

Practice Direction No. 2 of 2017 on Third Party Funding in the DIFC Courts

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March 14, 2017 Practice Directions

PRACTICE DIRECTION NO. 2 OF 2017

Citation:

This Practice Direction will come into effect on the date of signature. It may be cited as “Practice Direction 2 of 2017 – Third Party Funding in the [DIFC Courts](#)

” and may be abbreviated to “PD 2/2017”.

1. This Practice Direction sets out requirements to be observed by “Funded Parties” in respect of their relationships, interactions and contracts with “Funders” concerning legal “Proceedings” in the DIFC Courts.

2. In this Practice Direction, unless the context or subject matter otherwise requires, words or phrases will have the following meanings:

a. A “Funded Party” means a party to Proceedings before the DIFC Courts who or which has entered into a Litigation Funding Agreement with a Funder.

b. An “Associated Law Firm” means a law firm, including any single Associated Lawyer, representing a Funded Party before the DIFC Courts which is registered to act before the DIFC Courts, under the Register of [Practitioners](#)

of the [DIFC](#) Dispute Resolution Authority’s Academy of Law, and is thus bound by the Mandatory Code of Conduct for Legal Practitioners in the DIFC Courts.

c. An “Associated Lawyer” means any individual lawyer representing a Funded Party before the DIFC Courts who is registered to act before the DIFC Courts, under the Register of Practitioners of the DIFC Dispute Resolution Authority’s Academy of Law, and is thus bound by the Mandatory Code of Conduct for Legal Practitioners in the DIFC Courts.

d. A “Funder” means a person or entity independent from the Funded Party and the Associated Law Firm, including a parent entity, subsidiary entity or group of entities, that provides Funding towards the Proceedings.

e. “Funding” means any form of financial assistance which potentially confers to the Funder an economic benefit which is linked to the outcome of the Proceedings, including but not limited to receiving a share of the Proceeds.

f. A “Litigation Funding Agreement” or “LFA” means an agreement entered into between a Funder and a Funded Party relating to the Funding of the Proceedings.

g. The term “Proceeds” means all pecuniary advantages, in particular all financial gains (including interest) and all property gains which a Funded Party receives as a result of the [Courts](#)

’ or any other official judgment, a [Court](#) approved or out-of-[court](#) settlement or an admission or as otherwise defined or described in the LFA.

h. The term “Proceedings” shall mean any proceedings involving the Funded Party for resolving disputes filed in the DIFC Courts whether commenced or contemplated.

3. This Practice Direction is without prejudice to any subsequent determinations of the DIFC Courts regarding LFAs in general or any specific LFA in particular (or any part thereof).

4. A Funded Party who enters into an LFA in respect of Proceedings must put every other party to the relevant dispute on notice, in accordance with subsection (5) and (6), of the fact that he has entered into an LFA in respect of the relevant Proceedings. For the avoidance of doubt, this subsection (4) requires disclosure of the Funder’s identity but does not require disclosure of a copy of or any part of the LFA unless the Court orders otherwise.

5. For Part 7 claims, notice under subsection (4) must be given:

a. In the Case Management Information Sheet to be submitted prior to the Case Management Conference (CMC), pursuant to RDC 26.3; or

b. When the Funded Party enters into an LFA after the CMC, within 7 days of the date of the LFA. Such notice shall be in writing and shall be served on every other party to the relevant Proceedings as well as the DIFC Courts’ [Registry](#)

6. For all other types of claims, written notice under subsection (4) must be served on all other parties to the relevant dispute, including the DIFC Courts’ Registry:

a. Where Proceedings have yet to be commenced, as soon as practicable after the commencement of such Proceedings including within the Claim Form or Particulars of Claim if appropriate; or

b. Where the LFA was entered into after the commencement of Proceedings, within 7 days of the date of the LFA.

7. For claims made in the Small Claims [Tribunal](#)

, notice pursuant to subsection (4) is not required unless and until such claim is transferred or appealed to the Court of First Instance, at which time subsection (6) will come into effect as appropriate.

8. The DIFC Courts may take into account the fact that a party has disclosed that it is a Funded Party when making determinations on applications for security for costs, but the fact that a party is a Funded Party shall not by itself be determinative.

9. The DIFC Courts have inherent [jurisdiction](#)

to make costs orders against third parties, including Funders, where the Court deems it appropriate given the circumstances of the case.

10. This Practice Direction applies to Proceedings commencing on or after the date of the issuance of this Practice Direction.

Dated this 14 day of March 2017

Michael Hwang

[Chief Justice](#)

of the DIFC Courts