

## Asian Companies Are In the Market for Litigation Funders for Corporate Financing

The pandemic has created the perfect storm for funders. To create more liquidity, companies are either filing or dusting off claims and collecting on judgments and awards.

By Jessica Seah | October 29, 2020

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*Credit: Richard Mia*

As businesses around the world seek alternative funding options to manage cash flow and liquidity risks, an increasing number of corporations in Asia are turning to litigation funding as a viable corporate finance tool.

Singapore permitted the funding of international arbitration when it amended its Civil Law Act in 2017 but since then, progress in the litigation funding space has been slow. Most funders invested in traditional impecunious claims, but the more sophisticated utilization of the resource—including for corporate financing and the funding of portfolio disputes—had for several years been a foreign concept to companies in the region.

It was only last year that litigation financier Omni Bridgeway worked with Stephenson Harwood on funding Singapore's first dispute portfolio. The client was a Malaysian corporation that was looking to list and was therefore keen to keep its balance sheet clean in order to appeal to investors.

Since the pandemic, the insolvency sector has seen an increase in applications to courts for approval on third-party funding. In Singapore, that surge has in part also been driven by the country's recent overhaul of

its insolvency legislation. In July, the city-state enacted a new Insolvency, Restructuring and Dissolution Act, which consolidated corporate and personal insolvency and restructuring laws into one single law.

“I feel like we’ve jumped straight to the point of funding more sophisticated clients now,” said Tom Glasgow, Singapore-based Asia chief of investment at Omni Bridgeway. “The majority of our cases here now involve using litigation funding as a corporate finance tool to offset risks and manage cash flow.”

Previously, Omni Bridgeway had mostly been working with South Korean companies, but since the pandemic, it has seen significant activity and direct contact from Southeast Asian clients. According to Glasgow, 60% to 70% of the firm’s work comes directly from corporations and the rest are referrals from law firms.

The pandemic has created the perfect storm for funders. Ongoing disputes, private equity investments and M&A agreements are at risk, given the current economic climate, and many major infrastructure and oil and gas projects in Southeast Asia have also suffered delays. To create more liquidity, corporations are either filing or dusting off claims and collecting on judgments and awards. According to Glasgow, these issues will drive sophisticated funding opportunities for the firm for at least the next five years.

Portfolio funding works particularly well for companies in Southeast Asia, where disputes are typically less than \$10 million—the threshold at which funders will consider providing funds. “We tend to look for cases with a 10-to-1 ratio so if a claim is for \$10 million, then the costs will have to be less than \$1 million. After all the costs are covered, there will still be enough for clients to recover,” Glasgow explained.

There are only a handful of litigation funders on the ground in Singapore, including Omni Bridgeway and Woodsford Litigation Funding. In June, Woodsford added Franca Ciambella, former general counsel at Tyco International, as a consultant in its Singapore office.

In order to seize the onslaught of insolvency matters, funders on the ground will need to reinvent themselves, said Glasgow. Omni Bridgeway is considering taking on the role of creditor in Singapore, purchasing debt and using the insolvency process to recover.

“It’s a bit different from the traditional litigation funding model but it’s certainly complementary and we’ve been building out investment management skills to deal with those kinds of situations.”

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