

BRIEFING NOTE

The COVID-19 Virus and Funding Legal Proceedings – Unlocking Third-Party Funding to Help Businesses Pursue Claims whilst Minimising Financial Risk

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Introduction

As our battle with COVID-19 continues, and with additional restrictions on the movement of people, production of goods and operation of businesses, fulfilment of commercial contracts may come under strain. Whilst apportioning the unexpected risks and liabilities, it is inevitable that contractual claims may arise during this period. Some claims may be put on hold as businesses wait for cash flow to commence legal proceedings.

This briefing note provides an overview of how third-party funding assists with the pursuit of claims. We will also share actionable views on how we can assist with securing funding to assist businesses with advancing their claims.

Overview of Third-Party Funding for Legal Proceedings

Prior to March 2017, strict maintenance and champerty laws prevented third parties with no interest in legal proceedings from providing financial assistance to disputing parties. In March 2017, Singapore established a framework to allow third-party funding for international arbitration (and related court) proceedings. In August 2019, the Ministry of Law announced the extension of this framework to domestic arbitration (and related court) proceedings and Singapore International Commercial Court proceedings.

Third-party funders fund (or ‘invest’ in) legal proceedings with a view to generate a favourable return on investment. A thorough due diligence is carried out before a funder determines whether to fund a claim. This includes evaluating the merits of a claim, the legal costs involved in pursuing and enforcing the claim, the value of the claim, the likely amount of the claim recoverable, and the ability of the other party to pay the claim (if successful).

In the event the claim is deemed to have a good prospect of success and recovery, the third-party funder may finance all (or part of) the legal costs involved in the legal proceedings in return for a share of the proceeds recovered by the funded party from such proceedings. Funding can be provided at the commencement (or pre-commencement) of legal proceedings or at distinct stages of such proceedings.

Benefits of Third-Party Funding

First, for parties who are under-resourced or facing cash flow issues, third-party funding can enable them to pursue claims that a lack of financing would otherwise have prevented. For

parties with adequate resources, third-party funding allows capital that would otherwise be spent on legal proceedings to be allocated to other business activities.

Second, third-party funding offers opportunities for parties to manage the financial risk associated with the pursuit of a claim because those risks can be transferred to the funder. The claimant may enjoy a successful recovery without having to fund the legal proceedings. By the same token and depending on the funding arrangement, the claimant need not reserve a budget or scramble for funds to deal with the consequences of an unsuccessful claim.

Third, disclosure of the identity of the third-party funder may promote early settlement of the claim. That is because third-party funders typically fund cases that have strong legal merit and a high probability of success. The disclosure of the presence of third-party funders backing a claimant may prompt a respondent to reconsider its case strategy and promote early settlement discussions.

Fourth, securing third-party funding to pursue a claim early would mean that legal proceedings are carried out at a time when the memories of witnesses are fresh and the documentary records are most intact. Claims are judged as much on the strength of their legal bases, as well as the strength of witness and documentary evidence. Typically, the strength of the claim corresponds to the probability of success. Without doubt, timely engagement of third-party funders improves the likelihood of success for the pursuit of claims.

How We Can Help

We work with a number of third-party funders who are able arrange funding at competitive rates. We assist businesses to ascertain the merits of their claims so as to ensure that suitable claims benefit from early access to funding. Whilst third-party funding may not be suitable for all claims, it should help a significant number of businesses through this difficult period. Please feel free to contact us if you would like to learn more about arranging for third-party funding.

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