

LITIGATION FUNDING

Israel



Litigation Funding

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Quick reference guide enabling side-by-side comparison of local insights, including regulation and regulators; funders' rights (choice of counsel, participation in proceedings, veto of settlement and funding termination rights); conditional and contingency fee agreements; judgment, appeal and enforcement; collective actions; costs and insurance; disclosure and privilege; disputes between litigants and funders; and recent trends.

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REGULATION

Overview

Is third-party litigation funding permitted? Is it commonly used?

Third-party funding of litigation and arbitration is permitted in Israel and has received positive judicial endorsement. In *Benny Bachar Zoabi Construction company vs Bank Hapoalim*, LF 29526-10-16 (Nazareth District) (published in *Nevo*, 26 October 2017), the vice-president of Nazareth district court, Judge Attif Ailablouni, while holding that a litigation funding agreement was valid, also encouraged the use of such funding agreements in liquidation cases:

Finally, there is a fund that is willing to examine potential claims with professional eyes, and where the prospects of the claim look good, will be willing to fund the costs of the claim, while taking the risk that if the claim is rejected, there will not be indemnity on the funding costs, and if it succeeds, the fund will be indemnified and will receive additional returns. There is no doubt that we should bless the establishment of the fund and even say that it is a shame that it did not arise before. The idea underlying the establishment of the fund would enable the right of choice of the insolvency firm, if it so wishes, to use funding to file a claim and prevent a situation in which justified claims are waived only because of a shortage of funds. It is also necessary to encourage officeholders to apply for the services of the fund where it appears that there is a justified claim that has no sources of funding.

Today, third-party funding for litigation in Israel is an accepted part of the litigation landscape and has been judicially endorsed by the Israeli courts in recent years. Although the courts have not provided comprehensive rulings on the Israeli court's approval regarding all of the issues relevant to litigation funding, the courts have, through positive endorsement of funding, established a favourable environment for litigation funding in Israel.

The use of third-party litigation funding in Israel has grown significantly over the past five years. While most of the positive judgments regarding litigation funding in Israel have related to liquidation cases, the courts have also endorsed funding in general litigation.

Law stated - 19 October 2021

Restrictions on funding fees

Are there limits on the fees and interest funders can charge?

There are no specific statutory limitations on the fees or the interest a funder can charge, but according to the professional regulations governing lawyers in Israel, Bar Association Law, 5721-1961, the courts have the right to alter and reduce a lawyer's contingency fee arrangements if they are held to be excessive. Also, in liquidation cases, a liquidator requires the court's approval to enter into a funding agreement and the court may review the terms of that funding agreement to determine whether entry into a funding arrangement is in the best option available to the company in liquidation.

Law stated - 19 October 2021

Specific rules for litigation funding

Are there any specific legislative or regulatory provisions applicable to third-party litigation funding?

Presently there are none.

Law stated - 19 October 2021

Legal advice

Do specific professional or ethical rules apply to lawyers advising clients in relation to third-party litigation funding?

In Israel, a lawyer's conduct is governed by the lawyer's Bar Association Rules (Professional Ethics), 5746-1986 and Bar Association Law, 5721-1961. There are no specific professional or ethical rules applicable to a lawyer's advice in respect of third-party litigation funding, but general professional or ethical rules do apply: lawyers are obliged to act in the best interest of their clients; all information a lawyer obtains in relation to a case is confidential; lawyers are prevented from sharing their fee income with a third party (unless the third party is a lawyer); and lawyers are prohibited from soliciting work from their clients (either directly or through a third party).

Law stated - 19 October 2021

Regulators

Do any public bodies have any particular interest in or oversight over third-party litigation funding?

At present, no public bodies have a specific interest in or oversight over third-party litigation funding, apart from in a liquidation context, in which a liquidator is required to seek the court's approval when entering into a funding agreement with a third-party funder.

Law stated - 19 October 2021

FUNDERS' RIGHTS

Choice of counsel

May third-party funders insist on their choice of counsel?

There is no specific prohibition on a third-party funder insisting on a choice of counsel, and the courts have not yet considered the issue.

Law stated - 19 October 2021

Participation in proceedings

May funders attend or participate in hearings and settlement proceedings?

Court hearings are generally public (unless the court holds differently) and funders can attend without having to obtain permission. The court will usually set out the names of those in attendance at the hearing in the protocol (that is the transcript of the proceedings). In arbitrations or settlement proceedings, the parties usually have the right to decide who will attend on their behalf.

Law stated - 19 October 2021

Veto of settlements

Do funders have veto rights in respect of settlements?

A funder's rights to approve or reject a proposed settlement will depend upon the terms of the funding agreement. There are no specific restrictions on these rights under Israeli law.

Law stated - 19 October 2021

Termination of funding

In what circumstances may a funder terminate funding?

The funder's right of termination will be a matter of contract to be addressed in the funding agreement. There are no specific restrictions on this under Israeli law.

Law stated - 19 October 2021

Other permitted activities

In what other ways may funders take an active role in the litigation process? In what ways are funders required to take an active role?

The level of involvement the funder takes in the litigation process will be determined by the terms of the funding agreement. There are no specific restrictions on this under Israeli law.

Law stated - 19 October 2021

CONDITIONAL FEES AND OTHER FUNDING OPTIONS

Conditional fees

May litigation lawyers enter into conditional or contingency fee agreements?

According to the Bar Association Law, 5721-1961 and the Bar Association Rules (Professional Ethics), 5746-1986, lawyers may enter into conditional or contingency fee arrangements, except in criminal cases. However, lawyers are not permitted to make payments for clients' expenses (such as court fees or expert costs) on their clients' behalf or to provide their clients with guarantees.

Law stated - 19 October 2021

Other funding options

What other funding options are available to litigants?

In several types of class action, where the case is of public and social importance, the Ministry of Justice or the Israeli Securities Authority may support the claimant with funding from dedicated funds. Also, litigants may ask for an exemption from the payment of court fees when they are unable to meet those costs, or where the claim relates to bodily injury matters. Various insurances may also contain legal expenses coverage.

Law stated - 19 October 2021

JUDGMENT, APPEAL AND ENFORCEMENT

Time frame for first-instance decisions

How long does a commercial claim usually take to reach a decision at first instance?

According to the 2020 Israeli Judiciary Report, an average civil procedure in the district court will take 19.5 months (including compromises and withdrawals).

Law stated - 19 October 2021

Time frame for appeals

What proportion of first-instance judgments are appealed? How long do appeals usually take?

There are no accurate, up-to-date statistics on the proportion of first-instance judgments that are appealed. However, according to the 2020 Israeli Judiciary report, 913 civil appeals were filed to the Supreme Court in 2020, seven fewer than in 2019. Also, according to the report, an average civil appeal in the Supreme Court took 15.5 months (including compromises and withdrawals).

Law stated - 19 October 2021

Enforcement

What proportion of judgments require contentious enforcement proceedings? How easy are they to enforce?

There are no statistics available measuring the proportion of judgments which require contentious enforcement proceedings. The enforcement process is regulated by the Execution Law, enacted in 1967. A judgment rendered by an Israeli court is, in general, enforceable if it is final and binding and if the court or the chief enforcement officer has not suspended its enforcement. In general, the enforcement of an enforceable judgment or arbitral award in Israel is not yet seen as particularly burdensome. The methods of enforcement available to the judgment creditor include:

- seizing a judgment debtor's assets;
- third-party debt order;
- insolvency proceedings;
- appointment of a receiver;
- attachment of earnings; and
- preventing the debtor from leaving the country.

Law stated - 19 October 2021

COLLECTIVE ACTIONS

Funding of collective actions

Are class actions or group actions permitted? May they be funded by third parties?

Class actions are permitted in Israel. The Israeli Class Action Law came into force in 2006, and formally regulates the proceedings applying to class actions in Israel. Since the advent of that Law, class actions have become a favoured path of pursuing litigation. The majority of class actions filed in Israel are consumer claims against corporate entities,

and there have also been a significant number of securities and antitrust claims. The Ministry of Justice or the Israeli Securities Authority may fund the claim when it is of public and social importance. There is no prohibition on funding a class action.

Law stated - 19 October 2021

COSTS AND INSURANCE

Award of costs

May the courts order the unsuccessful party to pay the costs of the successful party in litigation?
May the courts order the unsuccessful party to pay the litigation funding costs of the successful party?

The court will usually order the unsuccessful party to pay some of the costs of the successful party. The amount will usually be significantly lower than the costs that are incurred by the successful party. To date, the courts have not been asked to rule on whether an unsuccessful party should pay the litigation funding costs of the successful party. Given the relatively low amounts that are often granted to a successful party in respect of its legal costs, it is unlikely, at least in the near future, that the courts would order an unsuccessful party to meet such a cost.

Law stated - 19 October 2021

Liability for costs

Can a third-party litigation funder be held liable for adverse costs?

No. According to the Civil Procedure Regulations, 5744-1984, only the party to the litigation can be liable for adverse costs.

Law stated - 19 October 2021

Security for costs

May the courts order a claimant or a third party to provide security for costs? (Do courts typically order security for funded claims? How is security calculated and deposited?)

The Civil Procedure Regulations, 5744-1984 and the Companies Law 5759-1999 allow the court to order a claimant to deposit security to meet the defendant's costs. When the claimant party is a limited company, the normal position is that the claimant is required to deposit security with the court (clause 353a of the Companies Law 5759-1999 (when the company is established outside of Israel the chance of security being granted is even higher)). If the claimant is a natural person, the normal position is that he or she will not be ordered to deposit a security. The main reason for this difference is that courts want to prevent claimants from hiding behind the legal personality of a company to avoid paying the expenses incurred by the defendants. The court might depart from the default position, if the financial strength of the company is insufficient or the claimant's claim is particularly strong.

Although the court is not able to order a third-party funder to provide security for costs, there have been cases in which a funder has voluntarily provided security on behalf of the claimant to allow the claim to continue. The calculation of security varies from case to case, but could be up to 2.0–2.5 per cent of the claim value. The most common means in which security is provided is a payment of cash into court, but in some circumstances a bank guarantee will be permitted.

Law stated - 19 October 2021

If a claim is funded by a third party, does this influence the court's decision on security for costs?

The fact that a claim is funded is not, itself, a ground upon which the court may make an order for security for costs. In a recent case, the existence of a third-party funder tipped the balance in favour of the court ordering security for costs.

Law stated - 19 October 2021

Insurance

Is after-the-event (ATE) insurance permitted? Is ATE commonly used? Are any other types of insurance commonly used by claimants?

There is no statutory prohibition on the use of ATE insurance; however, ATE insurance is not commonly used in Israel. Defendants' costs are sometimes paid by insurances, such as professional negligence or directors' duties cases.

Law stated - 19 October 2021

DISCLOSURE AND PRIVILEGE

Disclosure of funding

Must a litigant disclose a litigation funding agreement to the opposing party or to the court? Can the opponent or the court compel disclosure of a funding agreement?

There is no general requirement for a litigant to disclose a litigation funding agreement to any opposing party or to the court. However, if the court finds the agreement relevant to the dispute, it can compel disclosure of a funding agreement. Further, in liquidation cases the liquidator will have to obtain the court's approval to engage in a funding agreement, and as part of this procedure the liquidator is likely to be ordered to disclose the agreement to the court and possibly to the creditors and shareholders.

Law stated - 19 October 2021

Privileged communications

Are communications between litigants or their lawyers and funders protected by privilege?

Unlike communications between litigants and their lawyers, the communications between litigants (or their lawyers) and funders are not protected by privilege in Israel. In the few decisions that have dealt with the communications between litigants and funders, the courts did not order disclosure of the funding agreement (on the basis that it was not relevant to the dispute). In addition to 'litigant-client privilege', protecting communications between a lawyer and client there is also a privilege in Israel in respect of any information regarding 'preparation for trial', but once a party argues for such a privilege, that party cannot then use that information during the trial.

Law stated - 19 October 2021

DISPUTES AND OTHER ISSUES

Disputes with funders

Have there been any reported disputes between litigants and their funders?

There are no such disputes reported that we are aware of.

Law stated - 19 October 2021

Other issues

Are there any other issues relating to the law or practice of litigation funding that practitioners should be aware of?

Practitioners of litigation funding should be aware that while Israeli lawyers' costs are relatively low in comparison to some jurisdictions (and contingency fee arrangements are possible), there is a mandatory court fee of 2.5 per cent of the claim value (up to 25 million shekels; 1 per cent of the sum above that), where half of the fee should be paid when the claim is filed, and the second half when the trial begins. Also, lawyers in Israel are not allowed to pay the litigant's costs, such as court fees, expert's fees, security etc. The litigation funding industry is in its developing stages in Israel, and considering the increasing number of cases that are funded, we might see in the future more court decisions that will determine the rules on matters such as the limits on the fees and interest a funder can charge, the legality of veto rights and the privilege in the communications between litigants and funders.

Law stated - 19 October 2021

UPDATE AND TRENDS

Current developments

Are there any other current developments or emerging trends that should be noted?

No updates at this time.

Law stated - 19 October 2021

Jurisdictions

	Australia	Piper Alderman
	Austria	Nivalion AG
	Belgium	Nivalion AG
	Canada	Omni Bridgeway
	France	Nivalion AG
	Germany	Omni Bridgeway
	Hong Kong	Herbert Smith Freehills LLP
	India	Khaitan & Co
	Israel	Woodsford
	Italy	Fideal S.R.L
	Japan	Miura & Partners
	Luxembourg	Nivalion AG
	Netherlands	De Brauw Blackstone Westbroek
	New Zealand	Thorn Law Limited
	Russia	Aperio Intelligence
	South Korea	KL Partners
	Spain	Procurator Litigation Advisors
	Sweden	Nivalion AG
	Switzerland	Nivalion AG
	Thailand	Rajah & Tann Asia
	United Kingdom - England & Wales	Woodsford
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