

How Disputes Funding Works Across Jurisdictions

Cost has long been the primary barrier for companies and counsel looking to prosecute their highly meritorious claims in international arbitral forums.

While the expenses associated with cross-border cases aren't getting any lower, the growth of litigation financing is providing many enterprises—whether large multinationals or startups—the ability to take on cases they may have previously deemed too expensive to pursue.

What's triggering the change? Several jurisdictions—particularly leading arbitral centers in Asia—have adopted new rules explicitly allowing third-party funding. In addition, companies like Omni Bridgeway are building strong, highly experienced investment teams designed to help claimants better access financing. Funders are also forging creative financial partnerships with law firms to ensure that financing is available to claimants in emerging litigation markets.



Creative Solutions in Popular International Arbitral Hubs

In Israel, for instance, Omni Bridgeway has teamed with Kobre & Kim, a New York-based law firm with an office in Tel Aviv, to finance a \$30 million fund that is being used to help start-up companies have a fighting chance against large, multinational corporations in trade secrets misappropriation cases and other matters.

Through the Israel Litigation Fund, Omni Bridgeway subsidizes a portion of Kobre & Kim's legal fees and up to 100% of the legal expenses, while Kobre & Kim invests the rest of its legal fees. Together, the arrangement provides clients with a full (or nearly full) contingency and top-notch legal representation through the life of the litigation.

Because Omni Bridgeway and Kobre & Kim do not recover any payment unless and until the litigation is successful—by way of settlement, judgment, or otherwise—startup and emerging companies can inject capital in their businesses instead of spending it on legal fees and expenses.

Omni Bridgeway, inked a similar deal with a law firm to finance litigation in Vietnam—whose economy is touted as the next rising star in the Asian region. In April 2019, Omni Bridgeway announced an agreement with litigation and arbitration powerhouse Boies Schiller Flexner to fund cases involving Vietnam.

The agreement provides up to \$30 million to fund international arbitrations involving Vietnam or Vietnam-related litigation based in the United States or United Kingdom. Vietnam's emerging economy is appealing to foreign investors (especially from the U.S.) and rapid infrastructure development has contributed to an increase in disputes, many of them cross-border and involving billions of dollars.

Under the Omni Bridgeway-Boies Schiller arrangement, claimants are offered a streamlined due diligence process and Boies Schiller's services on a contingency. Omni Bridgeway subsidizes a portion of Boies Schiller's legal fees and 100% of the expenses (for example, expert costs). Boies Schiller and Omni Bridgeway do not recover any payment unless the litigation is successful and there is a recovery by the client.

The Global Rise of Funding

Omni Bridgeway's efforts in Israel and Vietnam are just two examples of how disputes financing is growing around the world—and of how law firms are leveraging funding to grow their disputes portfolios.

Those opportunities will grow as funding continues to gain acceptance around the world. During the last two years alone, international arbitration hot spots like Hong Kong, Singapore, Paris, and Dubai have all made moves to allow for third-party financing of arbitration and related court proceedings. Funding initially met resistance in many jurisdictions because of antiquated common law prohibitions on maintenance and champerty, which forbade third parties from supporting another's litigation. However, a majority of those barriers have fallen as various jurisdictions acknowledge the financial realities of modern disputes.

In an international arbitration, a funding arrangement allows claimants and their law firms access to non-recourse financing to cover fees and expenses through the lifespan of a case. Because funding is non-recourse, the funder collects a return on its investment only in the event of a successful recovery. If the case fails, the claimant does not pay.

With financing, claimants can hire the best lawyers to handle a case—firms with the experience and scope to handle complex claims that may span several countries. Likewise, claimants and their counsel will have the resources to retain the most-qualified experts for the case, a move that can help maximize a potential recovery.

Advantages for Claimants and Counsel

For smaller enterprises with limited resources, funding can allow the pursuit of claims against a larger multi-national corporation or state actor. Moreover, larger companies, with the resources to bring

significant claims, nonetheless can use funding to remove arbitration expenses from the balance sheet—thus improving the bottom line and potentially pleasing shareholders.

Law firms benefit in numerous ways. Financing for a cross-border dispute can reduce the risks inherent in a full, or partial, contingency arrangement with the client, as the funder can cover a significant portion of the firm's fees and expenses. The firm still has the opportunity to participate in the upside of a large recovery and also can enjoy the budgeting benefits of consistent cash flow over the course of a case. Firms can also increase their client base by offering services to clients who may not have had the means to hire them without financing.

Having a funder with a global footprint, such as Omni Bridgeway, also gives the advantage of having a network of disputes experts in strategic locations around the globe. While control of the case always remains in the hands of the lawyers and clients, our team is often called upon to serve as a sounding board regarding the strengths and weaknesses of a potential claims. Having an expert third-party view can be particularly helpful in a cross-border context, such as a state arbitration where the claimant may start the case with few documents to back up its claims.

To discover more about how law firms and parties can deploy financing in international arbitrations and other cross-border disputes, contact us for a consultation. And visit our Litigation Finance Education Center to learn about the CLE seminars we offer to companies interested in working with funders. There, you also will find our recent client podcasts, blog posts and videos.