THE THIRD PARTY LITIGATION FUNDING LAW REVIEW

Editor
Leslie Perrin

THE LAWREVIEWS

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PREFACE

Just as you start to think it might be safe to assume that everyone who needs to understand third party funding of litigation and arbitration really does understand it, you stand, as I did the other day, in one of London's finest clubs chatting socially to a Circuit Judge, who asks what you are doing these days and you reply that you invest capital in the costs of litigation in return for a share of the proceeds contingent on success. He looks you magisterially in the eye and asks, as if you would never have thought of it, 'isn't that unlawful?'

The task of proselytising third party funding, as anyone directly involved in it will tell you, goes on. Right across the global reach of third party funding, every meeting or conference, with lawyers or with potential claimants, can be expected to require a run through of the basics of how it is done. The process is not assisted by the silo mentality of most major law firms, where it is absolutely not possible to make the assumption that, having spoken to one, or even several partners, you have spoken to the firm.

This past year has also meant for most funders, a merry-go-round of encounters with investors, as blue-chip pension funds, family offices, endowments and seemingly all known fund management vehicles have realised that it might be possible to invest in an asset that is not only non-correlated with other asset classes, but also, where concentrations are properly managed, one where the individual assets in a portfolio are not internally correlated. Eye-catching returns are being reported by the listed funders, while rumours of similar performance circulate around the private funders.

Individual managers and underwriters of litigation risk with a track record of success are rarer than the proverbial hens' teeth though. Some observers estimate that in the entire world there are no more than about 35 people with a 10-year investment management record delivering the sort of results that investors are seeking. This has led to an aggressive global hiring spree by funders in an attempt to remedy this shortage, aimed at the cream of senior associates (and occasionally partners) from all types of firm, including the very largest.

As the pipeline to equity narrows at all law firms, but especially at the largest and most profitable, and that pathway comes to depend on ever greater commitments of time to the firm, over all else, many lawyers outside law firm equity have begun to be tempted by the stories they hear of the opportunities to earn an equity stake at a litigation funder where hard work and dedication are, of course, an absolute requirement, but where an 18-hour-day time commitment is not expected.

All this has led to a debate within funders as to what ingredients make up the ideal senior recruit from a law firm. Does it have to be a litigator? Not really. Third party funding can be seen as a corporate finance transaction where competitive advantage for a funder may lie in being able to field top-class transactional input to the way a deal is negotiated from the outset. Does it have to be a lawyer? No. Experienced finance professionals should play a role

in case assessment, not just in the process of understanding the true quantum of a claim but in establishing the return that will be required by the investors in given time and quantum outcomes.

Interesting business pressures are also mounting in consequence of the global nature of third party funding. Although the Association of Litigation Funders of England & Wales (of which I remain the chairman) continues to provide voluntary regulation to the third party funding sector that seems to be respected and understood in the senior ranks of the judiciary and beyond in the Ministry of Justice and in other government circles, it is becoming clear that some form of international trade association is now required, to give a collective global voice (albeit, not as a regulator) to the interests of the third party funding industry. It would not surprise me if such a body were to be launched in the coming months, possibly in the wake of the inquiry currently being run by the Australian Law Reform Commission (ALRC), which might only directly affect the Australian market but will achieve global significance because so many non-Australian funders are active in that market. The ALRC's final report is likely to be highly influential on what happens next, not only in the regulation of third party funding in Australia but also how the entire third party funding industry will organise its approach to marketing and opinion forming in the global market.

This all adds up to a remarkable 12 months since the first edition of the *Third Party Litigation Funding Law Review* was published. Awareness of the industry has spread, not just in the context of the funding of the legal costs of a single case from its inception through to resolution (what might be called Litigation Funding 101) but in the monetisation of judgments and awards. In civil law jurisdictions, monetisation of claims can also be achieved. In the common law countries, by and large, monetisation of a claim would still, even in these enlightened times, offend against maintenance and champerty.

Businesses have learned that there is a way out of the accounting bind that contingent claims against you must (as a matter of principle) be accounted for as a debit in your balance sheet but contingent assets can be ascribed no value until they are turned into cash. This fact of business life, combined with what could be described as 'litigation fatigue' (which requires no explanation!), means that monetisation transactions are very much on the rise.

A modest extension of the market in monetisations takes you squarely into consideration of secondary markets, where funders might sell their interest in an investment to (say) a hedge fund at a price that appeals to both sides of the transaction. The development of monetisations and the development of secondary markets might well be major themes for the year ahead.

Leslie Perrin
Chairman
Calunius Capital LLP and Association of Litigation Funders of England amd Wales
November 2018

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NORWAY

Eivind Tandrevold and Jan Olav Aabø[1]

I MARKET OVERVIEW

Although third party litigation funding[2] is still an uncommon concept in Norway, 2017 and 2018 have seen an increased momentum in the market. Several pending claims are publicly known to be backed by third parties, and in June 2018, a Norwegian court of first instance handed down Norway's first-ever court judgment in a funded matter.

As of September 2018, there is only one professional provider of third party funding services based in Norway: Therium Nordic. The company, which is partly owned and funded by UK-based Therium Capital Management, was established in 2016. Since the Norwegian third party funding market is largely unregulated, Therium Nordic instead proclaims its commitment to the Code of Conduct developed by the Association of Litigation Funders of England and Wales. In addition to Therium Nordic, a number of foreign-based funders are said to be assessing Norwegian cases.

While an increasing number of Norwegian legal practitioners are advertising the benefits of third party funding to their clients, many still appear sceptical to the concept. Moreover, a recent study reported that Norwegian buyers of legal services are less likely to resort to third party litigation funding in the near future than their Danish, Finnish and Swedish colleagues.[3] These perceptions may change as third party funding arrangements become more common in Norway and elsewhere in the Nordic countries.

Claims purchase arrangements are less rare than third party financing arrangements, and are widely accepted throughout the Norwegian legal industry.

II LEGAL AND REGULATORY FRAMEWORK

There is no legislation or other mandatory rules in Norway explicitly regulating third party funding. The issue of third party funding is neither addressed in the procedural law governing civil litigation, nor in the most common procedural rules of arbitration. In addition, there is no case law discussing regulatory issues or the legality of third party funding arrangements.

Due to the lack of regulation, claim owners and funders are generally free to negotiate the particulars of their contractual relationship. The same applies for transfer agreements between claim owners and claims purchasers. Parties need to be mindful, however, of general

1 Eivind Tandrevold and Jan Olav Aabø are senior lawyers at Arntzen de Besche Advokatfirma AS.

2 'Third party funding' will be used as an umbrella term for any arrangements where a party to a dispute seeks financing by non-parties to the dispute.

3 Roschier Disputes Index 2018, available at www.roschier.com. The survey was based on feedback from 143 of the largest companies operating in Sweden, Finland, Norway and Denmark.

principles set out in statutory law and case law that would apply to all types of commercial agreements governed by Norwegian law. For instance, as further explained in Section III, courts and tribunals may revise or even set aside unreasonable terms of an agreement.

Regulators have not yet subjected professional third party funders to licensing or other types of scrutiny, but that may change as the market for third party funding increases in size.

Lawyers acting in funded matters, however, need to take extra care to comply with the Norwegian Bar Association's Code of Conduct for Lawyers (the Code of Conduct). In the following – as all the legal and ethical dilemmas that may arise in relation to third party funding cannot be addressed within the scope of this chapter – we will discuss the most practical issues.

First, one of the main principles of the Code of Conduct is that a lawyer cannot undertake assignments in which he or she would risk breaching the duties of loyalty, confidentiality, and independence towards his or her client.[4] Consequently, a lawyer cannot act on behalf of both the funded party and the funder as there is a clear risk of these clients having conflicting interests in certain aspects of the case. Similarly, a lawyer representing a funded party must never allow the interests and influence of the third party funder to affect his or her advice to the client. As explained in Section III, the litigation funding agreement should be drafted with these principles in mind.

Second, the Code of Conduct prohibits lawyers from entering into contingency fee arrangements and, to a certain extent, conditional fee arrangements.[5] Agreements where lawyers receive a percentage of the recovered amount are prohibited, as are any agreements where the lawyer's personal economic interest in the outcome might conflict with his or her independence or the client's best interests, or both. 'No cure no pay', 'good cure good pay' and similar arrangements are permitted as long as the fee structure is reasonable and does not render the lawyer conflicted or financially dependent on the outcome.

In summary, third party funding is a largely unregulated practice but requires extra prudence on the part of the lawyers involved. We believe that if the third party funding market sees increased activity, the likelihood of regulatory developments is high.

III STRUCTURING THE AGREEMENT

There is currently no standard market practice for how to structure a litigation funding agreement. As a starting point, claimants and funders are free to tailor the structure and the terms of their litigation funding agreement as they prefer. Still, parties need to observe several principles of Norwegian contract law when drafting their funding or transfer agreement. For instance, Section 36 of the Norwegian Contracts Act grants courts and tribunals the power to set aside or revise unreasonable contractual terms upon the motion of a party. The threshold for revising or setting aside an agreement is high, in particular between professional parties, and courts and tribunals require evidence of considerable contractual imbalance before doing so.

Moreover, there exist no standard fee or uplift ranges in third party financing agreements governed by Norwegian law. We have seen fee structures ranging from multiples of three times the funder's commitment, to percentages at around one-third of the recovered amount.

4 Sections 2.1, 2.2, 2.3 and 3.2.1 of the Code of Conduct.

5 Sections 2.1.2, 3.3.2, 3.3.2 of the Code of Conduct.

Owing to the legal ethics challenges outlined in Section II, parties involved in third party funding arrangements should be mindful of how the counsels' role is set out in the agreement between the funded party and the funder. Drafters should place great emphasis on explaining and defining the lawyers' involvement and obligations so that they do not interfere with the lawyers' duties as set out in the Code of Conduct. To mitigate the risk of facing ethical dilemmas, lawyers should not be party to a litigation funding agreement and parties should place contractual responsibilities such as reporting on the funded party rather than on the funded party's counsel.

IV DISCLOSURE

Norwegian law imposes no explicit obligation on a funded party to disclose the involvement or identity of a third party funder in a dispute – neither in arbitration proceedings nor in civil litigation proceedings.

Although there are no such explicit obligations, failing to disclose the existence and identify of a third party funder could pose serious legal and ethical challenges for the parties and lawyers involved. Failing to disclose can, among other things, lead to delays or to the judgment or award becoming void or unenforceable. Parties should therefore consider carefully whether choosing not to disclose the existence of a third party funder is worth the risk. The main argument in favour of disclosure is that it ensures that the identity of the funder poses no challenge to the independence and impartiality of the arbitral tribunal or ordinary court.

When acting in arbitration and litigation proceedings, judges and arbitrators have a duty to inform the parties or to recuse themselves when there are circumstances that might raise doubts as to their impartiality or independence.

In most arbitration proceedings, issues concerning impartiality and independence are governed by the Norwegian Arbitration Act.[6] This is because the bulk of arbitration proceedings seated in Norway are *ad hoc* proceedings, meaning that they are not administered by an arbitral institution. Parties rarely adopt procedural rules that derogate from the Arbitration Act's rules on impartiality and independence. Section 14 of the Arbitration Act[7] provides that arbitrators have a duty to disclose 'any circumstances likely to give rise to justifiable doubts about his [or her] impartiality or independence.' Thus, arbitrators should not assess whether they are in fact conflicted, but whether it might appear as if they are.

When assessing their impartiality and independence, Norwegian arbitrators frequently refer to the International Bar Association's Guidelines on Conflicts of Interest in International Arbitration (the IBA Guidelines).[8] Since 2014, the IBA Guidelines has contained the following provision:

6 The Norwegian Arbitration Act is based on the UNCITRAL Model Law on International Commercial Arbitration.

7 Section 14 of the Norwegian Arbitration Act is based on Article 12 of the UNCITRAL Model Law.

8 As supported by leading authorities, see for instance G Woxholth, *Voldgift* ['Arbitration'] (1st edn Gyldendal Norsk Forlag, Oslo 2013), p. 407.

> *If one of the parties is a legal entity, any legal or physical person having […] a direct economic interest in, or a duty to indemnify the party for, the award to be rendered in arbitration, may be considered to bear the identity of such a party.*[9]

Therefore, when assessing their impartiality, arbitrators can deem third party funders to be comparable to the funded party to the arbitration proceedings. Arbitrators could very well consider themselves conflicted and thus incapable of acting if they have a relationship with the third party funder that could undermine the parties' and others' confidence in their impartiality.

The same general rule applies in civil litigation. Pursuant to Section 108 of the Courts of Justice Act, a person may not serve as a judge when circumstances exist that 'are capable of undermining confidence' in the judge's impartiality. This assessment should not only take into account the judges' relationships with the parties, but their relationships with anyone who would have an economic interest in the outcome of the particular dispute. While we have not seen Norwegian courts referencing the IBA Guidelines, the same general principles are relevant in the assessment of a judge's impartiality under the Courts of Justice Act. On this background, if a judge has a relationship with the third party funder that could undermine one's confidence in his or her impartiality, the judge should be disqualified.

Given the above-mentioned principles, judges and arbitrators would expect parties and counsels to let them know if any 'unknown' third parties have a direct economic interest in the outcome of the dispute that they preside over.[10] If, for instance, an arbitrator is a partner at the law firm that advises the third party funder, or the presiding judge is a close relative of one of the funder's key employees, they would likely recuse themselves.

Failing to disclose the existence and identity of a third party funder does not just entails the risk of delays owing to untimely recusals and reputational damage. In arbitration, if an award has been handed down and it is later discovered that an arbitrator was conflicted owing to the third party funder's involvement, the award may be nullified by the ordinary courts[11] or enforcement of the award may be refused.[12] Similar rules apply in civil litigation proceedings, where decisions may be appealed or reopened on the basis that they were rendered by a legally incompetent judge. When a judgment rendered by a judge that should have been disqualified is appealed in good time, the appeals court shall annul the judgment and the case must be retried.[13] If the deadline for appeal has passed, the judgment may still be re-opened and subsequently retried.[14]

In summary, parties are under no explicit obligation to disclose the existence of funding and the identity of the funder, but parties that do not disclose risk being faced with several types of delays and objections, such as the removal of arbitrators or judges, the challenge or annulment of the judgment or award, and the impossibility of enforcement.

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9 General Standard 6(b) of the IBA Guidelines.

10 Pursuant to General Standard 7 of the IBA Guidelines, parties have a duty to inform the arbitrators of such circumstances.

11 Section 43 of the Arbitration Act.

12 Section 46 of the Arbitration Act, which corresponds with Article V of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) (the New York Convention).

13 Sections 29-21 and 29-12 of the Dispute Act.

14 Section 31-3 of the Dispute Act. A judgment shall not be reopened, however, if it there is a reasonable probability that a new hearing of the case would not lead to an amendment of significance to the party, cf. Section 31-5 of the Dispute Act.

On this basis, we believe that funded parties are best off disclosing the existence of their funding arrangement and the identity of the funder. In addition to mitigating the risk of facing obstacles during and after the proceedings, disclosing the fact of funding might also benefit the funded party's claim directly, as it would demonstrate for the opposite party that an independent third party has faith in the merits of the claim. Furthermore, we believe that if even more funded parties disclosed the existence of their financial backing, it would serve the integrity of the market for third party funding.

Parties to Norwegian litigation and arbitration proceedings are obliged to share relevant documents, including those unhelpful to their case. The ordinary courts can compel anyone to make available evidence containing information that may be relevant to the factual basis for the ruling. An arbitral tribunal can only recommend parties or third parties to disclose such evidence, but does not have the power to enforce disclosure. However, if a party or third party fails to comply with a recommendation made by an arbitral tribunal, the requesting party might instead petition the ordinary courts to order disclosure.

Therefore, anyone – including funded parties and third party funders – can be compelled to disclose a litigation funding agreement provided that it contains information that may shed light on disputed matters.

However, the general duty to disclose evidence only comprises the parts of the evidence (such as sections of an agreement) that are relevant for the dispute in question.[15] If, for instance, a funded party claims compensation for its funding costs, the fee provisions of the funding agreement would be relevant while other provisions might not be. Similarly, if a claim purchaser needs to prove ownership of the claim that it pursues, the requested party would only need to disclose the parts of the requested documents that are sufficient to prove that the claims transfer was valid and binding. In other situations, where the funding agreement has no relevance for the disputed matters, requested parties may refuse to disclose it. It is important to note, however, that relevance assessments shall be based on the parties' assertions without regard to their merits – meaning that a requesting party may 'tailor' its assertions in a manner that would be more likely to result in a duty to disclose.

There are several exemptions to the duty to disclose evidence. For instance, parties cannot be compelled to submit evidence protected by legal privilege, that is, confidential communications between lawyers and their clients made for the purpose of seeking or giving legal advice. Courts and tribunals may also exempt a party from its duty to disclose if the evidence cannot be made available without revealing trade or business secrets.

V COSTS

In civil litigation, a party that is successful in an action is entitled to full compensation for its 'legal costs' from the opposing party.[16] Full compensation for such costs shall cover 'all necessary costs incurred by the party in relation to the action'.[17] Arbitrators generally apply

15 T Schei et al., *Tvisteloven*, Kommentarutgave ['The Dispute Act – Commentary'] (2nd edn, Oslo 2013), p. 961.

16 Section 20-2 subsection 1 of the Dispute Act.

17 Section 20-5 subsection 2 of the Dispute Act.

the same principles in arbitration proceedings, although the Arbitration Act merely provides the arbitrators' with the power to order the losing party to pay all or part of the legal costs of the prevailing party 'as it sees fit'.[18]

Under the main rules outlined above, courts and tribunals classify lawyers' fees, arbitrators' and experts' fees, and administrative fees and costs, as recoverable legal costs. In addition, a prevailing party can claim compensation for 'its own work on the case if the work has been particularly extensive or would otherwise have had to be undertaken by counsel or other qualified assistant'.[19] Any other type of losses and expenses, such as loss of revenue, lost goodwill, or increased interest expenses are, as a main rule, not recoverable.[20]

As of September 2018, the only Norwegian case law discussing whether funding costs qualify as recoverable legal costs is a first-instance court judgment, *Atlant v. Oslo municipality*.[21] The claimant, Atlant, that had its case funded by Therium Nordic, claimed compensation for its funding costs. Atlant's funding costs constituted approximately 50 per cent of the damages that it was awarded in the main claim. The district court concluded, summarily, that funding costs did not constitute 'legal costs' pursuant to the Dispute Act, and rejected Atlant's claim for compensation.

To our knowledge, no cost items similar to third party funding (for instance, claims for compensation of the added costs of borrowing money to cover legal fees) have been successfully recovered as legal costs under the Dispute Act or the Arbitration Act. This serves to support the district court's conclusion in *Atlant v. Oslo municipality*.

In addition, classifying funding costs as recoverable legal costs might conflict with the universal right of access to justice, as set out the Norwegian Constitution and the European Human Rights Convention. This is especially the case since holding a party responsible for the other party's funding costs could multiply its costs exposure manifold.

Therefore, as things stand, we believe that Norwegian courts and tribunals are highly unlikely to award a funded party compensation for its funding costs under the main rules that we have described above.

In certain exceptional circumstances, however, arbitrators and courts could award compensation for funding costs as damages. Pursuant to case law from the Norwegian Supreme Court, a party can be held liable for other costs than legal costs in 'abuse situations'.[22] A typical 'abuse situation' would exist if a party sets forth or rejects claims despite knowing that its position has no merits. As an example, if a party is found to have rejected a claim that it knew was merited, and that the rejection left the claimant with few other options but to seek funding to enforce its claim legally, a Norwegian court or tribunal court could award the funded party compensation for its funding costs. The threshold for proving the grounds for such a claim would be high, however, and there are few examples of claims that have prevailed on these bases.

In summary, applying existing statutory and case law, claimants seeking to recover their funding costs from the other party would face an uphill battle. To be awarded such

18 Section 40 subsection 2 of the Arbitration Act.

19 Section 20-2 subsection 1 of the Dispute Act.

20 JE Skoghøy, Tvisteløsning ['Dispute resolution'] (3rd edn, Oslo 2018), p. 1327.

21 *Atlant Entreprenør Svs v Oslo kommune* (Oslo District Court, 5 June 2018, case No. 16-094601TVI-OTIR/08).

22 Judgement reported in Supreme Court Reports (Rt.) 2015 on p. 385.

compensation, a funded party would likely need to prove that its counterparty has abused the legal system by knowingly maintaining an untenable position, and that the added costs were incurred as a consequence of the 'abusive' party's behaviour.

The loser pays principle applies in most Norwegian litigation and arbitration proceedings.

As a main rule, only direct parties to litigation or arbitration proceedings may be held liable for adverse costs. In most third party funding arrangements, the funder will not be a party to the arbitration or litigation proceedings. Hence, as a starting point, there are no legal grounds to hold a third party funder liable for adverse costs. When it comes to claims purchase arrangements, the company that owns the claim will be party to the proceedings. Thus, the claim purchaser would risk becoming liable for costs.

In terms of security for adverse costs, the rules differ between arbitration and litigation proceedings. In arbitration proceedings governed by the Arbitration Act, parties can only be requested to put up security for the arbitrators' fees and not for adverse costs. In litigation proceedings, however, courts may order claimants to put up security for adverse costs if the claimant is registered in a country outside the European Economic Area.[23]

None of the above-mentioned main rules apply to third parties, even in cases where the claimant is in such a poor financial condition that it will be unable to pay the respondent's legal fees and costs. As explained below, however, certain narrow exceptions exist, and there are circumstances in which third parties risk becoming liable for adverse costs.

First, under non-statutory law, company representatives (such as board members) can be held personally liable for adverse costs provided that they instituted or continued the legal proceedings on behalf of an insolvent entity, while at the same time knowing that the chances for the claim to be successful were low.[24] In civil litigation proceedings, parties may request the court to include the representatives to the proceedings by way of joinder.[25]

Second, while there is no statutory or case law on the issue, it is possible that courts and tribunals could award compensation for adverse costs from third parties in 'abuse situations' similar to the one exemplified in Section 5.i. The same applies for claims against shareholders or effective beneficiaries of 'claims vehicles' that are unable to settle an award for adverse costs. Here, non-statutory rules could evolve with inspiration from recent case law from Sweden[26] and Denmark.[27]

VI THE YEAR IN REVIEW

The past 18 months saw some interesting developments in the Norwegian market for third party funding.

23 Section 20-11 subsection 1 of the Dispute Act.

24 JE Skoghøy, *Tvisteløsning* ['Dispute resolution'] (3rd edn Universitetsforlaget, Oslo 2018), p. 1318, referencing i.a. judgments reported in Supreme Court Reports (Rt.) 2014 on p. 706 and p. 817.

25 Section 20-7 of the Dispute Act.

26 *Deloitte AB v MH and JL* (Supreme Court of Sweden, 11 December 2014, reported in NJA 2014 p. 877).

27 *Van der Boom Holding B.V. v Danish Business Authority et al.* (Supreme Court of Denmark, 19 January 2018, reported in UfR 2018 p. 1487).

In June 2018, in its first-ever case known to be funded by a third-party, Oslo City Court found for a claimant backed by Therium Nordic.[28] The claimant, the construction company Atlant, was awarded damages from a Norwegian municipality after being thrown out of a major construction project.

Atlant was always open about the fact that it had received funding to pursue its damages claim, and it even tried to recover its funding costs from the respondent.[29] Although the claim for compensation for funding costs was unsuccessful, the court did not appear to have any other issues with the concept of third party funding.

Several other Norwegian companies are also using third party funding to finance their claims. By way of example, Norwegian Energy Company ASA (Noreco), an oil and gas company listed on the Oslo Stock Exchange, received funding to pursue major claims against a group of insurers in Denmark. The Danish first-instance court awarded Noreco compensation of US$470 million including interest (of which, reportedly, US$200 million was payable to the funders).[30] However, in May 2018, an appeals court overturned the decision and only awarded Noreco US$21 million in damages.[31] Noreco has appealed the appeals court's decision to the Supreme Court of Denmark. Furthermore, in June 2017, EAM Solar ASA, a solar energy company listed on the Oslo Stock Exchange, reported that it had secured funding from Therium Capital Management to pursue a €200 million damages claim against Swiss and Luxembourgian counterparties.

These matters may prove to be stepping stones towards demystifying the concept of litigation funding in Norway.

VII CONCLUSIONS AND OUTLOOK

The Norwegian market for third party funding is still in its infancy. In recent years, however, the concept of litigation funding has slowly started moving towards becoming an established dispute resolution tool. Although the Norwegian market for third party funding is largely unregulated, parties involved in funded matters need to carefully observe applicable laws and be mindful of the risks they face.

In the coming years, as the global litigation funding industry is predicted to expand, it is likely that the Norwegian market for third party funding will grow too. The Norwegian litigation and arbitration climate appears ripe for more funders to enter. Further to the high-value oil and energy-related disputes that continue to dominate the market, 'funding-friendly' claims such as cartel damages claims, patent infringement claims, and class action lawsuits are becoming increasingly common. On this basis, there is definitely a potential for the continued development of third party funding in Norway.

28 See footnote 20.

29 As explained in Section V(i).

30 *Noreco Oil Denmark A/S et al. v Zurich Insurance Public Limited Company et al.* (Maritime and Commercial High Court, 15 December 2016, case No. S-2-14). See also Noreco's Annual Report for 2017 on p. 5, available at www.noreco.com.

31 *Noreco Oil Denmark A/S et al. v Zurich Insurance Public Limited Company et al.* (Eastern High Court, 4 May 2018, reported in FED2018.04). See also Noreco's Annual Report for 2017 on p. 5, available at www.noreco.com.

Appendix 1

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