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ON THE RISE: THIRD PARTY FUNDING IN THE MIDDLE EAST

In this edition of Vannin Capital's In Conversation Series, New York Managing Director, Carolina Ramirez discusses the rise of litigation funding in the Middle East, with Meriam Al-Rashid, Litigation Partner at Dentons in New York.

Carolina Ramirez (CM): How would you describe the current legal finance market in the Middle East?

Meriam Al-Rashid (MA): Currently, litigation finance or third party funding ("TPF") in the Middle East is on the rise, spurred on by legal developments in arbitration centers throughout the region. The growth of free-zone jurisdictions with common law systems in the United Arab Emirates ("UAE") has been a particular boost to international businesses looking for funding alternatives. Take the Dubai International Financial Centre ("DIFC"), for example. The DIFC is a financial free zone within Dubai, governed by its own autonomous and independent judicial system. The DIFC is based on the common law system and has jurisdiction over civil and commercial matters. In 2008, the DIFC passed the DIFC Arbitration Law, largely adopting the UNCITRAL Model Law as the basis of its arbitration law. Under the law, any party can choose the DIFC as its seat of arbitration (previously only parties physically located

in the DIFC could arbitrate there). This has made it an appealing venue for claimants looking to bring an arbitration in the Middle East.

The DIFC has used TPF to incentivize entities to bring their claims to the region. On 14 March 2017, the DIFC issued Practice Direction 2 ("Practice Direction"), which specifically addressed TPF. Funded parties who enter into a Litigation Funding Arrangement ("LFA"), as required by DIFC Courts, must disclose the fact that an LFA has been entered into along with the identity of the funder. Under this Practice Direction, DIFC Courts can also take sources of funding into account when deciding on security for cost applications. This means that funders might be liable for adverse cost orders, regardless of whether they were involved in management of the case or not. However, in a nod to maintaining confidentiality, the Practice Direction does not require funded parties to disclose the terms of their underlying funding agreement.



UNTIL VERY RECENTLY, TPF WAS RESERVED FOR MAJOR ARBITRATION HUBS IN THE UNITED KINGDOM, UNITED STATES, AND AUSTRALIA. BUT THE PAST FEW YEARS HAVE SEEN MUCH GROWTH IN LITIGATION FINANCE ALL OVER THE WORLD.

This Practice Direction puts the DIFC Courts ahead of the curve by setting up rules, albeit soft rules, on TPF. There are many benefits to having these rules. They incentivize claimants to seek reassurance from funders that they are good for their money without scaring away third-party funders. The rule helps to provide some modicum of certainty and a level of comfort for all the parties in the case by creating transparency with respect to non-party financial stakeholders with interests in a claim. Knowing that a claimant is being funded can be an important factor in how parties address a dispute and conduct the litigation.

Likewise, the Abu Dhabi Global Market ("ADGM") issued regulations expressly permitting TPF and outlining procedures to be followed for claims before the ADGM Courts. The ADGM regulations in many

ways echo the DIFC Practice Direction in that they, too, require only that a funded party disclose the fact that the party is funded. The party does not need to disclose the underlying funding terms. Also, the ADGM regulations expressly provide that agreements will not be unenforceable just because they involve litigation funding.

CM: When did third-party funding really come into play in the region?

MA: Until very recently, TPF was reserved for major arbitration hubs in the United Kingdom, United States, and Australia. But the past few years have seen much growth in litigation finance all over the world. For example, in March 2017, Singapore enacted The Civil Law (Amendment) Act of 2017 (the "Act") and Civil Law (Third Party Funding) Regulations of 2017 (the "Regulations"). Under the Act and accompanying

Regulations, TPF agreements with qualifying third-party funders are no longer illegal and unenforceable under Singapore law, so long as funding is provided for an international arbitration and/or related court or mediation proceedings. The Regulations stipulate that eligible third-party funders must (1) carry on the "principal business" of funding dispute resolution proceedings in Singapore or somewhere else, and (2) have a paid-up share capital of at least SGD 5 million.

Likewise, TPF in the Middle East has generated increased interest only in the last few years. While there has never been any prohibition against TPF in the Middle East, it has, nevertheless, been slow to grow.




CM: What is the growth potential for the industry?

MA: We anticipate that the use of TPF will grow together with the sophistication of claimants who know how TPF can help them to manage their costs and offset legal risk. There was a time when TPF was primarily thought of as a means for claimants without resources to bring meritorious claims that they otherwise would have been unable to due to a lack of funding. However, TPF also provides a means for large, sophisticated companies to bring claims. They can now use their resources for on-going business operations rather than siphoning off those monies for legal fees in lengthy proceedings.

The Practice Direction passed by the DIFC last year is a clear sign that the DIFC Courts have accepted and recognized the trend for TPF as a feature of modern commercial litigation. As the Middle East continues to attract claimants, regional institutions like the DIFC that take proactive but soft measures like the Practice Direction signal that that these forums will be attractive locations for arbitration.

As more claimants pick Middle Eastern locations as seats of arbitration, I expect to see an increase in both the use of TPF and the establishment of rules to regulate TPF. Arbitration is becoming a more popular means of dispute resolution throughout the region, especially for large-scale complex disputes. For example, the DIFC handled a total of USD 1.59 billion of cases last year, a five percent increase from 2015 and has seen consistent growth in its caseload.

Like the DIFC and the ADGM, the Dubai International Arbitration Centre ("DIAC") is set to publish revised rules within the next few months. Although the rules have not yet been finalized, word is that they, too, will include provisions regarding TPF.



COMPLIANCE WITH SHARIAH IS PART OF PUBLIC POLICY IN SAUDI ARABIA AND THE ENFORCEMENT OF AWARDS IS POSSIBLE ONLY IF IT DOES NOT VIOLATE GENERAL PRINCIPLES OF SHARIAH BASED ON THE QURAN AND LONG TRADITIONS OF ASSOCIATED SCHOLARLY WRITING.

CM: What is the interaction between the US legal market and the Middle East in terms of culture and how does funding fit into this?

MA: The biggest cultural difference to navigate is the need to comply with Shariah law in the Middle East. For example, compliance with Shariah is part of public policy in Saudi Arabia and the enforcement of awards is possible only if it does not violate general principles of Shariah based on the Quran and long traditions of associated scholarly writing. That said, sophisticated claimants, and their funders, should be aware of how Shariah law affects their claims. TPF, in and of itself, is not an issue under principles of Shariah law since it is seen as acceptable for an unrelated party to take an economic interest in a case.

However, the enforcement of some specific awards may be an issue under Shariah law. In Saudi Arabia, for example, courts may uphold awards or parts of awards that do not violate Shariah principles relating to alcohol, tobacco, gambling, or narcotics. They are not obligated to set aside the entire award. Nevertheless, for a claimant looking to enforce an award (and perhaps using TPF to do so), this begs the question of why a claimant should select a Middle Eastern jurisdiction to enforce its award, a decision that depends on many factors including, importantly, where assets are located, which parties and their subsidiaries are associated with the relevant claim and award, et al. That in itself is a whole other discussion.

CM: What are the benefits of third party funding for clients?

MA: The benefits for clients are wide-ranging. TPF might enable a potential client to bring a meritorious claim that they otherwise would be unable to due to lack of resources. TPF therefore provides access to justice where the complex nature of disputes and expense of long-term litigation deter claimants from initiating arbitration. For those clients who can otherwise afford bringing claims, TPF provides a valuable tool in the client's risk management arsenal. For these clients, TPF allows the client – say, a large multi-national company – to spend monies on the continued growth of its business rather than having to funnel those funds to an arbitration that might not even be successful.

A third party funder might be willing to fund all or part of a dispute in return for some of the damages recovered through a subsequent award or settlement. This can be particularly beneficial in those cases that pose a higher risk of loss. Additionally, since third party funders will only want to fund claims that they think will succeed, the funder's decision to provide funding suggests that it has independently determined the claim's likelihood of success.

Notably, with the rise in TPF there has also been increased sophistication in TPF. Today, TPF is not merely used for funding claimants but offers a broader array of uses, including funding options for respondents, litigation portfolio financing, and the potential to use litigation assets as collateral for general business financing. This means that not only are resources no longer being tied up, but it may not be necessary to wait until a final award has been enforced to get access to funds.



BIOGRAPHIES



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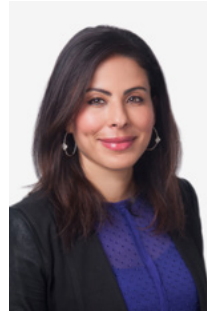
Carolina Ramirez works with law firms and claimants on how third-party funding can be pursued and utilised across a broad range of high-value commercial litigation disputes. Based in New York, her role focuses on identifying and providing a full appraisal of disputes that Vannin will consider for funding, as well as monitoring disputes that Vannin has committed to fund.

Prior to joining Vannin Capital, Carolina was a Senior Associate at Dentons US LLP. At Dentons, Carolina's litigation practice focused on representing clients in government investigations and litigation with a primary focus on violations of the Foreign Corrupt Practices Act. She conducted internal investigations of domestic and multinational organisations and assisted clients with the creation of industry-specific anti-corruption compliance programs.

Previously, Carolina was a member of the commercial litigation team in the New York office of White & Case LLP working on a variety of general commercial claims across a multitude of different industries.

Carolina earned her J.D. from the University of Pennsylvania Law School where she was a member of the International Law Organization and the Latin America Law School Association. She studied abroad in the spring of 2009 at the Tel Aviv University Law School and holds a B.A in International Relations. She also serves on the Penn Law Board of Overseers and is a member of the junior board of New York Lawyers for Public Interest.

Carolina is admitted to practice in New York and is fluent in Spanish.



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Meriam is a member of Dentons' Litigation and Dispute Resolution practice group where she focuses on international investment and commercial arbitration and risk management, covering various industries across the globe, including infrastructure, oil and gas, mineral resources, hospitality and real estate.

Her experience includes participation in arbitrations before the International Centre for Dispute Resolution (ICDR), London Court of International Arbitration (LCIA), United Nations Commission on International Trade Law (UNCITRAL), International Chamber of Commerce (ICC), and the International Centre for the Settlement of Investment Disputes (ICSID) and the Permanent Court of Arbitration (PCA) at The Hague.

Meriam has served as counsel in disputes and transactions involving parties from Libya, South Korea, the United Arab Emirates, the Arab Republic of Egypt, Iraq, Lebanon, the Republic of Turkey, the Republic of Kazakhstan, the Republic of Uzbekistan, the Czech Republic, Ireland, Romania, Austria, Rwanda, Ethiopia, the United Kingdom, Canada, and the United States. Meriam also acts as arbitrator on commercial and investor-state disputes primarily involving parties from the Middle East and North Africa.

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About Vannin Capital

Established in 2010, Vannin Capital is the global expert in legal finance, supporting law firms and corporations in the successful resolution of high-value commercial disputes.

From single case funding, to portfolio finance and enforcement arrangements, we offer creative capital solutions that are tailored to our clients' needs.

Our global team of legal and financial experts cover the key commercial litigation and arbitration centres from our offices in London, Jersey, Paris, New York, Washington, Sydney and Melbourne. More than just capital, we combine global experience with local knowledge to deliver the highest standard of service and expertise to our clients around the world.

A market leader, we are a member of the Association of Litigation Funders of England and Wales (ALF), conducting our business to the highest standards in line with its code of conduct.

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