

Debtor management made easy

In a contested debt situation, Litigation Capital Management's cost-effective portfolio model of disputes finance helps to ensure a risk-free positive outcome for your business.

The advantages of disputes finance or funding should not be underestimated as a risk management tool and in managing the cash flow of a business. Indeed, disputes finance, whereby a third-party funder provides financial resources to a business to enable the pursuit of claims in court or arbitration, is a cost-effective and risk-free way of realising cash. In return for providing financing and bearing the risk of pursuing a claim, the funder will receive a return on the investment or a percentage of a recovery. The litigant will pay nothing in the event a claim is unsuccessful.

Disputes finance can be used across a broad range of sectors to assist in managing receivables, and provides a realistic picture of what should be written off as bad debt.

In a post-COVID-19 era, following an effective "freeze" on transactions, and where cash is king, disputes finance provides a streamlined solution to managing company finances. Crucially, it allows a business to pursue meritorious claims without straining the balance sheet through spending on disputes or regular interest payments.

Portfolio model solution

It is often the case that a business has numerous claims and/or a large book of debts it would like to pursue. As the world emerges from lockdowns, businesses are under increasing pressure to manage and realise those debts. However, in today's post-pandemic climate, traditional debt

collection may not be effective for several reasons. While debt recovery agencies certainly have their place and provide an easy solution when a business is dealing with simple, uncontested debts, those agencies cannot assist where:

- Debts are contested on anything other than the simplest legal grounds
- Collection involves complex issues like choice of law or jurisdiction issues
- There are viable counter-arguments or defences such as *force majeure*
- Enforcement issues may arise further down the line.

Not only are debt recovery agencies unable to assist in such circumstances, exacerbated by the pandemic, but it's unlikely they'd find even moderately complex claims attractive. Similarly, such agencies are unlikely to have knowledge of pre-action procedural rules that might encourage early settlement or recovery.

A solution to dealing with such claims and debts is to seek financing on a portfolio basis, where a funder and a law firm effectively take on that book of debts or portfolio of claims, subject to certain provisions that would be negotiated and agreed at the outset of the agreement. Funding is provided to cover all legal fees, expenses and associated disbursements incurred in pursuing or defending a claim as it arises.

The deal

Litigation Capital Management (LCM) and Clyde & Co have been working together since 2019 on precisely that type of arrangement,

whereby LCM has agreed to finance the pursuit of a client's entire book of debts over a five-year period, subject to certain *de minimis* provisions. The risk of an unsuccessful claim is fully absorbed by LCM and Clyde & Co, and the client pays nothing unless and until a recovery is made. It is only when a claim succeeds and a recovery made that there is any impact on the client's cash flow or financial statements.

This model, which addresses the problem of smaller claims not being pursued, has allowed the client to pursue recovery of its debts, large and small, and to realise sums that would otherwise have been written off or treated as an impaired receivable. With Clyde & Co's expansive global teams of recoveries partners, lawyers and credit professionals, we are equipped to handle both high-volume recovery and complex individual debt matters. Simultaneously, the model has allowed the client to de-risk the litigation expense and adverse costs exposure by transferring those expenses and exposure to LCM and Clyde & Co.

In addition, by outsourcing the management and recovery of the

debts, the client can transfer its internal legal team time costs to Clyde & Co for no upfront cost.

This model can help your business

In addition to the factors mentioned above, by managing debts on a portfolio basis, your business would be able to pursue smaller and larger claims where it might be economically unviable or disproportionately costly do so individually in a cost-effective manner. Cumulatively, the realisation of smaller debts may be significant, and could provide invaluable cash flow that would otherwise be irrecoverable.

The portfolio model is suited to domestic claims and those with an international aspect in either litigation or arbitration. Company debts in the commodities, transport and shipping sectors are particularly suited to management using this approach. Given the negative impact litigation would normally have on a company's balance sheet, the advantages of disputes finance are likely amplified for publicly listed companies.

Key benefits

In today's uncertain financial climate, the numerous benefits of utilising a portfolio model should be taken into consideration when making decisions internally regarding debt management. Drawing on our own experiences, the benefits enjoyed by the client have included:

- Reduced financial risk
- Preservation of cash — disputes costs are removed from P&L balance sheet and combined with innovative fee arrangements
- Spreading of costs over a portfolio of more than 70 claims ranging in value from around US\$10,000 to US\$6.75m, making it possible to successfully pursue smaller debts
- Transfer of financial and litigation risk to LCM and Clyde & Co
- Identification of "no hope" claims (eg debtor insolvency) at no cost, reducing the provision for bad debts
- Application of a standardised procedure across claims, resulting in economies of scale and an efficient and streamlined process
- Accommodation of out-of-court

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settlements, where it would be beneficial to do so to preserve or enhance commercial relationships

- Use of Clyde & Co's global network of more than 50 offices and contacts to carry out an initial triage, identify assets and pursue the claims from start to finish
- Economic benefits including savings of the costs that would otherwise have been incurred, such as management time, internal legal team time and the use of other resources.

Disputes finance, in particular the portfolio model, offers a bespoke solution to litigation resolution and the management of company debts. It allows for the transfer for risk, cash-flow benefits and favourable accounting treatment. The unique relationship between LCM and Clyde & Co, coupled with their international reach, allows your company to assemble a highly effective team of lawyers and litigation finance experts to achieve favourable outcomes for your business.

For more information, visit lcmfinance.com or clydeco.com

LCM
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