

Bermuda

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Q. Are lawyers able to enter into contingency / damages sharing agreements with clients?

No. These are prohibited by the Barristers' Code of Professional Conduct 1981, Rule 96. The Bar Council has proposed allowing conditional/contingent fee structures however no steps have been taken to do so thus far.

Q. Recoverability of client costs and/or success fees?

As a general rule costs follow the event i.e. loser pays. Success fees are not recoverable.

Q. Can a Defendant obtain an order for security for costs?

Yes. The Court may order security for costs where it appears to the Court that: (1) The plaintiff resides abroad; (2) The plaintiff is suing in a nominal capacity on behalf of someone else and may not be able to satisfy an order for costs; or (3) The plaintiff has changed address with a view to evading the consequences of the litigation, or the address in the Writ is incorrect. Such security can in theory be dealt with by obtaining an insurance policy / third party funder indemnity.

Q. How active is the Court costs management? Are cost budgets required?

Not at all. Cost protection orders are available in limited cases of public interest, where the party has no financial interest in the outcome of the case and would otherwise not bring the case if they were to be exposed to costs orders.

Q. Is Third Party Funding of disputes available?

Yes, for both litigation and arbitration, Claimants and Defendants. However, such funding arrangements are presently uncommon with no developed or developing market for third party funders.

Q. Is it necessary to notify an opponent of any Third Party Funding arrangements?

No.

Q. Is there any applicable code of conduct /regulation for Third Party Funders?

There is no code of conduct. In principle there is no reason why third party funders cannot control a case, although in practice it has not been experienced in Bermuda. There are presently no restrictions on the types of cases that can be funded or any areas typically avoided.

Q. Are Third Party Funders at risk of costs awards in the event a funded claim is unsuccessful?

Yes.

Q. Is insurance for legal costs available?

Yes, for both litigation and arbitration. However, such arrangements are presently uncommon.

Q. Is there any applicable code of conduct /regulation for insurers?

There is no code of conduct.

Q. Are any other claim financing / insurance arrangements available to a Claimant?

Yes, although such arrangements are very rare.

Q. How technologically equipped is your Court system e.g. paperless / live transcripts / touch screen technology etc?

They tend to be lagging behind in these areas.

Q. Are any or all of the following available: e-filing; on-line access to the court docket/file; smart-phone applications to assist court interactions?

No.

Q. Are Judges available 24/7?

No.

Q. Are interim/interlocutory hearings heard by telephone conference / Skype / Video conference ?

The courts have the capability, although in practice it never occurs.

Q. Is evidence at trial capable of being by Skype / Video conference ?

In civil and commercial trials where both sides have given consent.

Q. What is your court's views on the use of e-disclosure technology?

E-disclosure is permitted and encouraged if it will save time and costs. There is no view presently on the use of technology assisted review solutions such as predictive coding.

Q. How widespread is the use of technology aided review tools such as predictive coding?

Clients and parties to disputes are yet fully to embrace such technology. Similarly it is not yet typically used by law enforcement or regulators.