

Guidance note – Funding Commercial Litigation

There are ways in which a company may be able to fund the litigation and/or minimise the risk of an adverse costs order.

Legal Expenses Insurance

It may be prudent to take out legal expense insurance. There are a number of legal expense policies available offering “before the event” and “after the event” cover.

If you take out legal expense insurance cover make sure you know exactly what the policy covers. Legal expense insurance may cover you for the risk of losing and having to pay the other side’s costs or cover you for your own costs, but not the risk of losing and having to pay the other side’s costs, or both your own costs and the other sides costs if you lose.

Be prepared for the insurer to want to take an active part in the conduct of the dispute and to be kept informed on an ongoing basis.

Since 1 April 2013 you can no longer recover insurance premiums from the losing party.

Third Party Funding

It is possible to obtain third-party funding for cases with a high chance of success and a high net value which can be of particular help for companies that cannot afford the expense of litigation or want to minimise their exposure to the cost of litigation.

Litigation funders will pay all or some of the costs and disbursements involved in litigation which will be repaid along with a share of any damages awarded if the claim is successful.

Sharing the risk with your legal advisers

Solicitors and barristers are allowed to offer to act on a no-win/no fee/reduced fee (a Conditional Fee Agreement (CFA)) or for a share in the damages (a Damages Based Agreement (DBA)).