



ADGM COURTS

محاكم سوق أبوظبي العالمي

## Litigation Funding Rules 2019



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## LITIGATION FUNDING RULES 2019

The Chief Justice of ADGM Courts, acting under powers delegated to him by the Board of Directors of Abu Dhabi Global Market, prescribes the following rules under section 225(3)(a) and (d) of the ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015.

Date of Enactment: 16 April 2019

### PART 1 – INTRODUCTION

#### 1. Application

These Rules apply in relation to litigation funding agreements as defined in section 225(2) of the Regulations.

#### 2. Interpretation

In these Rules, unless the context otherwise requires:

- (a) "**ADGM**" means Abu Dhabi Global Market, the financial free zone established by Federal Decree No. (15) of 2013 issued by the President of the United Arab Emirates, as delimited by Resolution No. (4) of 2016 of the Cabinet of the United Arab Emirates and as governed by Law No. (4) of 2013 concerning Abu Dhabi Global Market;
- (b) "**ADGM Courts Rules of Conduct**" means the ADGM Courts Rules of Conduct 2016 (as amended from time to time);
- (c) "**ADGM Courts**" means the Court of First Instance and the Court of Appeal of Abu Dhabi Global Market;
- (d) "**Funded Party**" means a litigant as defined in Section 225(2)(a) of the Regulations and includes a liquidator or judicial manager;
- (e) "**Funder**" means a funder as defined in Section 225(2)(a) of the Regulations;
- (f) "**Litigation Funding Agreement**" means a litigation funding agreement as defined in section 225(2) of the Regulations;
- (g) "**proceedings**" has the meaning given to it in Section 225(8) of the Regulations; and
- (h) "**Regulations**" means the ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015.

#### 3. Short title, extent and commencement

- (1) These Rules may be cited as the Litigation Funding Rules 2019 and shall apply in the whole of Abu Dhabi Global Market.
- (2) These Rules shall come into force on the date of their publication and nothing in these Rules shall have retrospective effect.

## **PART 2 – FUNDERS**

### **4. Requirements for Funders**

- (1) A Funder must satisfy the following at the time the Litigation Funding Agreement is made, and continue to satisfy the following:
  - (a) the Funder must carry on as a principal business the funding of proceedings to which the Funder is not a party; and
  - (b) the Funder must have qualifying assets of not less than US\$5 million or the equivalent amount in foreign currency.
- (2) “qualifying assets” means cash and cash equivalents including, without limitation:
  - (a) monies and assets contracted to the Funder under a contract for fund management; and
  - (b) in the case of an incorporated company, paid-up share capital.

### **5. Prohibitions against financial and other interests in Funders**

- (1) The Funder must not be owned (whether wholly or partly, and whether directly or indirectly, and whether by way of shares or otherwise) by a lawyer or a law firm:
  - (a) who has introduced or referred the Funder to a client in relation to the proceedings; or
  - (b) whose client has a Litigation Funding Agreement in force with the Funder in relation to ongoing proceedings.
- (2) If a stockbroker or other professional investment manager carries out an individual's dealings in securities in the Funder without instruction from or prior reference to that individual, that shall not be considered an ownership in the Funder for the purposes of sub-paragraph (1) above.

## **PART 3 - LITIGATION FUNDING AGREEMENTS**

### **6. Legal advice**

The Funder must take reasonable steps to ensure that the Funded Party has received independent legal advice in relation to the Litigation Funding Agreement and its terms prior to its execution. This obligation shall be satisfied if the Funded Party confirms in writing to the Funder that the Funded Party has taken such advice.

### **7. Scope of funding**

The Litigation Funding Agreement must include provisions setting out at a minimum:

- (a) the scope of funding;
- (b) the amount of funding
- (c) the timing of each tranche of funding; and
- (d) the Funder's recovery in accordance with section 225(3)(e) of the Regulations.

## **8. Financial liabilities**

- (1) The Litigation Funding Agreement must state whether (and, if so, to what extent) the Funder is liable to the Funded Party:
  - (a) to meet any liability for adverse costs; and
  - (b) to pay any premium (including insurance premium tax) to obtain adverse costs insurance.
- (2) The Litigation Funding Agreement must state when and the manner in which the Funder will seek recovery from the Funded Party.

## **9. Conflicts of interest**

- (1) The Litigation Funding Agreement must not contain any terms that:
  - (a) could induce the Funded Party's lawyer or law firm to breach their professional duties which are owed to the Funded Party or to ADGM Courts including under the ADGM Courts Rules of Conduct; or
  - (b) subject to paragraph 10 below, allow the Funder to influence the lawyer or law firm so that it takes control of the dispute or assumes conduct of it.
- (2) Litigation Funding Agreements which include more than one Funded Party must include provisions for managing conflicts of interest between the Funder, the Funded Parties and the lawyers.

## **10. Funders' involvement in settlements**

The Litigation Funding Agreement must include provisions as to the Funder's role in decisions about whether to settle the proceedings and on what terms.

## **11. Termination of agreement by Funders**

The Litigation Funding Agreement must state the circumstances in which the Funder may terminate the agreement and the Funder shall not be entitled to terminate it except in circumstances so specified.

## **12. Confidentiality obligations on Funders**

- (1) The Litigation Funding Agreement must require the Funder to observe the confidentiality and/or privileged nature of all information and documentation relating to the proceedings to the extent required by law.
- (2) The Litigation Funding Agreement must prohibit the Funder seeking disclosure of information from the Funded Party's lawyer or law firm which is subject to either legal privilege or is confidential unless such information is sought with the Funded Party's written consent or disclosure is ordered by any courts or required by law.

## **13. Funders' obligations about dealings with lawyers**

- (1) The Litigation Funding Agreement must not result from or involve any commission, fee or share of proceeds being paid to a lawyer or law firm in relation to the introduction or referral of a client to the Funder by that lawyer or law firm.

- (2) Nothing in this Rule prohibits a lawyer or law firm from receiving fees, disbursements or expenses payable by their client for the provision of that lawyer or law firm's legal services.
- (3) Neither the Litigation Funding Agreement nor anything done by the Funder in relation thereto must cause any lawyer or law firm to be in breach of the ADGM Courts Rules of Conduct.
- (4) If a stockbroker or other professional investment manager carries out an individual's dealings in securities in the Funder without instruction from or prior reference to that individual, any proceeds from such securities shall not fall within sub-paragraph (1) above.
- (5) The Litigation Funding Agreement must require the Funder to take reasonable steps to ensure that it has satisfied itself that there are no circumstances arising from the funding that might give rise to any reasonably foreseeable conflicts of interest, whether in connection with the Funded Party, its lawyer or law firm, the other parties to the proceedings or their lawyer or law firm, or ADGM Courts or arbitral tribunal hearing the proceedings.

**14. Notification obligations on Funders**

The Litigation Funding Agreement must require the Funder to notify the Funded Party expeditiously if the Funder foresees or reasonably believes that it will no longer meet any of the prescribed requirements for Funders.

**15. Jurisdiction as to costs**

The Litigation Funding Agreement must state, expressly for the benefit of the Funded Party and any other party to proceedings before ADGM Courts funded under the Litigation Funding Agreement, that the Funder submits to the jurisdiction of ADGM Courts for the purposes of disputes relating to costs as between the Funded Party and any other party to the proceedings.