

Does Ireland permit third party litigation funding and alternative fee arrangements?

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Developed legal jurisdictions that wish to attract their location as a centre for dispute resolution have permitted third party litigation funding and alternative fee arrangements. So where does Ireland stand on these?

Ireland for Law, Arbitration Ireland and Dublin International Disputes Week are three relatively new bodies with a common aim: to make Ireland an attractive venue to resolve international disputes. The Irish government, the Bar of Ireland, the Irish Law Society and various Dublin based commercial law firms are backing each body to one degree or another, all with a view to strategically making Dublin an attractive venue.

The Commercial division of the High Court in Ireland, which case manages and fast tracks the hearing of civil disputes, has met international acclaim for judicial efficiency. The Irish High Court is open for international disputes business and increasingly for corporate insolvency and recovery work, aided by the Examinership process. The Arbitration Act 2010 put Ireland on an equal international footing by adopting the UNCITRAL Model Law and the Irish community of arbitrators are in high demand internationally.

Dublin aspires to become a venue for international dispute resolution, such as Stockholm, Vienna and Switzerland before it. Ireland has now taken a step in the right in respect of the current laws restricting third party litigation funding.

Current status

Currently third party litigation funding is prohibited in Ireland, which is subject to the rules/torts of (1) Maintenance (funding of litigation by unconnected parties) and (2) Champerty (funding

of litigation by an unconnected party with a view to sharing profits). Certain exceptions exist such as funding by a third party with a legitimate interest in the proceedings (e.g. shareholders).

These rules/torts stem from centuries old legislation. The Statute Law Revision Act 2007 retained the existence of the torts (by leaving in force the Statute of Conspiracy (Maintenance & Champerty) dating back to the 14th Century and the Maintenance & Embracery Act 1540 and 1634).

The recent Irish Supreme Court case of *Persona Digital Telephony Ltd & anor v. Minister for Public Enterprise & ors* [2017] IESC 27 has made it clear that these torts remain in place and legislation will be required to remove them from the Irish statute book.

Proposed changes

However, change is on the horizon both at national and EU level. In Ireland there is legislation planned to permit third party funding in respect of international commercial arbitration only, amending the Arbitration Act 2010. The proposed legislative changes are included in the Courts and Civil Law (Miscellaneous Provisions) Bill 2022 (the Bill). The Bill is going through the approval stage in the Oireachtas (Irish houses of parliament) and is expected to be enacted in Q2 2023. There is also a report expected from the Law Reform Commission in 2023 on litigation funding generally.

Other fee agreements

Fee Sharing

In Ireland, fee sharing by a solicitor with a person who is not a solicitor may amount to professional misconduct. Regulation 3 of the Solicitors (Professional Practice) Regulations 1988 (SI 1988/343) provides: '*A solicitor shall not agree to share his professional fees with any person, not being either a solicitor or a duly qualified legal agent in another country.*' See also Irish Law Society guidance - [solicitors-guide-to-professional-conduct_4th-edition.pdf](#) (lawsociety.ie).

Contingency Fee

Contingency fees are governed by Section 149 of the Legal Services Regulation Act 2015, which makes it clear that solicitors are not entitled to charge fees expressed as a percentage or proportion of any damages (or other moneys) except in very restricted circumstances.

Uplift Fees

Solicitors in Ireland are prohibited from working on any basis where they are entitled to an uplift on their fees or a percentage of damages.

'No Foal no Fee'

"No Foal, No Fee" arrangements are permissible, however, the advertising of such arrangements is restricted by the Legal Services Regulation Act 2015 (Advertising) Regulations 2020.

The Irish Government has taken steps to level the playing field with other centres for international arbitration, which is welcomed. It will create the environment for more international disputes to be heard in Ireland and contribute to Ireland having its rightful place as a seat of preference for international arbitral disputes. We will see if this is the thin end of the wedge for litigation in Ireland, as presumably the rationale for not extending third party funding to litigation is because government concerns around cases being funded against the Irish State. The sky has not fallen on London or Belfast.

For more information on third party litigation funding, please contact larry.fenelon@ogier.com

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