Tipping the balance in your favour
A collaboration between Eversheds Sutherland and Harbour Litigation Funding
Introduction

The market for litigation funding has changed significantly in the last 12-24 months. An influx of cash-rich investors and purchasers of one-off pieces of litigation have helped to create a highly competitive market for litigation funding. New products are appearing every month and the legal profession is engaging seriously with funding as a way to monetise claims or completely de-risk litigation.

We have spent 12 months meeting with clients, funders, brokers and insurers – sharing our views on how to shape the market and what we at Eversheds Sutherland want to develop for the benefit of our clients.

In relation to third party funding, some of the concerns expressed by clients were:

- funding is only available for larger claims
- funding is only available for cases which are bound to succeed
- a funder may wish to influence the conduct of the litigation
- the due diligence process can be slow and costly

We have taken these concerns to funders as a result of which, we are collaborating with one of the largest global funders, Harbour Litigation Funding to offer clients direct access to litigation funding, but still leaving the client in control of the conduct of the litigation and removing the associated financial risk. Further, by putting lower value or riskier claims into a portfolio, we are able to secure funding for claims which previously, or as a standalone, may not have passed a funder’s due diligence process.
Our approach

Stand-alone funding
- an initial, risk free analysis, and as long as the claim is meritorious and commercially viable, Harbour will consider funding
- we would then work on a reduced fee basis with Harbour paying 50% of our fees as the matter progresses, with the balance deferred and only to be paid if the case is successful and damages are recovered
- Harbour would also pay 100% of your disbursements
- as Harbour are only funding 50% of our fees, the overall cost of funding is reduced

Portfolio funding
- by aggregating a number of claims together in a portfolio, as Harbour is able to spread its risk, we can offer you more favourable terms than might otherwise be available
- a portfolio arrangement potentially enables Harbour to offer terms on cases which may not meet their criteria for stand-alone funding, such as cases with a high level of risk, or those where the potential legal spend against expected damages would make them unattractive
- this arrangement offers the potential to add defended cases to the portfolio

Case in practice

Review process:
- Initial Stop/Go review: a high level review, to determine whether the case is viable for funding
- In-depth review: bronze, silver or gold level review fully funded by Harbour, dependent on complexity and level of detail required

If the case is viable, costs are funded as follows:
- 50% CFA with Eversheds Sutherland
- 50% funded by Harbour
- all disbursements paid by Harbour
- includes ATE policy to cover risk of an adverse costs order

If the case is successful:
- client retains balance of damages
- Eversheds Sutherland and Harbour recover their fees/investment plus a return

If the case is not viable:
- no cost to client

If the case is unsuccessful:
- client pays nothing
- Eversheds Sutherland write off balance of their fees
- Harbour carries loss
- ATE policy pays any adverse costs order

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Key benefits of the Eversheds Sutherland/Harbour approach

- Financially risk free litigation
- Free up legal spend from balance sheet
- All aspects of the claim from origination to enforcement
- You retain control of the claim
- A portfolio arrangement to fund lower value claims and reduce the cost of funding
- All cases project managed by our specialist project management team
- Consistent points of contact at both Eversheds Sutherland and Harbour throughout the life of the claim
- Benefit of external due diligence process and independent validation of the claim

Your key contacts

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Key facts and figures

Eversheds Sutherland

- We have over 5,000 people including more than 700 partners and 2,900 lawyers
- One of the largest law practices in the world, with over 69 offices across 34 countries
- The UK’s strongest law firm brand by the Acritas UK Law Firm Brand Index 2019
- 7th largest Litigation practice in the world with over 400 commercial dispute lawyers
- Featured in the Global Litigation Top 50, the GAR 30 and GIR 100

Harbour Litigation Funding

- Investments made by the Harbour Funds represent an aggregate claim value of around £10 billion
- Harbour has scale and experience with a large team of highly skilled professionals
- Founder member of the Association of Litigation Funders of England and Wales
- Global coverage, having funded 100+ cases in 14 jurisdictions and under four sets of arbitral rules
- Capital raised exceeds £750 million

Harbour Litigation Funding Ltd. ("HLF") is a limited company registered in England & Wales and is authorised and regulated by the UK Financial Conduct Authority. References to "Harbour" mean in the context of (a) approving and providing litigation funding, any of Harbour Litigation Investment Fund I, L.P., Harbour Fund II, L.P., Harbour Fund III, L.P. and Harbour Fund IV, L.P. (none of which is open to new subscriptions) registered and operating out of the Cayman Islands (the "Harbour Funds"); and (b) investment advisory and/or marketing activities (including but not limited to the promotion of the Harbour Funds; market research on case opportunities; and identifying potential cases), HLF as investment sub-advisor to the Harbour Funds.

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