

Omni Bridgeway supports litigation funding licensing proposal

Summary

- **Federal Government proposal for litigation funders to be licensed welcomed**
- **Reforms consistent with Omni Bridgeway's support for increased regulation of litigation funding in Australia**
- **Omni Bridgeway proposes to reapply for an Australian Financial Services Licence**

Omni Bridgeway Limited (Omni Bridgeway) welcomes the proposal outlined by the Federal Government today to require all litigation funders operating in Australia to hold an Australian Financial Services Licence (AFSL) and to conduct class actions in compliance with the managed investment scheme (MIS) regime.

The proposed reform is in line with Omni Bridgeway's long-standing support for increased regulation of litigation funding in Australia. In its ASX announcement of 14 May 2020, Omni Bridgeway reiterated its recommendation for the introduction in Australia of "a licensing regime for litigation funders that would include minimum onshore capital adequacy requirements, disclosure obligations and reporting standards".

Omni Bridgeway previously held an AFSL until April 2013, when the company was required to hand back its licence following the exclusion of litigation funding from the AFSL regime. Omni Bridgeway intends to reapply for an AFSL at the first opportunity should the foreshadowed legislative changes come into effect. Omni Bridgeway will comply with the requirements of the MIS regime.

Omni Bridgeway believes any licensing requirements should be extended to law firms who act as funders of class actions, under no win no fee arrangements or pursuant to the proposed Victorian legislation to permit law firms to charge contingency fees, if adopted. This would be consistent with the requirement for such law firms to provide security for costs in the action and be liable for adverse costs should the action be unsuccessful given that they are acting as both funder and lawyer.

Coupled with the High Court's 2019 ruling that the courts do not have the power to make common fund orders (at least at the early stages of the proceedings), Omni Bridgeway believes the Government's proposals are likely to result in the end of 'open' class actions – a development the company supports in the interests of ensuring that only class actions genuinely supported by claimants proceed.

Consistent with the Federal Government's concern for companies managing the effects of the COVID-19 pandemic, Omni Bridgeway's 14 May ASX announcement included support for a six-month moratorium on new class actions that are associated with COVID-19-related disclosures.

Shareholder class actions are a declining proportion of Omni Bridgeway's international portfolio, with only five currently funded by the company in Australia and no new shareholder class actions commenced in Australia in the past 12 months.

While empirical evidence has shown that there has been an increase in the number of class actions brought and funded in Australia in recent years, that evidence does not support recent media claims of an explosion of class action activity. However, as noted in the company's 14 May announcement, Omni Bridgeway believes additional regulation of the litigation funding industry would improve the class action system, deliver better outcomes for all participants and prevent opportunistic and unnecessary litigation.

Omni Bridgeway will be providing a submission to the Parliamentary Joint Committee on Corporations and Financial Services inquiry into litigation funding and the regulation of the class action system.

Omni Bridgeway background

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 has built its reputation as a trusted provider of funding solutions and offers end-to-end dispute finance from case inception through to post-judgment enforcement and recovery.

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