

[illegible]



THE CHANGING LANDSCAPE

With challenging market conditions and an increasing reluctance to expend cash reserves on potentially costly litigation, the need for banks and commercial entities to properly manage their legal costs budgets is increasingly important.

Businesses are becoming more aware of the need to manage litigation cost and risk and are looking for innovative costs solutions to help them remove legal costs from their balance sheet or at least to manage them with an element of budgetary certainty.

At the same time, there have been a number of important recent developments in how international courts and arbitral tribunals deal with the changing landscape of litigation funding, opening the door to a variety of potential cost solutions.

Addleshaw Goddard remains at the forefront of these changes, delivering alternative funding solutions as the costs environment develops, as well as providing its experience and expertise to resolve your dispute in the most cost and time efficient manner.

This guide provides a brief overview of different funding and costs options that Addleshaw Goddard is able to offer and sets out how these options (whether alone or in combination with each other) can offer businesses the budgetary certainty they need in an increasingly uncertain global market.

For a free costs consultation and to discuss how Addleshaw Goddard's Cost Control can be tailored for you, please contact Paul Hughes.



PAUL HUGHES
Legal Director
Commercial Litigation

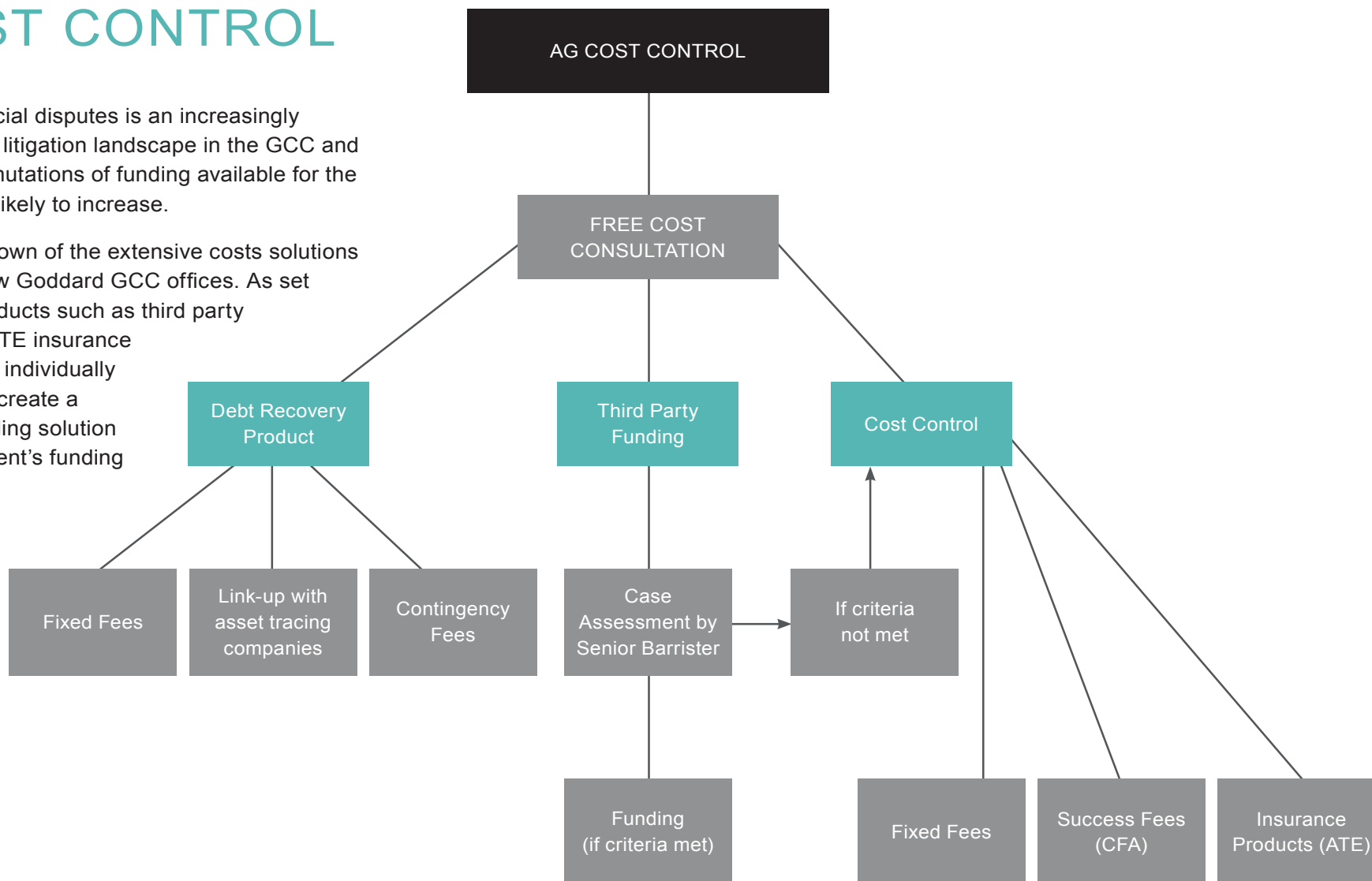
t: +971 4 350 6402
m: +971 56 656 2018
e: p.hughes@aglaw.com



AG COST CONTROL

Funding for commercial disputes is an increasingly important part of the litigation landscape in the GCC and the options and permutations of funding available for the right cases are only likely to increase.

Adjacent is a breakdown of the extensive costs solutions offered by Addleshaw Goddard GCC offices. As set out in this guide, products such as third party funding, CFAs and ATE insurance policies can be used individually or in combination to create a Cost Control co-funding solution tailored to meet a client's funding and risk needs.





THIRD PARTY FUNDING

Third party funding of litigation has traditionally been used by parties who would have struggled to fund their litigation without such investment. However, the process is growing ever more sophisticated, to the extent that international blue chip companies routinely fund ongoing litigation as a means of removing significant legal costs from their balance sheets.

In a period of tightening liquidity in the GCC, the options presented by litigation funders enable companies to pursue claims in a relatively risk-free manner – claims that they would otherwise have abandoned or perhaps settled at a significant discount.

The third party funding market has developed considerably in the last five years and funders are an increasingly important part of the legal landscape in the GCC. There has also been an increase in the number of new entrants into the litigation funding market ensuring that they, and some of the more established funders, are now competing to offer more commercially attractive terms.

Third party funding is more likely to be available for the more substantial claims, but there are funders who are keen to obtain exposure to smaller claims as well, e.g. from only USD 1 million.

Addleshaw Goddard has strong relationships with several Third Party Funders and works with them to create commercially viable litigation funding solutions for our clients.







CONDITIONAL FEE AGREEMENTS (CFA)

While success fees generally cannot be recovered from the losing party in the English or DIFC Courts, there are still many ways of structuring CFAs to make them a commercially attractive option for a party in dispute, particularly for a claimant.

Under our 'no win, low fee' model, we offer a discount on our standard hourly rates during the life of the litigation. That discount could be up to 30% or 40%. If success (the parameters of which will be agreed in advance) is not achieved, that is all the client pays.

If success is achieved, the client pays the difference between the standard rate and the discounted hourly rate (often referred to as the 'deferred fees'), and a success fee, which will be a percentage of the deferred fees, subject to prior assessment and agreement.

Despite the fact that a success fee cannot generally be recovered from the losing party, the deferred fees form part of a party's 'base costs' and are, therefore, still recoverable from the losing party in the ordinary way.

The success fee must now be paid by the winning party to its own solicitors, but, assuming that party is the claimant, the success fee will in effect be paid out of the damages recovered. The proportion of the damages accounted for by a CFA success fee will in almost all cases be significantly lower than if the same party had entered into a litigation funding agreement.

Another major advantage of CFAs is their flexibility. It is possible to enter into a wide variety of CFAs which can be fine-tuned to fit the economics of the particular case and the financial position of the client.

Finally, CFAs can be, and often are, combined with ATE insurance cover and/or third party funding. In a changing landscape, CFAs will likely remain an attractive way for a business to share litigation exposure with its lawyers and mitigate its costs and risk.



*Addleshaw Goddard's
Commercial Litigation team
in Dubai is very impressive –
providing premium service and
advice with invaluable add-ons
like linking up seamlessly with its
international offices when necessary,
as well as many others – which
is a winning combination . . .*

GENERAL LEGAL COUNSEL, JASHANMAL GROUP



AFTER THE EVENT INSURANCE (ATE)

After The Event Insurance is now a permanent fixture in the litigation funding environment. In the early days of the market, it provided cover only against adverse costs orders, i.e. a party's liability to pay the other side's costs in the event of losing an application or a claim as a whole.

In recent years, however, the ATE insurance market has matured and diversified such that it is no longer difficult to obtain ATE cover for disbursements, such as expert fees and counsel fees, and – in some cases – even for a proportion of a party's own solicitor fees.

While, like CFA success fees, ATE insurance premiums are no longer recoverable from the losing party, it may still be desirable to obtain such cover.

ATE premiums can be high, typically varying between 25% and 60% of the limit of indemnity (i.e. the total cover required). However, insurers have generally been willing to offer policies where liability to pay the premium is both contingent on success and deferred until the end of the case.

Where liability for the premium is contingent on success, a claimant will not have to pay the premium in the event that it loses and has to make a claim under the policy. It will have to pay only if it wins, but in those circumstances will of course be in receipt of damages.



DEBT RECOVERY PRODUCT

As market conditions in the GCC remain challenging due to a combination of weak global growth, the continuation of low oil prices and the straining of fiscal policies, the need for financial institutions and business owners alike to collect cash and realise their debts quickly and efficiently has never been more compelling.

It is for this reason that we at Addleshaw Goddard have assembled a regional team of dedicated commercial debt recovery specialists to assist clients in managing their debt portfolio and recovering money owed quickly, efficiently and with the support of the latest advancements in technology.

Taking advantage of our extensive debt recovery team and unique HighQ case management product, we can now offer clients that all important fixed fee budget certainty to pursue debtors and, if necessary, commence legal proceedings in the appropriate legal forum.

Addleshaw Goddard's experienced team in the GCC ensures a strategic approach to debt recovery, relying on a significant investment in innovative technology and know-how to achieve the quick resolution of disputes rather than engaging in a protracted and costly process. This means our clients can focus on what they do best whilst we pursue their debtors without any hidden financial surprises.



EXAMPLE OF A FUNDING SOLUTION

As set out above, third party funding, CFAs and/or an ATE insurance policy can be used individually or in combination to create a Cost Control co-funding solution tailored to a client's funding and risk needs.

By way of a practical example, the legal team agrees to act on a discounted CFA at 70% of their standard rates, with 50% of the ongoing litigation costs funded by a third party funder, and only 35% of fees being covered by the client.

This scenario would leave the client with only 35% of costs to pay during the life of the litigation and no additional costs at the end of the day in the event that the claim does not succeed.

Addleshaw Goddard is committed to delivering outstanding value and to doing all it can to help clients succeed in their ambitions.

CHAMBERS



KEY CONTACTS



ANDREW GREAVES
Head of GCC and Dispute
Resolution
Dubai

t: +971 4 350 6401
m: +971 50 451 5461
e: a.greaves@aglaw.com



PAUL HUGHES
Legal Director
Commercial Litigation
Dubai

t: +971 4 350 6402
m: +971 56 656 2018
e: p.hughes@aglaw.com



SAIF AL MAMARI
Partner
Commercial Litigation
Oman

t: +968 2 495 0704
m: +968 96 44 5443
e: s.almamari@aglaw.com



JAMIE KELICK
Legal Director
Commercial Litigation
Dubai

t: +971 4 350 6443
m: +971 50 237 3884
e: j.kellick@aglaw.com



CHARLOTTE BHANIA
Associate
Commercial Litigation
Dubai

t: +971 4 350 6449
m: +971 52 273 4149
e: c.bhanja@aglaw.com



NICOLA DORGHAM-MILNE
Associate
Commercial Litigation
Dubai

t: +971 4 350 6403
m: +971 55 802 3974
e: n.dorgham-milne@aglaw.com



CATHERINE JORDAN
Associate
Commercial Litigation
Dubai

t: +971 4 350 6405
m: +971 52 273 4840
e: c.jordan@aglaw.com



AHLAM SOUCCARIEH
Head of Corporate
Services

t: +971 4 350 6433
m: +971 50 759 3114
e: a.souccarieh@aglaw.com



SANAA FARIJI
Senior Paralegal

t: +971 4 350 6417
e: s.fariji@aglaw.com



aglaw.com

Aberdeen, Doha, Dubai, Edinburgh, Glasgow, Hong Kong, Leeds, London, Manchester, Muscat, Singapore and Tokyo*

* a formal alliance with Hashidate Law Office

© 2017 Addleshaw Goddard LLP. All rights reserved. Extracts may be copied with prior permission and provided their source is acknowledged. This document is for general information only. It is not legal advice and should not be acted or relied on as being so, accordingly Addleshaw Goddard disclaims any responsibility. It does not create a solicitor-client relationship between Addleshaw Goddard and any other person. Legal advice should be taken before applying any information in this document to any facts and circumstances. Addleshaw Goddard is an international legal practice carried on by Addleshaw Goddard LLP (a limited liability partnership registered in England & Wales and authorised and regulated by the Solicitors Regulation Authority and the Law Society of Scotland) and its affiliated undertakings. Addleshaw Goddard operates in the Dubai International Financial Centre through Addleshaw Goddard (Middle East) LLP (registered with and regulated by the DFSA), in the Qatar Financial Centre through Addleshaw Goddard (GCC) LLP (licensed by the QFCA), in Oman through Addleshaw Goddard (Middle East) LLP in association with Nasser Al Habsi & Saif Al Mamari Law Firm (licensed by the Oman Ministry of Justice) and in Hong Kong, Addleshaw Goddard (Hong Kong) LLP, a Hong Kong limited liability partnership pursuant to the Legal Practitioners Ordinance and regulated by the Law Society of Hong Kong. In Tokyo, legal services are offered through Addleshaw Goddard's formal alliance with Hashidate Law Office. A list of members/principals for each firm will be provided upon request. The term partner refers to any individual who is a member of any Addleshaw Goddard entity or association or an employee or consultant with equivalent standing and qualifications. If you prefer not to receive promotional material from us, please email us at unsubscribe@addleshawgoddard.com. For further information please consult our website www.addleshawgoddard.com or www.aglaw.com.