

A SHORT COMPARATIVE ANALYSIS OF RECENT DEVELOPMENTS IN LITIGATION FUNDING IN IRELAND AND SINGAPORE

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The availability of funding is a major consideration for plaintiffs who find themselves saddled with an arbitration clause which seats any arbitration they may wish to commence in some far-flung jurisdiction. Indeed, perhaps it ought to be a consideration for potential plaintiffs negotiating an arbitration clause and deciding where it should be seated. Until relatively recently, any plaintiff required to arbitrate in either Singapore or Ireland would have had to fund the costs of that arbitration themselves.

However, over the last few years, Singapore, and more recently, Ireland, have seen significant legal developments in the field of litigation financing. In Singapore, the most significant development has been the adoption of the Third-Party Funding of International Arbitration Act, which came into force in 2017. As the name would suggest, this act allows third-party funders to provide funding to parties involved in international arbitration proceedings, provided that certain conditions are met. This has made it easier for parties to obtain funding for complex international disputes, and has helped to support the growth of the litigation financing industry in Singapore. It has likely also made Singapore a more palatable choice of seat for potential plaintiffs negotiating an arbitration clause.

However, in the same year, Ireland was still taking a hard line against litigation funding, with Ireland's Supreme Court ruling that year that the practice was prohibited by Irish law.^[1] Paul Convery's brief summary of Irish law on litigation funding from that year^[2] is worth a quick perusal as it is in stark contrast with

developments in Singapore that year. The prohibition against litigation funding in Ireland dated from the 14th century Statute of Conspiracy (Maintenance and Champerty) and the Maintenance and Embracery Act 1540, both of which were expressly and intentionally retained by the Statute Law Revision Act of 2007. Naturally, this would be of concern to potential plaintiffs with arbitration clauses that seat any future arbitration in Ireland.

However, in recent months, the Irish government finally modernized the law, passing the Courts and Civil Law (Miscellaneous Provisions) Act 2023.^[3] The new act permits third party funding in all international arbitration proceedings either seated in Ireland or subject to Irish law and seated in another EU Member State. This has been welcomed by the arbitration community. While the European Commission has concerns regarding a "regulatory vacuum" in relation to third party funders and recently called for a directive in order to establish "common minimum standards" for third party funding in the European Union^[4], Ireland's legal reforms could well pave the way to harmonizing regulation of third-party litigation funding in EU member states.

In the meantime, Singapore, seeing the benefits to its legal economy of its loosening of restrictions in 2017, has decided to expand its litigation funding regime further.^[5] In 2021, it passed the Civil Law (Third-Party Funding) (Amendment) Regulations 2021 which extended the availability of third-party funding to domestic arbitrations, Singapore International Commercial Court ("SICC") cases and related mediations. Quentin

Pak's brief summary of these recent developments is worth a quick read.^[6]

It will be interesting to watch the development of this area in Ireland and see if, like Singapore, Ireland's legal industry begins to reap the economic rewards of the availability of litigation financing and pushes for it to be expanded beyond international arbitration into other commercial disputes in the next five years. Indeed, there are already indications that it will do so. The Law Reform Commission of Ireland has just published its Consultation Paper on Third-party Litigation Funding with submissions requested by 3 November 2023 in advance of its report.^[7] The Irish Department of Justice also plans to examine the policy considerations around third-party litigation funding in the first half of 2024.^[8] It is submitted that Singapore's experience is instructive and that Ireland will likely continue to expand litigation financing in the coming years to attract prospective litigants to Ireland as a destination for dispute resolution.

Endnotes:

[1] Persona Digital Telephone Ltd. and Sigma Wireless Networks Ltd v The Minister for Public Enterprise & Ors [2017] IESC 27.

[2] Paul Convery, Third-Party Litigation Funding in the Irish Context, Corporate Disputes (Jul-Sept 2017).

[3] Heather Mahon & Jill Callanan, Litigation Funding: New Rules for International Commercial Arbitration in Ireland, 19 July 2023 (LK Shields).

[4] Robert Wheal & Oliver Dean, The End of the Regulatory Vacuum in Europe and a New Era for International Arbitration In Ireland? Developments in Third-Party Funding Regulation, 27 October 2022 (White & Case).

[5] Singapore Ministry of Law, Third-Party Funding to be Permitted for More Categories of Legal Proceedings in Singapore, 21 Jun 2021.

[6] Quentin Pak, Singapore extends the scope of third-party funding, 1 Jul 2021.

[7] Law Reform Commission of Ireland, Consultation Paper on Third-party Litigation Funding, (2023).

[8] Supra n3.