

Cayman Islands

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

No, contingency fee agreements are unlawful. However, it is lawful for lawyers to enter a fair and reasonable conditional fee arrangement for an increase in fees to reflect the nature of the risk undertaken by counsel in accepting a case without the assurance of receiving payment.

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

The Court may order that costs (including attorney's fees, court fees, expert witness fees, travelling expenses for witnesses, and any other expense reasonably incurred by an attorney during the course of the litigation not included in the attorney's fees) are recoverable from an unsuccessful party. However, there are various restrictions on recoverability and it is rare that a client's full costs would be recoverable. For instance, foreign attorneys' fees are generally not recoverable. The Arbitration Law 2012 provides that every arbitration agreement shall be deemed to include a provision that costs awards shall be in the discretion of the arbitral tribunal (unless the contrary is stated).

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

Yes. Where a plaintiff may be unable or unwilling to satisfy a costs order a defendant can apply to court for an order that the plaintiff provide security for costs. Generally such an order requires the plaintiff to deposit an amount with the Court. The Court has previously found that an ATE insurance policy obtained after security for costs was ordered did not constitute acceptable security (in that case it was relevant that the policy was with a UK insurer with no assets in the Cayman Islands). However, if ATE insurance is obtained prior to any security for costs orders the Court will take it into account.

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

There are no requirements to file costs budgets in advance. However, after costs orders are made, if parties do not agree on costs, the Taxing Officer (a court official) may be called upon to review a detailed bill of costs from the party claiming costs and to assess the reasonableness of the claim. The Taxing Officer may consider written submissions and may also request further information. The Taxing Officer will then issue a costs certificate setting the amount to be paid. Either party may apply to Court to review the Taxing Officer's decision. A Judge then may request further evidence/submissions. A party may still appeal the Judge's decision to the Court of Appeal. However, leave to appeal will only be granted in limited circumstances

Q. Is Third Party Funding of disputes available?

Yes. Third party funding is often utilized in official liquidations. 2017 case law has provided helpful guidance on features to be included in litigation/arbitration funding arrangements to ensure they are lawful. This may now encourage more parties (including outside of liquidation matters) to consider Third Party Funding options (A Company v A Funder (unreported, 23 November 2017)). Presently third party funders who fund Cayman Islands litigation tend to be based in other jurisdictions, such as the UK and the United States of America.

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

There is no requirement that the Court or an opponent must be notified of Third Party Funding arrangements.

However, liquidators must request the Court's sanction to agree them given their duties to the Court.

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

There is no code of conduct. However, the Court is unlikely to approve of any third party agreement which allows a third party funder to control litigation, as such control may have a tendency to corrupt public justice.

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

Costs orders against non-parties are rare, but within the wide discretion of the Court. Where a non-party funds the proceedings, is substantially responsible for them and they are ultimately unsuccessful, the Court may require that party to pay the successful party's costs. This is particularly so if the Court considers that the third party funder is the "real party" to the litigation (In re Primeo Fund (unreported, 1 August 2017)).

Q. Is insurance for legal costs available?

Yes, but obtaining insurance in respect of arbitration claims and after the event insurance are both uncommon. There is no established local market for insurance for legal fees, but it is not barred and so it may, in principle, be possible to obtain elsewhere. Accordingly, insurers tend to be based in other jurisdictions e.g. the UK and the United States of America.

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?

In principle yes (to the extent that they do not constitute an offence under the common law rules of maintenance and champerty) but such arrangements are not readily available in the Cayman Islands.

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

Many of the Cayman Islands courtrooms have video teleconference facilities. Screens for e-trials, paperless trials and touch screen technology are not provided. Parties can arrange live transcripts of trials.

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. The Court has though recently announced that they will start trialling an e filing system.

Q. Are Judges available 24/7?

No.

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

Yes. The Court has video teleconference facilities. It is not uncommon for overseas Judges to hear urgent interim applications via video teleconference, while counsel attend the Court in the Cayman Islands.

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

Yes.

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

The Court is generally supportive of parties using technology to identify relevant electronic documents.

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

While e-discovery platforms are common in large litigations and familiar to law firms, many clients/parties are not as familiar. As parties/Courts become more comfortable such products will become more common.