



## Litigation funding: Definitions

Litigation Funding is where a third-party, with no prior connection to the suit, finances a proportion of the action, in return for a cut of the sums recovered if the funded litigant is successful.

#### **Fast Facts:**

- Key funding jurisdictions include Australia, The Netherlands, France, Switzerland, Hong Kong and Canada
- The UK hosts the most specialist litigation funding companies than any other jurisdiction
- England & Wales is the first and only jurisdiction to have a litigation funding Code of Conduct - enforced by the Association of Litigation Funders (ALF)
- · Most funders have an international reach





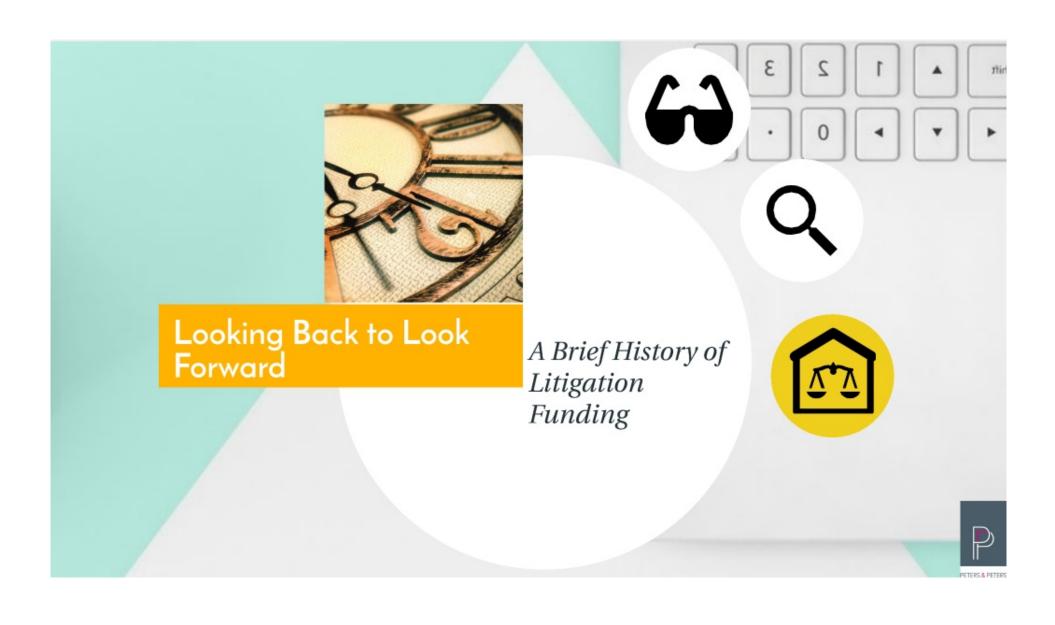
#### KEY REASONS

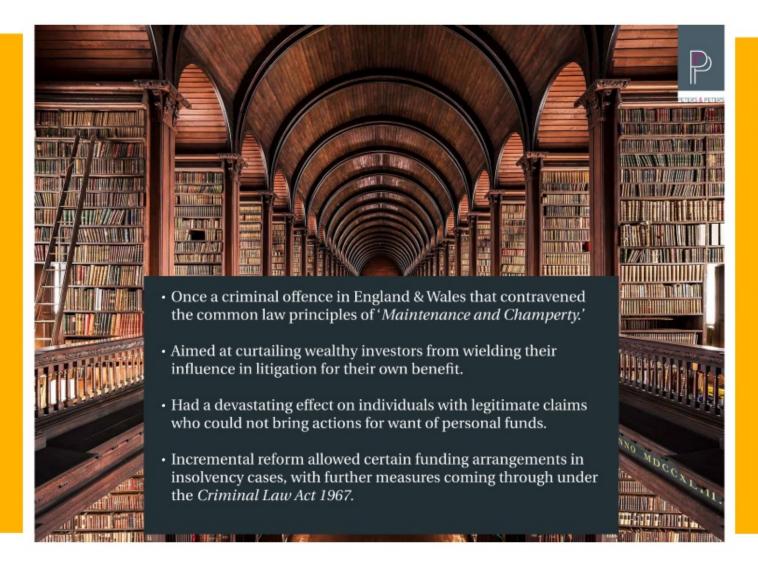


- Share the risk of pursuing the claim
- Companies often have limited budgets for legal claims
- Quick way to provide operating capital for the life of the case
- Access to justice





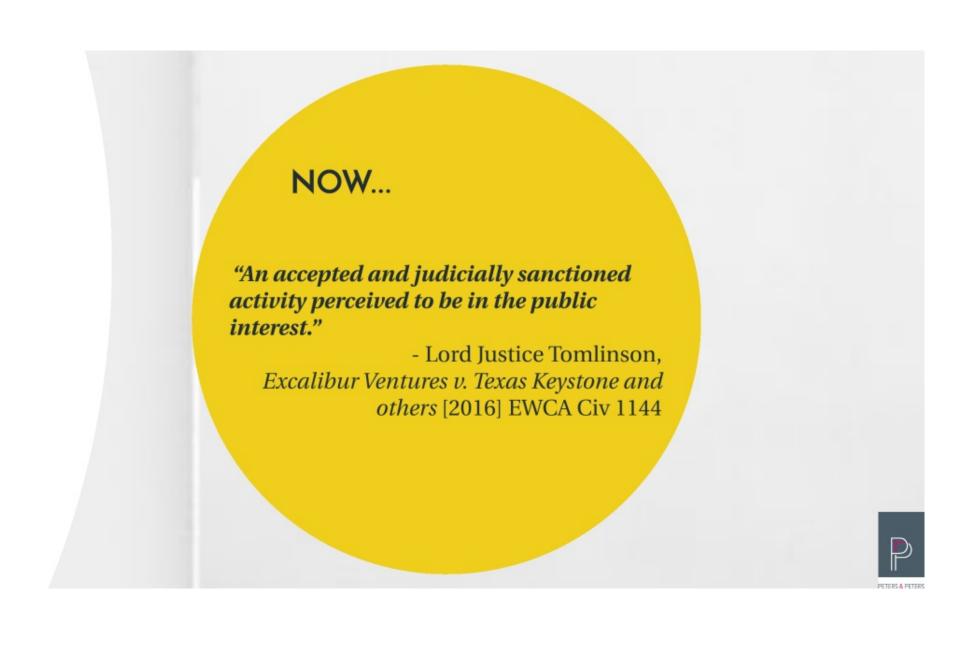






# P. P. S. APTIS

- R (on the application of Factortame and others) v. Secretary of State for Transport, Environment and the Regions (No. 2) [2002] EWCA Civ 932
- Arkin v. Borchard Lines Ltd & Others [2005] EWCA Civ 655
- Both set the parameters within which litigation funding could operate without circumventing established law
- · Jackson Reforms of 2010





#### FUNDING FRAUD CLAIMS



The need to provide security for costs/crossundertakings in damages where interlocutory relief is granted in fraud claims can be a real deterrent

O<sub>2</sub>

Funders look for claims where:

- · There are at least 60% chances of success
- The defendant is good for the money (e.g. those covered by a professional indemnity policy)

Funders assess whether the claimant is genuinely committed to pursuing the claim

The complexity of fraud claims often require independent advisers to evaluate the merits



#### **ISSUES?**

- The nature of fraud claims requires quick action, e.g. to prevent asset dissipation. Establishing funding takes time!
- During the early stages of the claim, claimants might not be aware of the full extent of the wrongdoing, whether there are recoverable assets - funding in these instances may be impractical.
- Yet, funders can get involved at any stage of the proceedings even if claimants have to self-fund the
  ancillary relief stages, the standard to secure an order of this nature requires a 'good and arguable case',
  akin to the '60% chance of success' bar used in funding. By securing relief, this may help to prove that a case
  in its later stages is still worth funding.
- Funding is expensive.
- Typical structures include returns of either the greater of a percentage of the award (between 10 and 50%) or a multiple of the funds provided (between 1.5 to 4 times the sum).
- Claims below £1 million are less suitable for funding.
- But, the rise in popularity of third-party funding, may make for more competitive market rates, with a wider pool of choice available.



### EXEMPLAR CASES

#### Perera v GetSwift Limited [2018] FCA 732

- The GetSwift software company is facing allegations of deceptive conduct and misstatement of profits made by a group of investors who bought shares after 24 February 2017 and assert that they would not have done so had GetSwift disclosed contract losses.
- The most recent proceedings concerned the appointment of lead counsel for the claimants.
- In the battle for the top spot, one firm of solicitors, which had filed the claim, lost out to another firm in part because of the support provided to that firm's clients by the litigation funder, Therium.

#### FUNDING WORKS

#### Kazakhstan Kagazy Group funded by Harbour wins \$300m fraud case



- 28 February 2018, the High Court awarded a \$300 million judgment to Kazakhstan Kagazy group, in a major fraud case against its former management and shareholders.
- Kazakhstan Kagazy, is one of Central Asia's largest paper and packaging manufacturers.
- In 2013 it brought a claim against its former shareholder and CEO, Maksat Arip, and former CFO, Shynar Dikhanbayeva.
- The defendants defrauded six companies in the Kazakhstan Kagazy group via the siphoning off of funds used for construction and land acquisition projects.
- All thefts were perpetrated by different companies that were ultimately controlled by the defendants.
- Defrauded funds included those raised in an IPO on the London Stock Exchange.
- The case took over 4 years to litigate and was contested at every point.
- Wealthy fraudsters aim to outspend and drag out litigation, until their victims give up.
- · Here, third-party funding can help by leveling the playing field.
- Harbour Litigation Funding in this instance, demonstrates that funding can sometimes be invaluable for victims of fraud.





