarghona Fazal and Maria Lezala - Hadef & Partners

Q. Are lawyers able to enter into contingency / damages sharing agreements with clients?
For the purposes of these questions, where relevant, we will consider the position both from an "onshore" perspective (i.e. the UAE Courts) and the "offshore" perspective (ie. the DIFC Courts). The DIFC is a Common Law and English language jurisdiction within Dubai, whose courts system is largely modeled on the English Commercial Court. DIFC Court judgments can be enforced as judgments in the Dubai Courts. We are aware of some firms who continue to offer contingency/damages sharing arrangements, however, these arrangements are technically prohibited.

Q. Recoverability of client costs and/or success fees?
In the UAE Courts each side will generally pay its own legal fees, unless the costs relate to arbitration proceedings and the costs are included in the final Award. The UAE Courts will generally only award costs on a nominal or token basis in the region of AED 2,000 to AED 3,000, irrespective of the size of the claim or the amount of the costs actually incurred. Success fees are not recoverable.

In the DIFC Court the general rule is that costs "follow the event" i.e. loser pays. The DIFC Court will not allow costs which have been unreasonably incurred or are unreasonable in amount. The DIFC Courts' voluntary Code of Best Legal Professional Practice does not allow contingency fee/success fee arrangements (where in the event of success a lawyer takes a share of proceeds or the subject matter of the action) but allows for conditional fee arrangements (where a lawyer receives an uplift in fees (not proceeds)). Costs payable to lawyers under a conditional fee agreement are in theory recoverable provided they are reasonable.

Q. Can a Defendant obtain an order for security for costs?
The UAE Courts do not make orders for security for costs. In contrast, the DIFC Courts do have the power

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to order security for costs, including in arbitration proceedings seated in the DIFC under the DIFC Arbitration Law.

Q. How active is the Court costs management? Are cost budgets required?
The UAE Courts are not active in costs management nor require costs budgets.

Q. Is Third Party Funding of disputes available?
Yes, Third Party Funding is technically available for litigation and arbitration disputes. There is presently a developing market for such funding in the UAE.

Q. Is it necessary to notify an opponent of any Third Party Funding arrangements?
Not before the Dubai Courts but it is necessary before the DIFC Courts.

Q. Is there any applicable code of conduct /regulation for Third Party Funders?
No.

Q. Are Third Party Funders at risk of costs awards in the event a funded claim is unsuccessful?
No.

Q. Is insurance for legal costs available?
At present, before-the-event and after-the-event insurance for legal costs is not widely available in the UAE but this may change in future.

Q. Is there any applicable code of conduct /regulation for insurers?
The insurance business is regulated by rules in Federal Law No 5 of 1985 (the UAE Civil Code) and the provisions of the Federal Law no. 6 of 2007 (the Establishment of the Insurance Authority & Organization of its Operations). The UAE Insurance Authority has adopted Board Resolution No. 3 of 2010 "Instructions Concerning the Code of Conduct and Ethics to be Observed by Insurance Companies Operating in the UAE".

This applies to all companies registered with the Insurance Authority and operating in the UAE, and which are marketing their products and services, directly or indirectly, thought an insurance agent or insurance broker.

Q. Are any other claim financing / insurance arrangements available to a Claimant?
No, we are not aware of any other claim financing/insurance arrangements available to a Claimant.

Q. How technologically equipped is your Court system e.g. paperless / live transcripts / touch screen technology etc? Are any or all of the following available: e-filing; on-line access to the court docket/file; smart-phone applications to assist court interactions?
Each Court has its own approach. We use the examples of onshore Dubai Courts and offshore DIFC Courts.

Dubai Courts - E-filing is available through the Dubai Courts website. Applications commencing proceedings (and documents in support of the application) are filed electronically through the website. Once a case number is assigned, all further applications and/or documents can be filed using the "Smart Petition" mobile app, including urgent applications. There is also a "Dubai Court" mobile app but this is generally used for administrative purposes (for example, paying Court fees) and communicating with Court staff. All documents filed in civil and criminal matters can be found on the website, but access is not public and is only formally available to legal representatives in a matter. It is not possible to obtain transcripts (live or otherwise).

DIFC Court - E-filing is available. All claim forms and supporting documents are filed through the DIFC Court website. Once a case number is generated, subsequent documents and pleadings can be filed electronically on the website. All documents in relation to a particular matter are generally available on the website. The DIFC Court has recently introduced a new secure, cloud-based technology to allow court documents to be uploaded from anywhere in the world. The e-bundling service is intended to enable judges, lawyers and court staff to access case information in various formats, across multiple locations and share with numerous

users. All cases filed from 1 July 2018 onwards will be paperless following adoption of this technology. The DIFC Courts also video records public hearings, with recordings publicly available on the website. In our experience, parties often use the public videos to obtain a written transcript of the hearing.

Q. Are Judges available 24/7?
Dubai Court judges are only generally available 8am-2pm, Sunday to Thursday. However urgent applications can be filed at any time through the "Smart Petition" mobile app. The application will be sent directly to the relevant judge's iPad or laptop. The judge has unfettered discretion to respond at any time to any application. DIFC Court Judges are generally available 24/7, depending on the urgency of the matter.

Q. Are interim/interlocutory hearings heard by telephone conference / Skype/Video conference ?
Not before the Dubai Courts. It is possible in the DIFC Courts if the judge deems it convenient.

Q. Is evidence at trial capable of being by Skype / Video conference?
Dubai Courts - our understanding is that these will be available in the near future. We are aware of instances where criminal defendants have been questioned by a Dubai Court Judge via skype/video link.

DIFC Court – Judges can allow video link, telephone, electronic device or "other appropriate means" evidence.

Q. What are your court's views on the use of e-disclosure technology? How widespread is the use of technology aided review tools such as predictive coding?
The use of E-disclosure technology is not yet widespread in the UAE. There is no process of document disclosure in the Dubai Courts. Parties generally only produce documents which support their case and are not obliged to produce adverse documents. E-disclosure technology is therefore unlikely to be used in Dubai Court proceedings in future. As to the tech of the DIFC Courts, please see answers above. Predictive coding has not yet been the subject of any reported cases in the DIFC, but we anticipate that this will change in the future.

Ukraine

Contributor: Oleksiy Demyanenko - Asters

Q. Are lawyers able to enter into contingency / damages sharing agreements with clients?
Yes, however it is uncommon. Lawyers may offer fixed fee per stage of proceedings, success fee, cap, hourly rates, etc.

Q. Recoverability of client costs and/or success fees?
Yes. In the event of a win it is normally possible to recover reasonable court and arbitration costs. The level of reasonable costs for recovery will be determined by the Judge or Arbitrator.

Q. Can a Defendant obtain an order for security for costs?
Yes, upon the Defendant's motion, the Claimant may be obliged to deposit with a Court a reasonable amount of funds for potential Defendant's Court costs.

Q. How active is the Court costs management? Are cost budgets required?
The requirement to file cost budgets in advance has been recently introduced in Ukraine.

Q. Is Third Party Funding of disputes available?
Yes, for both arbitration and litigation, but it is highly uncommon, if practised at all. OpenLex is a recently launched start-up Ukrainian platform for litigation funding.

Q. Is it necessary to notify an opponent of any Third Party Funding arrangements?
No.

Q. Is there any applicable code of conduct /regulation for Third Party Funders?
No.

Q. Are Third Party Funders at risk of costs awards in the event a funded claim is unsuccessful?
No.

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Q. Is insurance for legal costs available?
Yes, for litigation only, but again this is highly uncommon. Litigation insurance can be provided by any insurer, subject to receipt of a proper license. Insurance is not available for arbitration claims as there is no specific statutory permission under Ukrainian law.

Q. Is there any applicable code of conduct /regulation for insurers?
No.

Q. Are any other claim financing / insurance arrangements available to a Claimant?
Yes. There are no restrictions (any form of financing can be used), but as already noted, Third Party Funding or insurance of litigation costs are highly uncommon for Ukraine, if used at all.

Q. How technologically equipped is your Court system e.g. paperless / live transcripts / touch screen technology etc?
Courts are poorly equipped. The court makes an audio record and basic paper transcript of any hearings.

Q. Are any or all of the following available: e-filing; on-line access to the court docket/file; smart-phone applications to assist court interactions?
E-filing is not yet available but it is expected that e-filing of lawsuits will be launched shortly, and the court file is partially available for parties online. There are though no smartphone apps.

Q. Are Judges available 24/7?
No.

Q. Are interim/interlocutory hearings heard by telephone conference / Skype / Video conference ?
No. However, upon well-founded motion, in specific cases determined by the rules of procedure, the court at its own discretion may determine to hear a case on the merits (trial) by way of video conference.

Q. Is evidence at trial capable of being by Skype / Video conference ?
Yes. As noted above the court has a discretion to hear evidence at trial by way of video conference.

Q. What are your court's views on the use of e-disclosure technology?
No particular view.

Q. How widespread is the use of technology aided review tools such as predictive coding?
Presently it is not used.

USA (New York)

Contributors: May Orenstein – Brown Rudnick LLP

Q. Are lawyers able to enter into contingency / damages sharing agreements with clients?
Yes. While contingent fee arrangements were traditionally confined to certain practice areas (e.g. personal injury), they are being used with increasing frequency in commercial litigation. A hybrid or modified contingent fee is also permissible (i.e. a mix of lower hourly rates and a share of any ultimate win). Contingent fee arrangements are, however, subject to scrutiny for being excessive. In practice areas where contingent fee arrangements are traditional, a fee of one-third of the award is generally acceptable. Contingent arrangements are not permitted for criminal and investigative matters. Although class actions do not lend themselves to conventional contingency fee arrangements, a similar economic result is achieved by obtaining a court order permitting counsel for the class to share in the recovery. A range of criteria will be applied, with the time investment of counsel an important criterion. In matters where litigation may be being funded by a third party, the NY Bar Association (in a 2018 opinion) has identified further ethical issues to be aware of when seeking to structure attorney fee compensation.

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Q. Recoverability of client costs and/or success fees?
The general rule in US litigation is, win or lose, each party bears their own attorneys' fees. There are exceptions e.g. where there is a contractual arrangement governing recovery; breaches of certain state or federal statutes; and at the Court's discretion e.g. in the event of undesirable conduct/behaviour by a party. That said, generally a prevailing party is entitled to statutorily set "costs", but these usually represent only a fraction of the actual costs of litigating as they exclude actual attorney fees.

Q. Can a Defendant obtain an order for security for costs?
Because an award of actual fees and costs are not available, it follows that a defendant cannot obtain security for their payment. The provision of security is routine, however, in cases involving a preliminary injunction or a temporary restraining orders. On appeal from a judgment awarding damages, the appealing party may be required to bond the amount of the judgment pending appeal.

Q. How active is the Court costs management? Are cost budgets required?
Given the usual approach on costs, this is not US Court practice. However, in a class action context the court will have a hearing to determine the appropriate award to class counsel from the class recovery.

Q. Is Third Party Funding of disputes available?
Yes, although it is still a developing area. What arrangements are permissible is made more complicated by the fact that within the U.S., issues of champerty will generally be governed by State laws. New York, for example, has an anti-champerty statute that restricts individuals and companies from purchasing or taking an assignment of notes or other securities "with the intent and for the purpose of bringing an action or proceeding thereon." In 2004, that statute was amended to include a 'safe harbor' provision exempting claims based on financial instruments or claims for which the party bringing suit has paid at least US$500,000. The case of Justinian Capital v WestLB, 28 N.Y.3d 160 (2016) was a rare example of a case being struck down for being champertous. In that case, an attempt to fit within the safe harbor was rejected because the obligation of the party pursuing the claims to pay the purchase price for the Notes was contingent rather than fixed.

Q. Is it necessary to notify an opponent of any Third Party Funding arrangements?
There is no statutory or regulatory obligation requiring a party affirmatively to disclose such arrangements. That said, US discovery is broad and an opposing party may well seek to compel the disclosure of a litigation funding agreement as well as communications between the litigation funder and the litigant. Where such material is sought, it must be produced unless it can successfully be established that it is not relevant to the parties' claims and defences or, in the alternative, the materials may be withheld on the ground of some form of privilege. Although funded litigants have had success opposing the routine production of litigation funding agreements, parties are well-advised not to assume that privilege will attach to communications between litigation funder and the litigant. See Acceleration Bay LLC v. Activision Blizzard, Inc., 2018 (rejecting work-product protection for communications between party and funder prior to entering into a funding relationship); Carlyle Inv. Mgmt. L.L.C. v. Moonmouth Co. S.A., Case No. 7841-VCP, 2015 Del. Ch. LEXIS 42 at *28 (Ch. Feb. 24, 2015) (applying work-product protection to shared documents that preceded funding arrangement).

Q. Is there any applicable code of conduct /regulation for Third Party Funders?
Not as yet. Arguments are often made in the US for oversight of such matters to be exercised by an appropriate US body (e.g. SEC) but to date nothing has been implemented.

Q. Are Third Party Funders at risk of costs awards in the event a funded claim is unsuccessful?
No. Thus far there are no NY authorities where a litigation funder has been held liable for adverse costs (or indeed attorneys' fees where recovery of these also might be possible).

Q. Is insurance for legal costs available?
Since in the US, the losing party is not generally at risk for paying the legal fees of the prevailing party, ATE

insurance is little known and little used. There is though no express prohibition on ATE insurance in the US. That said, insurance tends to be a heavily regulated field in the US.

Q. Is there any applicable code of conduct /regulation for insurers?
As noted the industry is heavily regulated, but there is no specific litigation insurance code of conduct.

Q. Are any other claim financing / insurance arrangements available to a Claimant?
Nothing aside from the typical sources of finance otherwise available to parties.

Q. How technologically equipped is your Court system e.g. paperless / live transcripts / touch screen technology etc?
This varies from court to court but there is a growing move towards the use of technology, with some Courts investing in 'state of the art' facilities. These provide for things such as tech/video based systems to enhance the presentation of evidence. While not necessarily the norm, some also have wireless internet access with secure access for judges who in some instances are issued smart tablets and laptops. There is also the facility in some courts for real time court reporting via instantaneous voice to text transcription.

Q. Are any or all of the following available: e-filing; on-line access to the court docket/file; smart-phone applications to assist court interactions?
E-filing and online access to court dockets are available. Smart-phone apps are not.

Q. Are Judges available 24/7?
Not as of course, but a Judge can typically be reached in the case of emergency applications.

Q. Are interim/interlocutory hearings heard by telephone conference / Skype / Video conference?
US judges will frequently accommodate telephonic appearances by geographically remote counsel as a matter of discretion. The general expectation that attorneys will appear personally in court remains and the use of video conference is not at all common.

Q. Is evidence at trial capable of being by Skype / Video conference ?
This is likely permissible in a number of circumstances subject to the Court's discretion, but is not at all common.

Q. What are your court's views on the use of e-disclosure technology? How widespread is the use of technology aided review tools such as predictive coding?
It is growing in usage and acceptance. With the aim of reducing costs of litigation, as from 1 October 2018 the New York Commercial Division court adopted a new rule (Commercial Division Rule 11-e(f)) encouraging the use of technology-assisted review of electronically stored information. The new rule is not prescriptive in terms of whether or when technology-assisted review should be used, rather it encourages cooperation among the parties, with input also expected from the court.

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