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Focus on litigation funding

There's growing demand for companies to seek assistance financing legal claims

JOHN KINGSTON

Over the past few years Third Party Litigation Funding (TPLF) has developed from a little known litigation funding mechanism to an increasingly popular means for businesses to pursue meritorious claims that might otherwise have been left unrealised.

The benefits of TPLF have not gone unnoticed by finance directors, who recognise that, by partnering with a litigation funder, a claimant can entirely de-risk the financial costs of litigation, transforming it from an exercise with an unknown cash commitment to one with zero cost outlay and only upside potential.

John Kingston, Head of investments at Vannin Capital

GROWING POPULARITY

Research report *Funding in Focus* conducted by Vannin Capital reveals that law firms are starting to see blue chips regarding TPLF as a smart way of managing litigation and arbitration portfolios, a view reflected in 52% of in-house respondents to the survey saying they would be open to using TPLF.

Involving little more than a third party commercial investor paying the costs of pursuing a claim through to resolution, the TPLF model is simple. In engaging with a funder the claimant gains access not only to financing but also to the funder's facilities and legal insights, which can make a significant contribution to the structure and development of the claim in question.

If the claim succeeds, the investor receives a return on its investment paid from the damages awarded. If the claim fails, the funder loses the money it has invested. The claimant has no risk of losing further money. Put simply, the objective is for the claimant and the funder to bring the claim to a successful resolution and to profit from their mutual collaboration.

CLEAR PATH

The obvious benefit of litigation funding is that companies which require the finance to fund a claim can have their liabilities for legal fees and adverse costs alleviated, with the result that access to justice is not limited to businesses or individuals with large financial resources.

Equally important is that funding enables such companies to pursue litigation without fear of EBITDA (earnings before interest, tax, depreciation and amortisation) or cash erosion.

Furthermore, all liabilities, including contingent liabilities for adverse costs, remain off the balance sheet.

Let's take the example of a company which is deciding whether to embark on a £30 million claim which its lawyers have advised has a 60% probability of success, with each side expecting to incur legal fees of £2 million.

The company can choose to secure funding where the terms stipulate, for example, that the funder will take the greater of 3 time the funding advanced or 30% of the damages in the event that the claim is successful, and will underwrite the adverse costs.

In this case the monetary impact to the profit and loss account will be zero. The funder picks up the legal fees, and there would be no requirement to disclose any contingent liability as the funder pays the defendant's legal costs in the event that the case is lost.

Those who have used litigation funding regard as inevitable the fact that TPLF is becoming a well-used fixture of the UK and international litigation and arbitration scene.

BENEFICIAL SERVICE

Funding is a prudent financial tool which both enables companies to access justice and protects them from the downside of the costs of litigation. The place of funding in business is growing and will, in time, become a key consideration in large commercial disputes, regardless of the size of the claimant and its financial resources.

As TPLF becomes more mainstream, its availability is also increasing, with a number of sophisticated and well-resourced players in the market. These providers are backed by a wide range of investors: corporate investors such as those that last month invested £200 million last month in Therium Capital Management.

Retail and institutional investors are backing the two publicly quoted providers, **Burford Capital (BUR:AIM)** and **Juridica Investments (JIL:AIM)**. Meanwhile, Vannin Capital is funded by private equity investment. All are attracted by the ability to access and invest in an alternative non-correlated asset which offers significant growth potential and returns.