

Economic impact of COVID-19 and monetising legal assets

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The extent of the economic impact of the COVID-19 pandemic is likely to be uncertain for some time. According to the Organisation for Economic Co-operation and Development (OECD), containment measures introduced around the globe to slow the spread of the Coronavirus have led to “many businesses being shut down temporarily, widespread restrictions on travel and mobility, financial market turmoil, an erosion of confidence and heightened uncertainty”. OECD estimates published in late March indicate that these measures will directly affect sectors amounting to up to one third of GDP in the major economies and many economies will fall into recession. In mid-April, the International Monetary Fund published its latest World Economic Outlook update on the global economy. It confirmed there is extreme uncertainty around the global growth forecast but projected the global economy to contract sharply by -3 percent in 2020, much worse than during the 2008 – 2009 financial crisis.

While the containment measures are undoubtedly necessary, businesses in all regions around the world and in many different sectors are being affected. These include retail and wholesale trade, professional and real estate services, construction, transportation, tourism and hospitality.

In a recent publication, a leading international law firm described some of the legal issues that businesses will face:

"The COVID-19 crisis has set in train a cascade of events that will impede, delay or prevent performance of many contracts in the coming months. Businesses are likely to face pressure from many directions: shortages of materials, shortages of staff, limitations on movement of personnel, restrictions on conducting operations, other legislative and administrative actions, and the insolvency of contractors, subcontractors and suppliers, to give only what is ultimately likely to be a limited set of examples. Through no fault of their own, many will find themselves in a position where it is impractical to perform some or all of their contractual obligations and where they will be forced to seek, by whatever means they can, temporary or permanent relief from performance."¹

Liquidity management

Prior economic crises have been followed by an immediate need to decisively manage liquidity. It is clear that this pandemic may cause a similar requirement for many businesses to manage liquidity, even if they are well-capitalised.

As insolvencies are first and foremost a liquidity issue, an increase in the number of bankruptcies in our economies may be unavoidable. This is typically followed by:

1. A short to medium term increase in unemployment.
2. A reset of risk pricing with the cost of risk typically going up significantly, and often disproportionately for higher (perceived) risks.
3. A reduction of asset values, with the riskiest assets disproportionately impacted.
4. A short-term total loss of demand for any risk assets.

What can we do to help as dispute funders?

In this challenging and uncertain environment almost all businesses, large or small, will need to conserve cash and consider ways to access liquidity. There is no magic bullet, but dispute resolution finance is one potential source of liquidity. While businesses are likely to face a range of new commercial disputes, there will be little room in budgets to pursue legal claims and seek recoveries that may sustain them through the economic downturn.

Litigation or arbitration outcomes lie in the future and are inherently uncertain. A professional funder will be able to help assess these outcomes and, on that basis, provide a financing solution that lowers liquidity pressure using an asset that may otherwise be overlooked.

Monetising legal claims

How does it work? By using external funding to finance the costs of a dispute (including lawyer and expert fees, court costs, arbitration related fees, adverse cost protection, where applicable), legal claims are leveraged as assets. This means the funder pays some or all of these costs in return for a share of the outcome. In this way businesses can improve liquidity, maintain cash on the balance sheet and transfer all or a portion of the legal expenses to the funder. Legal claims can also be monetised by selling them, in whole or in part, to the funder.

Unlike traditional forms of finance, dispute resolution finance is non-recourse. This means that the funder receives a return on its investment only in the event of a successful recovery from the litigation or arbitration. If the case is lost, the funder receives nothing, i.e. no repayment is required of any of the funded costs or purchase price of a claim. Therefore, the risks of pursuing the claim are also transferred to the funder.

If the claim is successful, revenue can be recorded by the business without having incurred any downside costs or risk along the way. Dispute resolution finance therefore helps transform litigation or arbitration from an expense into a cash-generating asset. And the funding provides opportunities for substantial recoveries without negatively affecting profitability along the way.

Some professional funders have specific in-house enforcement expertise that may also increase the likelihood of success. For example, if a business has an unpaid judgment or arbitration award against an unwilling but able debtor, such as a foreign sovereign or business, a dispute funder with asset tracing and strategic enforcement know how, can significantly enhance the prospects of a recovery. Often businesses are unaware of the potential measures that can be taken to pursue payment, but which may be very welcome and worth considering in these difficult times.

Dispute resolution funding for businesses

What are the options for corporate decision makers to consider? We are here to help, and our funding arrangements are flexible and can be tailored to the needs of the business. The solutions include:

- Cash-flow management and corporate finance:** Businesses are able to leverage the value in their contingent arbitration or litigation assets by seeking funding in the form of a capital advance, with no corresponding balance sheet liability. In some cases, the combined value of a claim or portfolio of claims may be used to secure funds, not only for legal expenditure, but also for general business purposes or simply to declare as profits². For example, in one recent transaction, we provided an energy company with a working capital facility to enable it to fund new projects, with the returns to be repaid by a pending arbitration claim.
- Funding for enforcement of debts, awards and judgments:** Omni Bridgeway is a specialist in assisting debt/judgment/award creditors with enforcement, where payment has not been made by a debtor who is unwilling but capable of paying. Enforcement management services include asset tracing, formulating the strategy of enforcement and execution (possibly of multiple and simultaneous global enforcement processes), all on a funded success fee only basis. For example, Omni Bridgeway (in partnership with IFC / World Bank) is helping banks in the Middle East recapitalise their balance sheets via recovery of non-performing loans from defaulting debtors (see [here](#) for more details of the MENA DARP project).
- Sale of legal assets:** Alternatively, the debt, judgment or award, and certain other claims such as insolvency claims, can be sold to the funder via an assignment, which is a quick way of returning cash to the business.
- Portfolio funding:** Many businesses have more than one potentially valuable claim. With a few meritorious cases to pursue, a business can work with a funder to create a portfolio of bundled cases that allows the business and funder to further manage risk and keep the cost of capital down. The funder's return and its costs of funding each of the cases in the portfolio can be recovered from those cases that are successful. As the risk is spread over the portfolio, the overall cost of funding to the funded business is generally reduced. Portfolio arrangements may also allow the business to pool together cases that may not provide sufficient monetary value to secure funding on a stand-alone basis, including the funding of defence costs.

² Report of the ICCA-Queen Mary Task Force on Third-Party Funding in International Arbitration, April 2018 (International Council for Commercial Arbitration), page 38.

- **Cost-sharing basis:** Funding arrangements can be structured to suit the needs of the business. For example, the funder pays 50% of the legal fees and other expenses associated with the arbitration or litigation in return for a discounted fee or share of any sum recovered. Therefore, the business pays only 50% of the costs and receives a greater share of the recovery than if it was receiving full funding.
- **Funding for law firms:** The business model of most law firms depends on prompt payment of bills by clients. If external events prevent the clients from paying, a squeeze can result. Funders can help in several different ways, including taking over the funding of existing cases, and providing working capital loans direct to the firm to be repaid out of future billings.

Stronger financial results

Faced with severe disruption, highly constrained operating environments and an uncertain economic outlook, many businesses will need to consider alternative sources of liquidity. By partnering with an experienced, transparent and reliable funder, businesses can monetise their litigation or arbitration assets and turn legal claims into a revenue source that boost – rather than diminish – the bottom line.



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About Omni Bridgeway

Omni Bridgeway is a global leader in dispute resolution finance, with expertise in civil and common law legal and recovery systems, and operations spanning Asia, Australia, Canada, Europe, the Middle East, the UK and the US. Omni Bridgeway offers dispute finance from case inception through to post-judgment enforcement and recovery. Since 1986 it has established a proud record of funding disputes and enforcement proceedings around the world.

Omni Bridgeway is listed on the Australian Securities Exchange (ASX:OBL) and includes the leading dispute funders formerly known as IMF Bentham Limited, Bentham IMF and ROLAND ProzessFinanz. It also includes a joint venture with IFC (part of the World Bank Group).

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