

DELOS GUIDE TO ARBITRATION PLACES (GAP)

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REPORT ON ARBITRATION FUNDING

BY

OLIVIA DE PATOUL AND DAVID WALKER
DEMINOR LITIGATION FUNDING

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GAP REPORT: ARBITRATION FUNDING

A potential litigant faces various challenges, including the need to cover legal costs and disbursements, especially in an (international) arbitration. To address this issue, several alternative financing options have developed in the market such as third-party funding (TPF), Damages-Based Agreements (DBAs), Conditional Fee Agreements (CFAs), and Alternative Fee Arrangements (AFAs).

These financing structures emerged initially to facilitate access to justice by offering solutions to parties with a meritorious claim but without access to the necessary funds. Over the years, however, these financing structures have become more and more popular. They are still utilised by under-resourced litigants, but they are also popular with those unwilling to allocate money to litigation when they could put it to better use elsewhere, such as in developing their business. As a consequence, litigation and arbitration cases can now be considered as real assets that can be monetized and not simply as liabilities. With this monetization of claims, a real litigation financing market has developed with more competition and players continuously looking to offer new financing alternatives.

DBAs and CFAs are special fee arrangements between a client and their lawyer where the lawyer's compensation is contingent on the success of the case. Under a DBA, the attorney will receive fees in the event of success based on a predetermined percentage of the recoveries. With a CFA, on the other hand, the lawyer is paid at a discounted rate compared to the normal fee that he or she would usually charge, with the difference only being paid in case of a success, along with a further success fee.

Finally, AFAs cover all other fee arrangements between a lawyer and their client that are not based on the classic hourly billing model. They include, for example, flat fees, capped fees, and blended hourly rates.

Third party funding, or litigation funding, is a different financing model as it involves a third party – the funder – who provides the financial resources to the client to pursue claims. The funder pays all or part of the costs of the litigation/arbitration (including lawyers' fees, expert fees, arbitration costs, etc.) in exchange for a success fee if the client achieves a recovery. Litigation funding originally emerged in common law countries, but it has gained a lot of traction in continental Europe recently, especially for commercial and investment treaty arbitrations.

The increasing interest in third party funding has led market players to constantly adapt their offerings to make it attractive and appropriate for the different stakeholders. We can no longer discuss only "classic" litigation funding, but rather we have to deal with many different funding structures like portfolio funding, co-funding and sub-funding, law firm funding, and many more.

The classic funding structure

A classic funding agreement is concluded between a funder and the funded party whereby the funder will cover all or part of the costs of one litigation case on behalf of its client.

After conducting due diligence on the case successfully, the funder undertakes to pay the costs and fees related to the case up to a certain amount (the funded amount). Provisions in the litigation funding agreement (LFA) usually cover the following:

- *The funding amount:* the LFA will generally define the maximum commitment of the funder, the specific items that are included in the budget (legal fees for first instance and appeal, expert fees, adverse party costs, etc.) and the conditions to draw down from the budget. To avoid budget overruns, and depending on the type of case, funders may work with capped amounts per item or stage of the proceedings.
- *Exposure to counterclaims:* the LFA will specify whether the funding covers the costs of defending a counterclaim and whether the funder will cover any financial exposure to a counterclaim.

- *The exchange of information:* correspondence between the client and his or her lawyer, and any written material drafted for the client, are protected by attorney–client privilege. The lawyer, therefore, cannot disclose any of this to the funder without the client’s express consent. Consequently, the LFA will regulate the exchange of information between the client, the lawyer, and the funder. This enables the latter to be kept abreast of the progress of the case and to monitor its investment.
- *Control or consent rights:* to protect its investment, the funder will generally seek to have some degree of control over important decisions in a case, such as filing appeals, terminating proceedings, or accepting settlements.
- *Termination rights:* in addition to termination for material breach, the funder and the client may also agree on a right for the funder to terminate the LFA if an event occurs that negatively impacts the prospects of the case or makes the case commercially unviable. The LFA may even allow for termination for convenience.

As for the funder’s remuneration, this will depend on the type of claim, its chances of success, enforcement issues and the duration. The longer it takes, the more expensive the funding is likely to be. It is also possible to receive partial funding (covering, for example, only the security for costs or the lawyer’s fees) if the client seeks to limit the funder’s involvement and limit the funder’s remuneration.

The funder’s remuneration can be either a percentage of the recovered amounts, a multiple on the funded amount, or a combination of both. Usually, the multiple and the percentage will evolve over time on a periodic basis.

Portfolio funding

Portfolio funding consists of funding a number of claims at the same time, either several claims for the same client, or several claims for different clients instructing the same law firm. All types of litigation can be included in a portfolio and, depending on the size of the portfolio, an in-depth due diligence may or may not be required on each individual case.

The main advantage of this structure is that it allows for the cross-collateralization of the litigation assets upon which a return is obtained from those that are successful.

If the portfolio contains several claims held by the same client, it also allows for the inclusion of less promising or less certain cases in the portfolio because they are balanced with more meritorious cases. Taken alone, the less promising case would not have made it to funding. However, thanks to a portfolio structure, the risk to the funder is spread over many claims and terms can thus be more flexible.

A funded amount will be determined for each case in the portfolio and the funder’s return might either be calculated on the entire portfolio or per case depending on how different the cases are.

Another type of portfolio is where the same law firm seeks funding for several clients with similar claims but with each claim being an individual case (i.e., not a class/group action). For example, funding was provided in France to several business owners in their pursuit of indemnification from insurance companies for losses suffered due to the closure of their restaurants during the COVID 19 pandemic. The exact number of cases which would be included in the portfolio was not known at the outset. The structure was therefore built on an estimate of the number of claims to be funded for clients working with the same law firm. A fixed amount of fees was agreed upon in advance with the lawyer to be paid per case by the funder and the lawyer would also, in case of success, be entitled to a success fee.

In this type of portfolio funding, it is almost impossible to know the exact number of cases to be funded in advance (although there should be an estimate). It is also not possible to conduct due diligence on each individual claim. Typically, a few cases amongst the existing portfolio will be chosen randomly for due diligence, and the results of that can be duplicated on the others. This is, however, only possible if all the cases are very similar in terms of who the defendant is, the facts, and the applicable law. A budget will be

created on an individual case basis (generally including a success fee for the lawyer if permitted) and the same level of funder's remuneration will apply to all cases.

The main advantage of this structure is that the funder's due diligence is very efficient as it will focus on a limited number of cases. The success rate can be very good because the same arguments will be raised across the board. This means that if there is already a track record when the portfolio is presented to the funder, it is likely that the same outcome will apply for most of the cases.

If the portfolio involves only one law firm, the relationship between the lawyer(s), the clients, and the funder is very important. This type of portfolio usually takes time to reach a conclusion. Depending on the size of the portfolio, the funding is likely to last longer than a classic funding as the cases will be spread over time, meaning that the duration of the funding is more difficult to discern at the outset.

Finally, should the funding be disclosed were the portfolio concerns the same defendant, the chances of settlement may sometimes increase as a result of the mass effect perception that a funded portfolio may trigger on the defendant.

Co-funding and sub-funding

With the aim of diversification and mitigation, a co-funding structure allows for liabilities and potential risks to be shared amongst two or more funders. Co-funding might be an option, for example, if the funder who initially reviewed a case has reached its capacity in a specific claim type, or if it is simply willing to share the risks on a case.

All co-funders will be parties to the funding agreement with the client. They will all be entitled to be paid a portion of the proceeds.

The LFA will need to determine the extent of each funder's participation in the payment of the costs and the allocation of the proceeds, if any. It will also be important to define the role of each funder and its role in monitoring and case management to avoid unnecessary delay in the process.

When co-funding is considered for a claim, it is important to discuss this at an early stage of the due diligence process. Consent must be obtained from the client to work with several funders, but stakeholders also need to work efficiently during the due diligence process to ensure that all funders are proceeding at the same pace and with the same timetable in mind.

As the co-funding process involves more than one funder, there can be a concern in the market over potential delays in the due diligence process. To address this concern, one alternative is sub-funding which is now used more and more frequently. This structure allows only one funder to sign the LFA, complete due diligence and act as the liaison for the client and the law firm. However, the funder can also limit its exposure by sharing the risks with another funder via a participation agreement where the sub-funder undertakes to fund part of the costs in exchange for part of the proceeds in the event of success by the main funder.

The sub-funder will not, however, have direct contact with the case and, in the event of success, it will only be paid by the main funder once the latter has received its remuneration. The arrangement therefore requires a high degree of trust between the relevant funders. Indeed, while the main funder remains the debtor of the full funding amount towards the client, it is also the direct beneficiary of the entire remuneration.

With this structure, the client is satisfied that it has only one interlocutor during the due diligence process and one partner during the litigation. However, the funder has made it possible to onboard the case by sharing its risks internally with another funder.

Purchase of future proceeds

In this structure, the funder purchases a portion of future proceeds against payment of certain expenses and disbursements associated with the pursuit of the claim. The purchase price will be defined as the total amount effectively funded. It will be paid in several instalments throughout the litigation depending on when costs are incurred, so that the final purchase price will be known only at the end of the litigation, once all costs are paid. At the signature of the LFA the purchase price is thus only estimate with a defined maximum purchase price, equivalent to the maximum approved funding amount.

The client remains the owner of the claim during the litigation, as in a classic funding structure, and the transfer of the proceeds only occurs if and when there is a success. If a success materializes, the amount of proceeds to be transferred to the funder will be calculated based on a formula similar to the one usually applied for the calculation of a funder's return: a multiple of the purchase price; a percentage of the total proceeds; or a combination of both.

This structure is very similar to a classic funding structure and frequently used in Italy, known as "*Cessione di Credito Futuro*" or "*Vendita di Cose Future*".

Assignment of claims

On the occasion of certain events such as an insolvency, restructuring, business reorganization, sale or merger, a company or its trustee may be interested in selling a claim. Moreover, it can also be appealing to a claimant which has already paid significant litigation costs to obtain a final decision or arbitral award. If the judgment or award is likely to require costly enforcement proceedings, the client might be willing to remove this litigation from its balance sheet and sell it to a funder.

In such cases, the client and the funder sign a sale agreement under which the funder pays the client a purchase price for its claim. The ownership of the claim transfers from the client to the funder in exchange for the payment of a discounted price compared to the value of the underlying litigation.

Through this mechanism, the client transfers its ownership of the claim and is no longer involved in the litigation from the moment the sale agreement is executed. From then on, the claim is solely the funder's property and the funder will take all decisions regarding future litigation, strategy, or settlement.

The financial risk for the funder is higher compared to other types of funding due to the additional upfront cash payment. However, if the case is successful, the return is likely to be higher too as the funder will be entitled to recover the entirety of any damages obtained.

When considering this structure, careful attention should be paid to the applicable law. Many jurisdictions (at least in continental Europe) allow a debtor in certain circumstances and defined conditions to extinguish its debt by paying the beneficiary of the assignment an amount equal to the price it paid to purchase the claim (*retrait litigieux*). Without entering details on this particular issue, the application of this principle has led to many discussions under French law leading to disputed case law from the French Supreme Court.

Law firm funding

One final structure that is becoming increasingly popular is law firm funding. In this scenario, the funder provides funding to the law firm rather than the litigant.

In jurisdictions where lawyers and law firms are permitted to act under CFAs or DBAs, the law firm takes both a credit risk and a litigation risk. First, while a case is ongoing, the law firm will have to carry some or all of its own costs in pursuing the litigation or arbitration. That could mean a running financial cost over a period of years which law firms are not traditionally set up to deal with. This is especially true in the case of DBAs where the law firm will not be receiving any payment from the client until the case is resolved. Second, the law firm is also taking on the risk that the outcome of the case might be unfavourable to its client, so that it would not receive any payment or only a reduced amount at the end.

The success fees payable pursuant to DBAs and CFAs are designed to compensate the law firm for those risks, but law firm funding also allows law firms to reduce that risk further by offloading it to a funder.

A funder can enter into an agreement with a law firm pursuant to which the funder will pay the law firm a proportion of its fees incurred on a regular basis. If the claim succeeds and the law firm is paid its success fee, it will then share the same with the funder. If, on the other hand, the case outcome is negative then the law firm will not be paid any success fee but it will still have received remuneration from the funder as the case progressed.

This model can be utilised on single cases or as part of a portfolio of cases run by the same law firm. Such funding also allows law firms to build significant books of smaller claims where the law firm's running costs can be split across a number of cases.

Other forms of law firm funding are also emerging in the market where funders in some jurisdictions are providing capital to law firms for expansion, for the acquisition of other firms or cases, or for launching new practices of claim types. The funder can get a return from the law firm's profits or from the future proceeds of cases which are due to the law firm. For the law firm, this offers a chance to obtain financing from an entity like a funder which is acclimatised to both litigation risk and law firm structures.

*Olivia de Patoul & David Walker
Deminor Litigation Funding
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ABOUT THE AUTHORS & DEMINOR LITIGATION FUNDING

OLIVIA DE PATOUL

Olivia is General Counsel Belgium and France at Deminor. She is in charge of sourcing, reviewing and managing cases in international arbitration (both investor state and commercial arbitration) and court litigation. Olivia joined Deminor in 2018 and opened Deminor's office in Hong Kong before then relocating to Europe in 2021. Olivia is a member of the ICC Commission on Arbitration and ADR since September 2022. She holds a LL.M. of Queen Mary University (London) in international arbitration and worked within an international law firm for almost 9 years before joining Deminor.

DAVID WALKER

David is the Head of Arbitration and Investment Manager in Deminor's London office. David focuses on litigation funding opportunities in international arbitration and UK litigation. He sources potential opportunities, carries out diligence on cases, and monitors funded cases. David has more than ten years of experience in international commercial arbitration and investor state arbitration, having practised as an international arbitration solicitor and as in-house legal advisor for litigation funders.

DEMINOR LITIGATION FUNDING

Deminor is a leading international litigation funder with offices in Brussels, London, Hamburg, New York, Hong Kong, Madrid, Milan, Stockholm, and Luxembourg. Deminor's name, derived from the French 'défense des minoritaires', reflects its origins in providing services to minority shareholders. Deminor is still very much defined by the pursuit of good causes and its determination to restore justice for clients. Deminor has also been a leading force in numerous high-profile securities actions including the Fortis case which produced a record settlement of EUR 1.3 billion for investors in Europe. Combining skill sets from 19 different nationalities and 22 languages, Deminor has funded cases in 21 jurisdictions.



The information below is presented in summary form. Additional detail is available in the GAP chapters, to which you can click through via the hyperlinked jurisdiction names. Please note that the information presented in this reference sheet does not constitute legal advice and the contributing law firms and Delos Dispute Resolution decline any and all responsibility. Time-limitation can be a highly technical subject, with multiple exceptions and variations, and you should accordingly consider seeking legal advice.

Jurisdiction	Validity of CFAs/AFAs and TPF?	Commentary on CFAs and AFAs	Commentary on third-party funding
Algeria , by Bennani & Associés	Probably yes	Contingency fee arrangements and third-party funding are possible under Algerian law.	
Angola , by Miranda & Associados	Contingency fee arrangements – no Third-party funding – uncertain	The Angolan Bar Association forbids the use of contingency fee arrangements where the attorney's remuneration is dependent on the outcome of the case.	Third-party funding is not regulated under Angolan law and there are no specific restrictions to its use.
Argentina , by Bomchil	Contingency fee arrangements – yes Third-party funding – uncertain	According to the local bar rules, lawyers may agree on contingency fees for up to 30% of the awarded amount (see, for instance, Article 6 of Law No. 27,423).	Third-party funding is not regulated , although not banned, the practice is quite infrequent.
Australia , by Squire Patton Boggs	Contingency fee arrangements – no Alternative fee arrangements – yes Conditional fee arrangements – yes Third-party funding – probably yes	In general, lawyers are prohibited by their professional standards regulations from entering into arrangements with clients that provide for contingency fees. In general, lawyers are permitted to enter into alternative fee arrangements. Any alternative fee arrangement must charge costs “that are no more than fair and reasonable in all the circumstances”. There are also restrictions on conditional fee arrangements that provide for an uplift fee on the occurrence of an event.	Third-party funding, particularly for class actions and representative proceedings, is now a common and accepted part of the Australian legal landscape. There is not likely to be any restriction on third-party funding for domestic or international commercial arbitrations, except perhaps in rare and exceptional circumstances amounting to an abuse of process.

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Austria , by Knoetzl	Contingency fee arrangements – no Alternative fee arrangements – yes Third-party funding – probably yes	While attorneys, in general, are free to agree on their remuneration, there are a few limitations under the Austrian Civil Code and the Code of Professional Conduct for Lawyers. Pure contingency fees and <i>pactum de quota litis</i> arrangements are prohibited and unenforceable. In addition, agreeing on an unreasonably high remuneration is not allowed. The assessment is conducted on a case-by-case basis. In case the remuneration is unreasonably high, Austrian attorneys may be liable under their disciplinary rules. Despite the prohibition of <i>pacta de quota litis</i> , lawyers are allowed to agree on alternative fee arrangements stipulating success fees.	Third-party funding is not covered by a specific legal or regulatory framework. Nevertheless, third-party funding is generally considered permissible under Austrian law and is widely practiced. While there is a discussion as to whether the prohibition of <i>pacta de quota litis</i> extends to third-party funders, the prevailing opinion is that this is not generally the case. The Austrian Supreme Court has so far not decided on this issue. Depending on the circumstances of the case, the relationship between the attorney and a third-party funder may be qualified as contrary to the prohibition of contingency fees and <i>pacta de quota litis</i> arrangements.
Belgium , by Fieldfisher	Contingency fee arrangements – no Alternative fee arrangements – yes Third-party funding – yes	Lawyers may not charge contingency fees. Success fees are however permitted.	Third-party funding is allowed , but not common.
Benin , by Oya	Contingency fee arrangements – yes Third-party funding – uncertain	Under the Beninese Bar rules, contingency fee arrangements are partly permitted , provided they relate only to part of counsel's remuneration.	There are no specific legal provisions governing third-party funding in ad hoc and institutional arbitration.
Brazil , by TozziniFreire Advogados	Uncertain	The Brazilian Arbitration Act is silent on agreements regarding contingency fees and third-party funding, and there is no restriction regarding these topics.	
Bulgaria , by Kambourov & Partners	Contingency or alternative fee arrangements – yes Third-party funding – probably yes	There are no restrictions to contingency or alternative fee arrangements, and in fact these are often used in practice.	Third party funding is not contradictory to the local law, but is not very common in practice yet – there have been very few reported cases involving third party funding.

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Canada , by Borden Ladner Gervais (BLG)	Yes	Contingency fee arrangements have long been accepted .	Third-party funding is widely used but the jurisprudence on its acceptability is limited.
China (Mainland) , by Herbert Smith Freehills	Contingency or alternative fee arrangements – yes Third-party funding – uncertain	Generally, there is no restriction on lawyers entering into conditional fee arrangements, or pure contingency fee arrangements, or a combination of both with limited exceptions. Where contingency fees are allowed, the party and its legal advisor are required to enter into a contingency fee agreement, setting out the allocation of risks and responsibilities, and method and amount/rate of the charges. Contingency fees are not permitted to exceed 18% of the amount in dispute. Note that the restriction only applies to Chinese lawyers; foreign lawyers are subject to the codes of conduct and regulations applicable to them.	Depending on the specific circumstance of the case , PRC courts' view may differ in respect of the legitimacy or validity of thirdparty funding agreements in legal proceedings.
Côte d'Ivoire , by Dogue - Abbé Yao & Associés	Uncertain	None of the provisions of the Uniform Act on Arbitration Law or Ivorian law deals with the issue of contingency fee arrangement in arbitration, but it is forbidden for judicial trials .	Regarding third-party funding, there is no provision related to it. Due to the impecuniosity of many parties involved in arbitration proceeding, third party funding could be increasingly used in Côte d'Ivoire.

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Cyprus , by Christos Georgiades & Associates	Contingency fee arrangements – uncertain Third-party funding – probably yes	There is no statutory prohibition against contingency fee arrangements. Professional conduct rules of the Cyprus Bar Association do not allow for an advocate's fee to be dependent on the outcome of the case to any extent. Therefore, contingency fee arrangements are not permitted for members of the Cyprus Bar Association.	There is no statutory prohibition against third-party funding. Third party funding is not regulated . At present, it appears that it can be done in relation to arbitrations seated in Cyprus.
Dominican Republic , by Jimenez Peña	Contingency fee arrangements – yes Third-party funding – uncertain	Contingency fees are allowed and occasionally agreed upon between clients and lawyers.	There is no express provision in the law prohibiting third-party funding for international arbitration claims. According to the Code of Ethics for Dominican Attorneys, counsel shall not gain monetary interest from a case they are handling other than the legal fees agreed upon with the client. However, there is no specific sanction provided in the Code for counsel who fund claims. In fact, in certain matters, such as labour claims, the worker's counsel tends to advance the expenses on behalf of their client.

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Egypt , by Zulficar & Partners	Contingency or alternative fee arrangements – probably yes Third-party funding – uncertain	The Arbitration Act does not include provisions relevant to contingency fees. However, Egyptian Advocacy Law No. 17 of 1983 allows lawyers to receive contingency fees, and therefore allows them to enter into alternative fee arrangements, in a margin of 5% to 20% of the outcome of the case. However, the 5% minimum was declared unconstitutional by the Supreme Constitutional Court, and so there is no minimum threshold as a matter of Egyptian law. Alternative fee arrangements between client and counsel cannot be based on the client's solvency as ruled out by the Supreme Constitutional Court.	The Arbitration Act is silent on the issue of third-party funding. Albeit the absence of significant case law on the matter, this does not preclude, <i>per se</i> , arbitration tribunals from embracing this increasingly important practice
England & Wales (UK) , by White & Case	Yes	Conditional fee arrangements ("CFAs") and Damages-based agreements ("DBAs") are generally permitted in England. Both CFAs and DBAs must however comply with statutory requirements governing such fee arrangements.	Third party funding is also generally available and there is an increasing awareness of this funding option.
Ethiopia , by Aman Assefa & Associates	Contingency fee arrangements – probably yes Third-party funding – uncertain	There are no legal restrictions . However, such alternative funding mechanisms, with the exception of contingency fee arrangements, are not widely known or practised in Ethiopia.	

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Finland , by Castrén & Snellman	Contingency or alternative fee arrangements –yes Third-party funding – yes	A party and its counsel may agree on contingency fees and other alternative fee arrangements.	A party may acquire external funding for an arbitration from third parties, including third-party funders, insurance companies, banks, etc. Special third-party funding companies are not very active in the Finnish market, but it is quite common for Finnish parties to have insurance that covers the costs of disputes up to an agreed amount.
France , by August Debouzy	Contingency fee arrangements – probably yes Third-party funding – uncertain	Under French ethic rules applicable to French lawyers, fee arrangements solely based on success fees are prohibited (the so-called “ <i>quota litis pactis</i> ”). However, the Paris Court of Appeal held that such contingency fee arrangements are valid in the context of an international arbitration , as they are not contrary to the French definition of international public policy.	Third-party funding is not prohibited under French law and it has recently gained importance in France. However, there are no specific legal provisions or case law regarding this issue.
The Gambia , by Farage Andrews Law Practice	Uncertain	No restrictions noted.	
Germany , by CMS Hasche Sigle	Contingency fee arrangements – yes Third-party funding – probably yes	German lawyers may only enter into contingency fee agreements under very limited conditions .	Third party funding is not codified in German arbitration law, but it is accepted and increasingly used.

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Greece , by KLC Law Firm	Contingency fee arrangements – yes Third-party funding – probably yes	Greek law recognises and regulates , to a certain extent, lawyer funding schemes in the form of contingency fee agreements. However, only contingency fees of up to 20% (or 30% if more than one lawyers are handling the case) fees are permitted. A contingency fee agreement is valid only when the lawyer undertakes to provide his/her services up to the final adjudication of the case, without receiving any remuneration if he/she fails to do so (even if the latter takes place through compromise).	Third-party funding, while uncommon in Greek arbitral practice, is not prohibited . In the absence of a regulatory framework and any publicly available precedent, any party is free to conclude a relevant agreement with a third party, on the basis of the general principle of freedom of contract or could resort by analogy to the existing regulation regarding contingency fee agreements in litigation.
Guinea , by Thiam & Associés	Uncertain	No restrictions noted.	
Hong Kong , by Fangda Partners	Contingency fee arrangements – yes Third-party funding – yes	Outcome-Related Fee Structures have been available in Hong Kong since 16 December 2022 for arbitration and arbitration related proceedings, allowing for not only Conditional Fee Arrangements, but also for Damages Based Arrangements and for hybrid Damages Based Arrangements.	Third party funding is expressly permitted for arbitration including proceedings before emergency arbitrators and ancillary court proceedings.
India , by Trilegal	Contingency fee arrangements – no Third-party funding – probably yes	The Bar Council of India does not permit advocates to charge their clients fees that are either subject to the outcome of a litigation or are a percentage or share of the awarded claims by the court.	There is no separate law governing third-party funding in India but in general there is no embargo against it .
Indonesia , by KarimSyah Law Firm	Yes	Indonesian law does not restrict the freedom of parties to either agree with their counsel as to the quantum or method of payment of their fees, nor whether they may utilise external/third-party funding.	
Iran , by Gheidi & Associates	Uncertain	No restrictions noted.	

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Iraq , by Eversheds Sutherland	Contingency fee arrangements – yes Third-party funding – probably yes	Contingency fee arrangements are not prohibited .	There are no laws or regulations prohibiting third-party funding. Although there are no precedents on this issue yet, there are no particular reasons to suggest that such agreements would not be enforceable.
Italy , by Legance	Contingency fee arrangements – no Alternative fee arrangements – yes Third-party funding – uncertain	As a rule, contingency fees are not permissible . Attorneys can accept a remuneration based on a percentage of the value of the case, but it may not vary in relation to the outcome of the case (Code of Ethics, Art. 25).	Concerning third-party funding, the practice is not prohibited by Italian law. However, to the best of our knowledge there are no judicial cases defining the limits of third-party funding in Italy.
Kenya , by ALN Kenya - Anjarwalla & Khanna	Contingency fee arrangements – yes Third-party funding – uncertain	There are restrictions against contingency fee arrangements (Section 46(c) of the Advocates Act (Chapter 16, Laws of Kenya).	There are no statutory restrictions against third-party funding. However, it is worth noting that Section 46(a) of the Advocates Act prohibits an agreement allowing an advocate to purchase any part of the client's interest in a suit.
Lebanon , by Obeid Law Firm	Yes	The Lebanese Legal Profession Act provides that legal fees are determined by an agreement concluded between the lawyer and the client. The Act does not restrict the nature of the agreement which remains subject to the parties' contractual free will.	Insofar as a third-party funding is concerned, a careful structure is required to ensure that such arrangements would not fall under the prohibition of excessive <i>riba</i> under Lebanese law.
Libya , by MKE Lawyers	Contingency fee arrangements – no Third-party funding – probably yes	Contingency fees are common .	Third party funding arrangements not clear but may be possible .
Mauritius , by Peeroo Chambers	Uncertain	No restrictions noted.	

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Jurisdiction	Validity of CFAs/AFAs and TPF?	Commentary on CFAs and AFAs	Commentary on third-party funding
Mexico , by Von Wobeser	Uncertain	No restrictions noted.	
Morocco , by Gide Loyrette Nouel	Contingency fee arrangements – probably no Third-party funding – uncertain	There is no provision in the Code relating to contingency or alternative fee arrangements or third-party funding. However, Moroccan lawyers are prohibited from fixing fees according to the result to be achieved.	
New Zealand , by Chapman Tripp	Third-party funding – probably yes	N/A	There are no statutory restrictions on third-party funding. Arbitral tribunals are generally not concerned with the sources of litigation funding. Art 17, Sch 1 affords the tribunal the power to grant an order for security for costs as an interim measure. In court proceedings, however, courts may impose disclosure requirements in non-representative cases, such as disclosure of the identity of the funder, its amenability to the jurisdiction of the New Zealand courts, and details of its financial standing.
Nigeria , by Broderick Bozimo & Company	Contingency fee arrangements – yes Third-party funding – uncertain	The Rules of Professional Conduct for Legal Practitioners (the “RPC”) allows contingent fee agreements. Whilst the RPC precludes a lawyer from entering into an agreement to pay for or bear the expenses of his or her client’s litigation, the lawyer may, in good faith, advance expenses as a matter of convenience and subject to reimbursement.	Funding agreements that include the provision of funding an arbitration in return for a proportion of any recoveries are potentially, although not necessarily, champertous .

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Norway , by Wikborg Rein	Conditional fee arrangements – yes Contingency fee arrangements – yes Third-party funding – yes	Conditional fees are permitted . Contingency fees for attorneys are permitted only to a limited extent . The Code of Ethics for Lawyers contains a general prohibition against percentage share fees; a fee based on a share of the outcome or subject matter of the action is not permitted, while non-excessive success fees are accepted.	Third-party funding is accepted , but it will not extend the scope of legal costs to be awarded.
Pakistan , by Raja Mohammed Akram & Co. (RMA&CO)	Contingency fee arrangements – no Third-party funding – yes	Contingency fee arrangements are not permitted in Pakistan under the 'Canons of Professional Conduct and Etiquette of Advocates'.	Third party funding is not per se illegal and permitted where the funding arrangement is not against public policy or extortionate and does not lead to vexatious litigation.
The Philippines , by SyCip Salazar Hernandez & Gatmaitan	Uncertain	No restrictions noted.	
Poland , by Clifford Chance	Contingency fee arrangements – no Third-party funding – uncertain	The rules of ethics of Polish advocates and legal advisers state that their remuneration cannot be based solely on a contingency fee .	There are no legal provisions regulating the issue of third-party funding, although it is becoming more common in Poland.
Portugal , by Morais Leitão, Galvão Teles, Soares da Silva & Associados (MLGTS)	Contingency fee arrangements – no Third-party funding – uncertain	The Code of Ethics of the Portuguese Bar Association expressly prohibits the use of contingency fee arrangements according to which the right to lawyer's fees is dependent on the success of the claim.	Third-party funding is not specifically regulated and there are no particular restrictions to its use.

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Romania , by Iordache Partners	Contingency fee arrangements – no Third-party funding – probably yes	Under Romanian law, lawyers are not allowed to conclude pure “ <i>quota litis</i> agreements”, but contingency arrangements (known as “success fees”) are allowed to supplement regular fees.	Third party funding is not regulated in Romania; therefore, such funding arrangement may be possible, but the legal structure of the arrangements should be examined from case to case for compliance with the local law.
Russia , by Freshfields Bruckhaus Deringer and Stonebridge Legal	Uncertain	Contingency fees of lawyers are not expressly prohibited as a matter of law, but courts have held such fee arrangements to be unenforceable.	Assignment of the rights and obligations and therefore of the legal interest in claims is widespread, but third-party funding without the assignment is a relatively new phenomenon for the Russian market, which is not expressly regulated, nor prohibited by law .
Rwanda , by Freshfields K-Solutions & Partners	Contingency fee arrangements – no Third-party funding – uncertain	Fees based on results, also known as a quota litis pact are illegal under Art 2 (1) (c) of the Rwandan Bar Association Regulation No 01/2014.	There is no regulation on third party funding in Rwanda.
Singapore , by Shearman & Sterling	Contingency fee arrangements – no Conditional fee arrangements – yes Third-party funding – yes	Contingency fee (<i>i.e.</i> , damages-based) arrangements are prohibited . However, conditional fee arrangements are expressly permitted following the 2022 amendments to the Legal Profession Act 1966.	Third-party funding in Singapore-seated arbitrations and related court proceedings is also allowed . From 2021, third-party funding in domestic arbitrations and related court proceedings are also allowed.
Spain , by Garrigues	Contingency fee arrangements – yes Third-party funding – uncertain	No restrictions regarding contingency fee arrangements exist. Contingency and success fees were historically banned, but were recently accepted as a pro-competitive measure.	The Arbitration Act does not regulate third-party funding. Although in practice this type of funding is being used (particularly after the prohibition of contingency fees was lifted), there is still scope for improvement and development.

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Sri Lanka , by FJ&G de Saram	Contingency fee arrangements – no Third-party funding – uncertain	Contingency fee agreements are expressly prohibited under the Code of Ethics for lawyers.	There are no legal provisions dealing with third-party funding or the sharing of risk. There have also been no reported cases on this.
Switzerland , by Lévy Kaufmann-Kohler	Contingency fee arrangements – no Alternative fee arrangements – yes Third-party funding – uncertain	Under Article 12(1)(e) of the Swiss Federal Lawyers' Act, Swiss attorneys cannot enter into a prior agreement with their clients providing for a contingency fee based entirely on the outcome of the case (pactum de quota litis); nor can they agree to waive legal fees in the event of an unfavourable outcome. A fee arrangement containing elements of a contingency fee (<i>pactum de palmario</i>) is allowed under certain conditions.	Swiss law does not prohibit third party funding.
Taiwan , by Formosa Transnational	Contingency fee arrangements – yes Third-party funding – yes	There is no restriction against contingency legal fee arrangements for arbitration (family and criminal matters, which do not allow contingency fee arrangements, are not arbitrable).	Third-party funding is permitted only if the funded client agrees thereto and such funding does not affect the impartial professional evaluation of the attorney under Article 30-2 of the Rules of Professional Attorney Ethics.
United Arab Emirates (UAE) , by Al Tamimi & Co.	Contingency fee arrangements – no Third-party funding – uncertain	However, contingency fee arrangements are prohibited in the UAE.	UAE law does not expressly prohibit third-party funding in general.
United States of America (USA) by Arent Fox for California, Boies Schiller Flexner for Florida, New York and Washington D.C., and Vinson & Elkins for Texas	Each U.S. state separately governs the terms and legality of funding arrangements. Each state has attorney ethical and possibly other rules (e.g., champerty) that should be consulted	N/A	N/A

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	<u>Washington D.C.</u> : Contingency fee arrangements – yes Third-party funding – uncertain	D.C.'s ethics rules impose certain restrictions on contingency or alternative fee arrangements.	In 2020, the D.C. Bar asked for comment on possible revisions to D.C.'s ethics rule which would loosen restrictions on fee-sharing with non-lawyers which in other jurisdictions has been interpreted to restrict lawyers from directly engaging in certain third-party funding arrangements.
	<u>New York</u> : Contingency fee arrangements – yes Third-party funding – uncertain	New York ethics rules impose certain restrictions on contingency or alternative fee arrangements.	On 2018, the New York City Bar Association (NYCBA) issued a formal opinion which interpreted New York's Rules of Professional Conduct's fee-sharing prohibition as forbidding a lawyer from entering into arrangements with third-party litigation funders where the payments to the lawyer were contingent on the fees received. This opinion was heavily criticized, and in 2020 the NYCBA's Working Group on Litigation Funding issued a report recognizing the benefit of litigation funding and proposing revisions to the applicable rules. The report also addressed arbitration funding specifically and recommended that changes be made to require the disclosure in arbitration of the fact of litigation funding and identity of litigation funders.
	<u>Florida</u> : Yes	While the law does not directly bar the use of contingency fees, alternative fee arrangements, or third-party funding for arbitrations, the ethical rules in Florida impose certain restrictions	

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