ADDLESHAW GODDARD

The Evolution of Litigation Financing

1990

The Courts and Legal Services Act 1990 introduced a framework for new litigation financing tools – CFAs were permitted in England and Wales for the first time.

1995

The first CFA rules were introduced making it possible to enter into CFAs in limited circumstances.

1999

The Access to Justice Act 1999 substantially changed the rules on financing, including liberalising the use of CFAs and introducing ATE insurance. Success fees and insurance premiums were recoverable from the losing party at this stage.

2002

The Court of Appeal said that only those funding arrangements that "*undermine the ends of justice*" fall foul of the prohibition on maintenance and champerty.

2005

In the seminal case of *Arkin v Borchard Lines*, the Court decided that non-party costs orders could be obtained against third party funders, but limited to the so-called Arkin Cap.

2006 AG first CFA

2008

AG launched Control. FT Innovative Lawyers Award – AG highly commended for Control.

2009

The Jackson Report (Review of Civil Litigation Costs) was published making recommendations in relation to reform of the costs regime in civil litigation.

2009 AG 50 CFAs

2011

The Association of Litigation Funders (ALF) was formed with members adhering to a voluntary Code of Conduct.

2011 AG 100 CFAs

2013

Damages Based Agreements became permissible for the first time.

The Jackson Reforms came into force abolishing the recoverability of CFA success fees and ATE insurance premiums (except for in insolvency and publication & privacy proceedings).

2014 AG first DBA

2015 AG 150 CFAs

2015

The Civil Justice Council published a report with 45 recommendations to make the DBA regime simpler and clearer.

2017

AG obtained security for costs in excess of the Arkin cap.

Singapore permitted, and Hong Kong recommended permitting, the use of funding in international arbitration.

2018 AG has done over 165 CFAs

2018

The litigation financing market has matured with over 25 active funders operating in the UK with a collective estimated war chest of £1bn. The estimated size of the global funding market is £70bn.

Litigation financing is a key issue in litigation strategy.

Institutional investors will continue to join the market.

Increased use of Damages Based Agreements.

Litigation financing regulation worldwide will drive competition between legal centres.

Increased use of litigation financing by corporates.