



CLYDE & CO

Disputes Funding



THE
CLYDE & CO
DISPUTES FUND

Welcome

Dispute finance has become an essential tool in the litigation resolution toolkit and in recent years has become increasingly commonplace in dispute resolution.

Dispute finance offers a solution for those who cannot pursue strong claims due to the associated costs and perceived risks, and/or offers a solution to those who want and choose to take the cost of the dispute(s) off their balance sheet.

We have good working relationships with all the leading funders, working with our clients to find the best solution in each case.

Clyde & Co has formed a unique relationship with global litigation financing experts Litigation Capital Management (LCM). LCM is a pioneering provider of dispute finance and a leader in portfolio funding, to deliver bespoke tailored solutions to our clients rather than rigid, off-the-shelf products, by making available a multi-million pound fund to provide funding for our clients' cases.

For further information and to schedule a meeting, please visit our website:

[www.clydeco.com/
disputes-funding](http://www.clydeco.com/disputes-funding)

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We work with lots of law firms around the world. I am happy to say that Clydes thinking around funding is way ahead of the competition.

Leading global litigation funder

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Clyde & Co's reputation in disputes, and particularly international cross border disputes, is outstanding.

Legal 500, 2018

Frequently asked questions

What is dispute finance?

Dispute finance, or third party funding, is the process whereby a 'funder', that has no direct interest in a piece of litigation, pays the legal fees for one of the parties.

In return for the payment of the party's legal fees, the funder receives a return on its investment. In the most common form of dispute finance, the return received is conditional on the success of the case and is paid to the funder from the proceeds of the action.

It is usual for the return on the funder's investment to be a multiple of the amount which they advanced, or a percentage of the proceeds. However, it may also be a combination of these forms of return or some other calculation made with reference to the risk involved, the amount of money at stake or the time the money is engaged.

Why is it something we should think about?

There are numerous reasons to use dispute finance, including risk transfer, cash flow benefit and accounting benefit.

Additionally, the use of dispute finance allows clients to assemble the finest and most effective team of lawyers and experts to give clients the best opportunity to achieve a favourable outcome.

What constitutes a portfolio?

A portfolio is usually a minimum of three claimant cases. There may be some discount in pricing even if securing the investment against two cases, however the real benefits – and the purpose behind portfolio financing – will most often be realised with three or more cases.

Can we add cases into a portfolio at a later date?

Of course. Funding may start with a framework agreement and with only one case. As more cases are added, the pricing across the book is retrospectively reduced to take account of the reduced risk. Alternatively, with an existing book, more cases may be added at a later date or some cases carved out to create a second portfolio. Flexibility is required, it is about understanding what clients want to achieve.

Do we lose control of the case?

Absolutely not. It is imperative at the beginning of the process to work with clients to understand the case strategy including enforcement strategy. But day-to-day conduct of the case, in particular settlement decisions, are agreed jointly, provided of course there is no impact on the terms of the funding.

Can defence cases be funded?

Yes. Defences can be financed. If there is a portfolio of claimant cases, the value from these can be unlocked to cover additional cases in the portfolio where the asset value is zero. This allows defence, declaratory relief, investigations and those cases where quantum is an issue to be run and to be fully financed.

Do you cherry-pick the best cases?

No. The best cases are not the problem, it is the difficult ones a client struggles with, the ones where it is about reputational risk, where quantum is questionable or there is a genuine collection risk. It is best to take the entire book, to solve the whole problem by using the value of the 'anchor tenant' cases to cover those that would traditionally never be funded by an external finance provider.

Isn't it too expensive to consider or to justify?

It does not, and should not have to be. The purpose behind dispute financing and contingent asset-backed lending is to make financing a genuinely attractive and commercial proposition to a sophisticated client. Accounting principles aside, taking dispute spend off the balance sheet and allowing clients to spend that money in ways that benefit their business is something that should not be ignored. Crucially, the investment is non-recourse.

Do you provide specific products?

No. Every client and every situation is different. We work to understand the issue, the drivers behind the need for financing and then provide the best solution. Each finance agreement is bespoke to each client, its situation and its requirements.

Are disputes an asset?

Absolutely. Any form of dispute, in any forum worldwide, is a contingent asset. The pricing of the investment secured against this asset depends upon the risk. One case is inherently risky, a portfolio of cases much less so. There does not have to be a link between the investment and asset.

How much can we monetise?

Any amount monetised will depend upon the total claim quantum in the portfolio and the total legal costs budget. Up to 25% of the portfolio value may be available, including legal costs. The difference between the total legal budget and the 25% total is the amount that can be monetised.

Of course, if there is a case that is being paid for already but the client wishes to unlock some of the value now, or there is 'fee fatigue', it may be possible to invest against that asset.

Is there a tax consequence to monetisation?

It depends on how it is booked. If value is unlocked and monetised as against contingent assets and this is booked as revenue then there are potential liabilities. If it is accounted for as a non-recourse loan then there are no liabilities. But each scenario and jurisdiction is different and independent tax advice must be taken.

How do I obtain financing and how long does it take?

A review process is undertaken before any funding is agreed. Due diligence undertaken involves the assessment of a case against the funding criteria in order to measure the risks. The time required to conduct due diligence varies, although the aim is for due diligence to be completed within 30-60 days, provided all required documentation and information is provided, and depending on whether it is a single case or a portfolio. A multi-stage due diligence process is often conducted, involving an initial review followed by a more detailed review undertaken by external counsel to independently assist the process.

Is everything confidential and is there any waiver of privilege?

All information exchanged is confidential with express provisions protecting against waiver of any privilege under a Non-Disclosure Agreement.

Is portfolio due diligence different?

Portfolio due diligence is 'lighter touch' because of the reduced risks associated with a book of cases. Cases are often assessed for fundamental reasons as to why they shouldn't be run, such as limitation or jurisdiction, or where the value of the assets are zero (i.e. defence). The main cases from which the majority of the value will be extracted will generally require greater due diligence but again should fall within the 30 – 60 day period.

True financial benefits to business

The true cost of disputes

	Client cash pay	External financing
Annual cost to litigate	GBP 10 million	External capital replaces P&L expense
Market value impact No. 1	At a 10x P/E ratio, the negative market value impact of self-paying GBP 10 million, is GBP 100 million	Using external capital the business does not suffer any decline in market value
Market value impact No. 2	Spending cash on disputes reduces cash available for business investment. If the same GBP 10 million is generating a 10% ROI then a further GBP 10 million in market value is gone.	The business can capture that incremental market value by using external financing

True impact to the business

The business pays a price to pay legal fees on a current cash basis to pursue disputes

Eliminating those two negative market value impacts is much more valuable to the business than the cost of the off balance sheet financing. The business also achieves a risk transfer benefit.

External financing quick wins:

- Avoiding the P&L impact of ongoing dispute spending has substantial value
- Financial benefit is even better in portfolios
- Dispute finance: Less risk, more benefit

The benefits of dispute finance to business

	Without dispute finance	With dispute finance			
Creation of a legal claim	Claim cannot be recorded as an asset on the balance sheet	Opportunity to monetise legal assets	Successful claim	Seen as an exceptional event that isn't core to the corporate's business activities	
	Stock analysts do not account for potential value of legal claim	Corporate no longer has to bear the cost of dispute and it's negative accounting impact, and can invest the capital it would have used for legal fees back into growing the business		Excluded from forecasts before a victory and not appreciated afterwards	Upside participation in the outcome
	The legal claim asset worth approximately GBP 50 million cannot be recognised			The market reaction to the news is far less than hoped, but the company does have GBP 50 million to redeploy in the business	Corporate receives net proceeds, being a large proportion of the original damages estimate, having taken no financial risk during the litigation
Necessary legal expenditure	Costs cannot be capitalised, but must be expensed each period	Up to 100% of legal costs covered	Unsuccessful claim	Questions from the Board of Directors about spending GBP 5 million on unsuccessful claim	
	Reduces operating profit in each period	Corporate reports better operating margins than it would if it were funding the dispute on its own balance sheet		Corporate regrets that it pursued the claim on its own, shouldering all of the risk by itself	Downside exposure mitigated
	Annual legal costs of GBP 1 million, reduces corporate's operating profits by GBP 5 million over five years				No impact on corporate balance sheet because dispute finance provider bears cost; revenue neutral outcome

About us

Clyde & Co

Clyde & Co is a leading, sector focused global law firm with 2200 legal professionals operating in over 50 offices on six continents. The firm specialises in the sectors that move, build and power our connected world and the insurance that underpins it, namely: transport, infrastructure, energy, trade & commodities and insurance.

With a strong focus on developed and emerging markets the firm has expanded beyond its UK headquarters and is now the largest international law firm in the Middle East, we also have offices across Asia Pacific, The Americas and Africa and ambitious plans for further growth.

LCM

LCM founded in 1998 in Australia and listed on the London AIM market in 2018. LCM are specialists in providing litigation finance to enable the pursuit and successful recovery of funds from legal claims, they understand that large scale litigation is costly and can carry considerable risk.

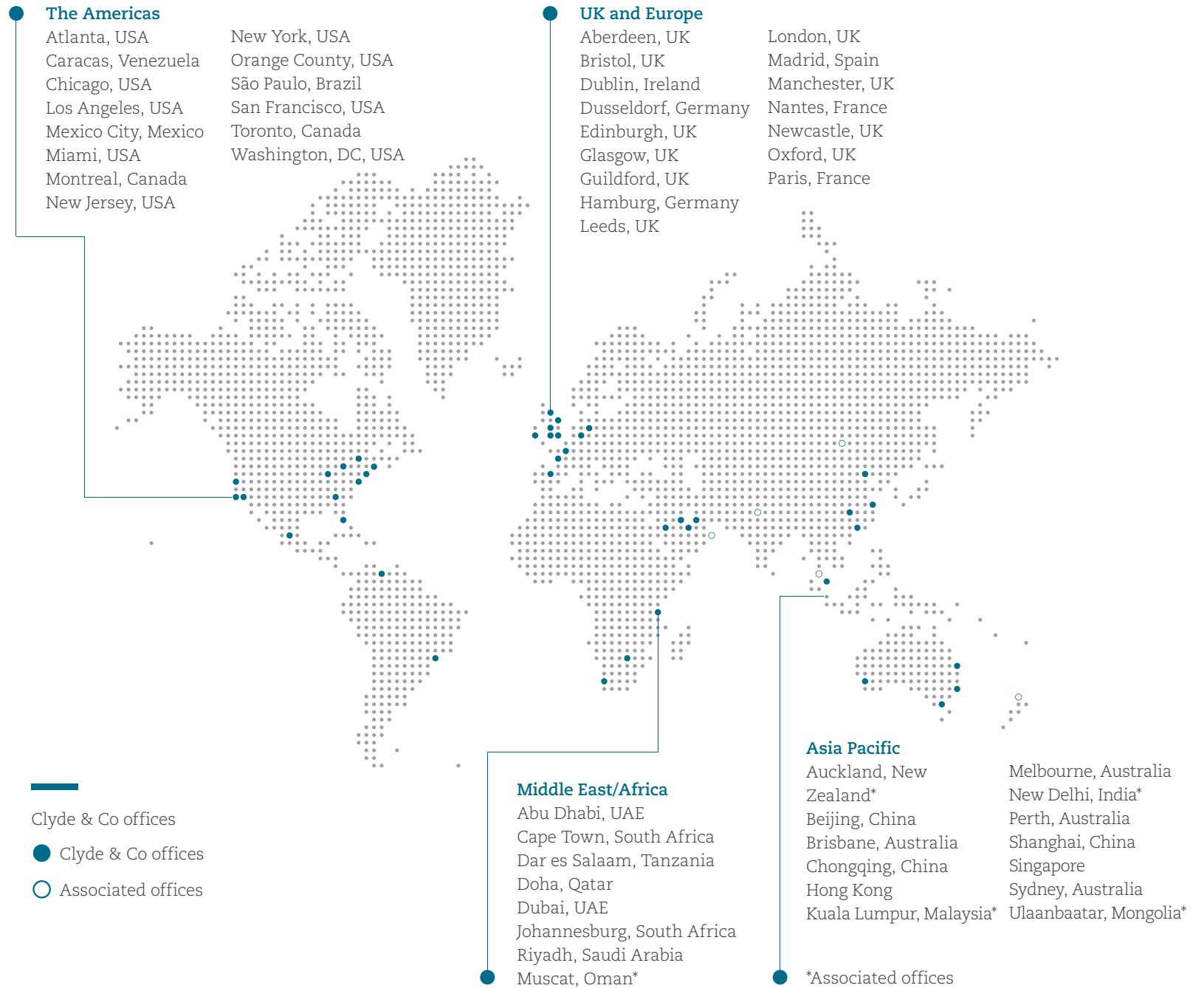
Traditionally there is a tendency to focus on one-off single cases creating a scenario that is too expensive for most clients, and which clients avoid as this type of funding is costly and the process is cumbersome.

LCM have redefined the market and created a genuinely attractive and commercially viable proposition tailored to meet the needs of clients by modelling funding scenarios which greatly reduce individual case risk and costs. Their approach allows litigation financing to be a key factor in corporate budgeting, changing the mind-set from 'Why would I?' to 'Why wouldn't I?'.



International reach

Our global network of offices enables us to provide expertise and experience across multiple jurisdictions, we operate far beyond our physical locations or where a dispute may have originated to assist clients wherever they do business or a solution is required.



440

Partners

1,800

Lawyers

4,000

Total staff

50+

Offices worldwide*

www.clydeco.com

*includes associated offices

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