

How litigation funding could transform Hong Kong

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Litigation funding describes the method where potential claimants finance their litigation claims through a third party funding company. Generally, the funding company provides an advance to the litigant and receives a share of the settlement, if the litigation claim is successful.

Litigation funding in context

The Law against champerty and maintenance dates back to medieval England. Maintenance inferred a person with no interest in the litigation, assisting and encouraging a party in litigation. Champerty was a form of maintenance whereby the maintaining company received a percentage of the successful

policy are pushing the courts to review the law, adopting a more flexible approach to litigation funding, mainly in relation to insolvency.

Developments involving the introduction of conditional fee arrangements for solicitors mean the acceptance of litigation funding is moving even closer to Hong Kong. These no win, no fee arrangements would allow third party litigation funding, in conjunction with solicitors, on the basis that the solicitors would only charge their client fees if the case is successful. Equally, the funding third party would only receive a share if the case is successful.

Implications for the litigation market

Harneys' Litigation and Insolvency Partner, Ian Mann, and coauthor of the leading textbook, *British Virgin Islands Commercial Law*, claims that if litigation funding expands in Hong Kong, it will have important benefits to the litigation market.

terms of funding and whether the funding agreement should be disclosed to any defendant. In the early stages, defendants will seek to strike out funded cases before they get off the ground. Fourthly, a booming market in litigation insurance will develop to protect claimants and funders from substantial adverse costs orders."

A jobs bonanza

An increase in litigation funding inevitably means an increase in jobs. The rise of litigation funding could have a strong effect on jobs and recruitment. After a relatively slow first quarter, if litigation funding expands in Hong Kong, we should see a steady peak in the number of litigation jobs in the region.

It will take time for the Law against champerty and maintenance to disappear fully. As time progresses and attitudes become more accepting of litigation funding, and people begin to understand the importance of aiding firms with solid claims that are in need of funding, there will be a gradual shift resulting in an increase in litigation jobs. According to Jamie Milne, CML Recruitment's litigation specialist: "I am excited to see not if this will affect my area of recruitment, but when; litigation funding is clearly necessary in the market and as people continue to accept this, things are certainly likely to pick up."

The ever-changing demands of public policy are pushing the courts to review the law, adopting a more flexible approach to litigation funding

litigation's proceeds. This traditionally put a ban on litigation funding by third parties. The Law was abolished in England in 1967, and third party litigation funding has since grown in several common law jurisdictions. Although Hong Kong is taking longer than other common law jurisdictions to fully accept third party litigation funding, it is clear moves are in place to become more accommodating.

Hong Kong holds a strict stance on litigation funding. It appears the authorities would be prepared to prosecute champerty as a criminal offence; however, there are exceptions. Recently, the Court of Final Appeal showed signs of reconsidering the law against champerty and maintenance. The ever-changing demands of public

He points out that litigation funding in Hong Kong is at a very nascent stage and has so far probably been confined to traditional insolvency related claims, known as the insolvency exception. He believes that the possible expansion of litigation funding in Hong Kong could have four important consequences. First, it would allow claims to be filed that could not otherwise be brought for lack of funding.

Second, Mann believes that the expansion of litigation funding will result in lawyers considering at an early stage alternative means of funding a case, and indeed, charging a client. "This will potentially revolutionise the way lawyers start cases," he writes. "Third, there will be interesting legal arguments about the



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