

The Economics of Litigation Funding: Assessing the Financial Viability of Legal Dispute Investments

Investment Associate Aliko Halcoussi explores the considerations of litigation funders when approached by businesses and individuals seeking legal finance.

LONDON, UNITED KINGDOM, August 28, 2024 /EINPresswire.com/ -- Individuals and businesses seeking justice without the associated burden of legal costs are increasingly considering litigation funding as an attractive financial solution. However, whether these cases remain attractive to litigation funders from an [economic perspective](#) is determined through a thorough and complex process.

[Deminor](#) Investment Associate [Aliko Halcoussi](#) sheds light on the considerations of litigation funders in this latest Deminor article.

Introduction -

Litigation funding has become an essential tool for claimants seeking justice without bearing the associated costs of filing a lawsuit. This pivotal shift in the legal environment has led both individuals and entities into the exploration of this financial avenue as explored in the business case for litigation finance. However, determining from an economic perspective if a case is attractive enough to obtain funding requires a thorough and complex process in which this article will coherently summarise.

Funding model: Recoveries & Probabilities -

A litigation funder's financial assessment commences with the collection of numerous relevant financial data, including any prior financial deployment undertaken by the claimant. This allows



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for the discovery of the claim value and, more importantly, for evaluating an estimation of the recovered amount of a successful claim.

This initial step is the financial framework of the multivariate analysis, which will ultimately steer the likelihood of successfully securing funding. The financial model used can accurately calculate the relevant exogenous factors that might affect the recovery amount, such as the numerous accruals of interest rates based on jurisdictional regulations.

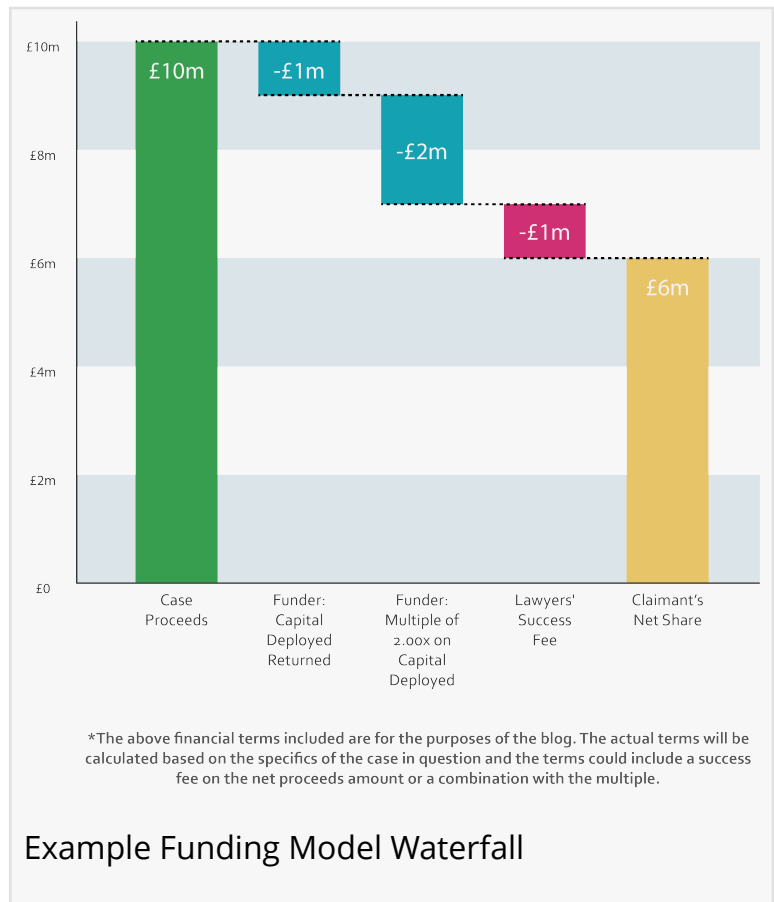
After the calculation and development of the initial financial framework for the potential of the recovered amount, the model is then adjusted to reflect on the case's potential outcome (win, settlement and loss). The financial probable hypothesis is then synthesised based on each weight percentage the case's potential outcome carries.

Legal Budget & Case Durations -

Following the initial financial structure, the model then continues with the evaluation of the numerous costs attached to each case. Such costs would, for example, include the legal budget. This budget is given to the funder by the client's legal representation and encapsulates both their legal fees and all relevant legal costs that follow the case's progress. Such costs would include, but are not limited to, the upfront court fees, filing fees, expert witness costs, travel expenses and other miscellaneous costs.

Other significant costs for a litigation funder would include adverse party costs in which costs follow the event (i.e., the losing party pays both their own and the opposing party's costs). It is noteworthy to mention that the financial analysis also encapsulates the time of deployment of said costs, which could alter the results of the model.

Another consideration that the model must evaluate is the expected duration of the trial. This impacts the financial assessment of funding a case since longer cases imply higher risk due to extended capital deployment. A realistic estimation involves breaking down the timeline for each litigation phase (i.e., pre-litigation, trial and appeals). The analysis of the funder should reflect on these phases and provide a pathway towards achieving an accurate percentage of each phase's occurrence.



Case Outcome & Funding Waterfall -

After securing the funding needed for the case to proceed, and should the outcome be a successful one, the funder will then receive a portion of the recovered proceeds. The portion provided for the litigation funder could be a multiple of the initial investment or a percentage of the net proceeds. This ensures equitable compensation for the funder while safeguarding the client's interests.

Funders usually have a predefined risk appetite with a maximum budget-to-claim size ratio for each case and a set of specific investment criteria that must be met. The return of investment for the funder is contingent upon a successful claim. If a claim is unsuccessful, then the client is not liable for any costs accrued throughout.

Below is an illustrative example showcasing a standard, very simple funding waterfall*:

Capital Deployed by Funder: £1 million

Case Proceeds: £10 million

Funder's Return: Capital deployed returned + multiple of 2.00x on capital deployed = £3 million

Lawyer's Fee: 10% of proceeds = £1 million (subtracted from the client's share)

Client's Net Share: Remaining £6 million

Explanation: The funder deploys £1 million in capital, and the proceeds are at £10 million. The funder would receive a return of three times the capital deployed, equating to £3 million. If a law firm asks for a success fee (alongside their legal fees), the lawyer's fee, set at 10% of the net proceeds, totals £1 million; this is subtracted from the client's share, leaving the client with the remaining £6 million.

Conclusion -

While all the aforementioned parameters are thoroughly examined in order to construct an accurate financial analysis, each case's viability is evaluated on an individualistic basis. This means that the adjustment of multiples and the success fee for each case is evaluated, analysed, and concluded based on the case's merits and not on a generic framework. This allows the funder's offering to be adjusted specifically for each case.

Funders bear the responsibility of assessing the risk and viability of each case. This structured approach not only mitigates the funder's risk but also aligns with the client's best interests, fostering a fair and balanced relationship whilst effectively upholding the overriding objective of fairly disposing legal disputes.

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