Funding Options for Civil Litigation: Checklist (UAE)

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A table detailing the various types of fee arrangements available to parties in litigation and arbitration proceedings in the UAE.

Other than traditional retainer-fee arrangements, third-party funding is becoming the most commonly used method of litigation funding, in the UAE. Under a funding arrangement, a third-party funder agrees to pay a party's legal costs for pursuing a legal claim (whether through court litigation or arbitration) in return for an agreed share of any damages awarded and recovered by the funded party.

The use of third-party funding is commonplace in certain Asian jurisdictions and in England and Wales, and the US. In the Middle East, however, third-party funding has not had the same traction because funders have tended to have a negative perception of the certainty and foreseeability of legal court decisions. In fact, most types of litigation funding methods outside of traditional fee arrangements were rarely utilized in the UAE, as they were either unregulated, regulated but untested, or partially regulated and relatively uncertain.

That perception has been progressively changing due to the advancement of the innovative free zone systems in Dubai and Abu Dhabi, and the introduction of new laws that improve the legal landscape:

- In 2017, the Dubai International Financial Centre (DIFC) courts, a Dubai free zone jurisdiction, introduced regulations governing the relationship between "funder" and "funded".
- A year later, in 2018, the UAE introduced a Federal Arbitration Law based on the UNCITRAL Model Law. This new Arbitration Law has gone some way towards improving the rules that apply to arbitration proceedings, thereby creating greater certainty about the enforceability of onshore arbitral awards.
- In 2019, the Abu Dhabi Global Markets (ADGM) courts, an Abu Dhabi free zone jurisdiction, introduced what was regarded a "comprehensive framework" for third party funding of proceedings.
- Most recently in 2022, the Dubai International Arbitration Centre (DIAC), updated its rules to specifically deal with third party funding, disclosure requirements relating to third-party funding arrangement, and circumstances giving rise to conflicts of interest where a party or parties have obtained third-party funding.

The table below sets out the differences between the various types of fee arrangement available to parties in litigation and arbitration proceedings in the UAE, and the advantages and disadvantages of each method. It includes links to related content for further guidance.

Method	Legal Position	Advantages	Disadvantages	Constraints and Challenges
Hourly rate fees	Permissible under UAE law	**No cost-cutting.** A clear advantage of this method of billing	**No cost certainty.** A key drawback is that an hourly fee	A common challenge for lawyers is to

		is that lawyers are incentivized to deliver the best result, allocating the best person for the job without being restrained by having to meet a budget. **Familiarity of billing**. Generally, this type of billing arrangement is perhaps one of the most familiar methods of billing to both clients and lawyers. It tends to be most used in cases where it is difficult to estimate the duration and complexity of proceedings. **Flexible.**This method of billing caters to the ups and downs of proceedings, so that it reflects the level of work required in any given period. It allows for flexibility as workloads increase or decrease. **Enables comparison.** It allows clients to easily compare the rates and therefore level of costs from one firm to another. **Transparency.** Clients can ask to see narratives detailing the work carried out and time breakdowns per fee earner. This is especially useful as it allows clients to see how fees have been incurred. It also ensures that	arrangements risk costs racking up without any visibility for clients for the amount of fees likely to be incurred. A common solution to that is the provision of fee estimates at the outset of a case. While this will not guarantee a certain level of fees, it tends to set the client's expectations as regards the total level of fees to be incurred. **More costly.** Law firms typically charge their time in units of six or ten minutes. As such, a one-minute task will cost a client a minimum of six or ten minutes.	ensure that their hourly charges are reasonable in the context of the overall task, both in terms of its complexity and value.

		the work is being done by lawyers with an appropriate level of seniority and in an efficient manner.		
Fixed fees	Permissible under UAE law	**Cost certainty.** Perhaps the most notable advantage of this method of funding is cost certainty. While it is common practice for fixed fee arrangements to be subject to a number of caveats/conditions/ assumptions, these types of arrangement enable clients and in-house lawyers to control their legal expenditure and ensure that they are incurring fees within any relevant budget. **Encourages efficiency.** In circumstances where legal providers are aware that they are working within a budget, they tend to record time more conservatively and work more efficiently in order to achieve the relevant work product within the allocated budget.	**Inflexibility.** Lawyers may overestimate or underestimate the amount of work involved in a case when proposing fixed fees, which can result in the law firm performing at a loss or the client overpaying for the work. **Suitability.** Fixed fees tend to be more suitable for bespoke tasks such as performing a contract review or completing a transaction, whether it be in relation to real estate, finance, or corporate matters. Fixed fees can be much harder to assess for uncertain types of work such as arbitration and litigation cases, where it is not known how the case will develop and how involved it might be. **Quality.** Some lawyers may not perform the work to the highest possible standard if they feel that they must do the work quickly to ensure that the fixed fee is not exceeded.	It can often be difficult to assess what a fixed fee should be in circumstances where the law firm does not have a proper understanding of the level of work required and the complexity of the legal issues. To address this, law firms will tend to make fixed fees subject to a number of caveats and assumptions. Where these apply, the law firm will tend to seek further fees which can counteract the client's desire for fee certainty.
Conditional or contingency fee agreements	CFAs are legal in UAE onshore court proceedings provided they are	**Incentivises performance.** Conditional fee arrangements	**Restrictive.** Even in circumstances where CFAs are permitted, they	A common issue faced by parties, particularly when entering into

(including damages-based agreements)	not structured to allow lawyers to be rewarded with a share of the proceeds in the event of success rather than by fees incurred. CFAs are permitted in relation to DIFC and ADGM litigation and arbitrations seated in the DIFC or ADGM, provided they comply with certain requirements. In the ADGM, damages-based agreements (contingency fee arrangements) are permitted. However, none of these restrictions apply in cases where third-party funding. arrangements apply.	incentivize lawyers to win a case for their client as in the event of a successful outcome or recovery, the lawyer will be entitled to charge a higher fee. **Credibility of case.** Lawyers will only tend to agree conditional fee arrangements if they are confident about the strength of the client's case, and this can be reassuring for clients to know before they embark on a lengthy dispute.	are still subject to restrictions. For example, in the DIFC, CFAs are permitted only if the lawyer receives an uplift in fees rather than a portion of the proceeds. In the ADGM, CFAs and DBAs are only permitted if they comply with the requirements in section 222 and section 224, respectively, of the ADGM Court Regulations.	CFAs or DBAs in relation to offshore proceedings, is that counterparties seek to challenge decisions on grounds of the relevant fee arrangement between a party and its legal advisors being prohibited as a matter of UAE public policy. These arguments are more likely to succeed in onshore proceedings rather than in offshore proceedings if the CFA/DBA is not carefully structured. In addition, UAE law is silent on whether CFAs and DBAs are permitted in arbitration proceedings seated onshore. It is therefore assumed that the same rules applicable to CFAs and DBAs in litigation proceedings would apply to arbitration proceedings. This presumption is relatively untested and so remains uncertain.
Legal costs and expenses insurance	Both before the event insurance and after the event insurance are permissible under UAE law. The difference between these types of insurance is that "before the event insurance" can only be called on if the insurance policy is in place before the relevant insured event. On	**Minimises risk.** Costs insurance gives clients peace of mind that if they lose the case and have an adverse costs order made against them requiring them to pay the other side's costs, they would have the protection of the insurance.	**High premiums.** Depending on the risk profile of a particular case, the premiums payable for such insurance can be high and not affordable to certain clients. **Limited coverage/ availability.** Legal costs and expense insurance is not always comprehensive.	Litigation Insurance is not particularly common in the UAE as the UAE onshore courts do not award legal costs save for nominal amounts. Litigation Insurance may have a role to play in offshore proceedings before the DIFC and ADGM courts, which are empowered to make adverse cost orders.

	the other hand, “after the event insurance” can be obtained at any time after a dispute has arisen, irrespective of whether proceedings had commenced yet.		Often, insurance policies exclude coverage in certain circumstances (for example manifest error and negligence) or simply do not cover all of the costs incurred, such as a client’s internal costs (for example, costs related to in house counsel engagement, particularly where in house counsel is exclusively tasked to assist with the litigation) and disbursements.	
Third-party litigation funding	Permissible under UAE law	**Risk sharing.** Third-party funding allows a party to pursue a claim without having to pay part of or any of the litigation costs. **Balance sheet.**It allows a party to keep the costs of litigation off balance sheet. **Credible of case.** Securing third-party funding will demonstrate to the opposite party that there is credibility to the claim as funders will only be interested in cases that have a high prospect of success.	**Due diligence.** Funders will need to carry out significant due diligence before deciding whether to fund. This can involve the funder reviewing all of the relevant documents and obtaining independent advice on the merits of the claim. It can be a slow and costly process in the sense that the clients’ lawyers will need to spend significant time in dealing with the potential funder queries. **Sharing success.** The funder will insist on recovering its investment and a sizeable amount of any damages recovered. **After the event Insurance (ATE).** Funders will not tend to cover the risk of an adverse costs order being	More difficult to obtain for onshore proceedings in the UAE due to the lack of case law precedent and uncertainty over the outcome and the likeability of enforcement of a favorable judgment.

			made in DIFC and ADGM proceedings and clients may therefore need to secure ATE insurance to cover this risk. The premiums for such insurance can be high.	
Legal Aid	Permissible under UAE law	**No financial risk.** The most obvious advantage of this type of funding is that the litigating party is not liable or responsible for any of the funding. As such, a client is not exposed to any financial risks associated with litigation proceedings.	**Will take time to procure.** This type of funding is subject to approval by various bodies and organizations (particularly those that ultimately cover the costs of litigation). As such, similar to third-party funding, it takes time to procure. **Limited availability.** This type of funding is only available in limited circumstances and is subject to the satisfaction of very specific criteria.	Legal aid tends to only be available to underprivileged individuals. Aid to businesses is not commonplace and so this method of funding is not generally available in most circumstances. However, pro bono schemes are available through either the Dubai Legal Affairs Department or the DIFC Academy of Law in certain circumstances, usually depending on the type of claim and parties involved.

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