MULTIPLICITY
PERSPECTIVES

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LITIGATION FUNDS COMING OF AGE... AND THE NEED FOR LIQUIDITY OPTIONS

At Multiplicity we create value by providing secondary market liquidity for niche alternative investment funds. Litigation funding is one of these niches that is maturing and where a need for secondary market liquidity is emerging.

A young asset class...

Litigation financing is a fairly modern concept and is still viewed and regulated differently across jurisdictions. In certain jurisdictions – also through codes of conduct of attorneys – lawyers are prohibited from funding legal cases of their clients, and thus, funding of litigation through independent third parties has come up. The modern concept emerged in the UK during the second half of the last century; in the US, the concept has become more accepted later on. Since the turn of the century, litigation financing has become an accepted concept that has been formalized by both the regulator and trade associations.

During the ascent of litigating financing, the concept was perceived as a conflict with public policy in certain jurisdictions. Through the formalization of litigation financing by the regulator in hand with the policymaker, litigation financing has become a generally accepted, well-proven concept with more and more lawsuits being financed indecently.

...is maturing

While the financing of litigation was initially more opportunistic in nature, litigation financing has become more and more institutionalized, with professionally managed litigation funds providing funding over the last twenty years or so.

Litigation financing remains the realm of primarily professional investors. Still, other funders have taken a broader approach – Burford Capital, a global litigation financer, for instance, has even opted to list its entire business on the London AIM stock exchange. As a result, it has received the "AIM Award for Innovative Fundraising of the Year" for it. The undisputed and critical advantage for investors in litigation financing is the distinct nature of investment returns that are completely uncorrelated to the macroeconomic environment and financial markets. Given that institutional pools of money are professionally managed, the manager will also ensure that only cases with a high likelihood of success are funded.

Institutional litigation finance investment funds generally have a life cycle comparable to that of a private equity fund: During the 'investment period', new legal cases are added to the fund's portfolio, followed by a period during which only additional funding to existing cases is added. During this time, successful cases will also pay the fund, and this capital will be returned to investors. Funds generally have a well-defined life span and may be extended in line with the fund's constitutional documents.

Litigation financing in a nutshell

Litigation financing is the financing of the legal costs of a litigant in a lawsuit by an independent third party in return for a share of the financial outcome of that claim.

The funding of the litigant is through non-recourse payments, as such, the litigation financer only receives the funded amount and a pre-agreed success fee in case of a successful judgment or settlement of the funded legal case. In essence, litigation financing covers all legal costs of a lawsuit, ranging from employing an attorney to legal fees and in certain instances even subsistence of the litigant.

The immense benefit of this concept is that parties that do not have the means to initiate litigation can now do so without personal financial risk. As litigation funding is never considered debt, the credit rating of both individuals and corporates is not negatively affected by seeking litigation financing. Many civil rights cases, workers' compensation cases and even class action suits (at least in certain jurisdictions) could only be brought to court thanks to independent third-party funding of the legal process.

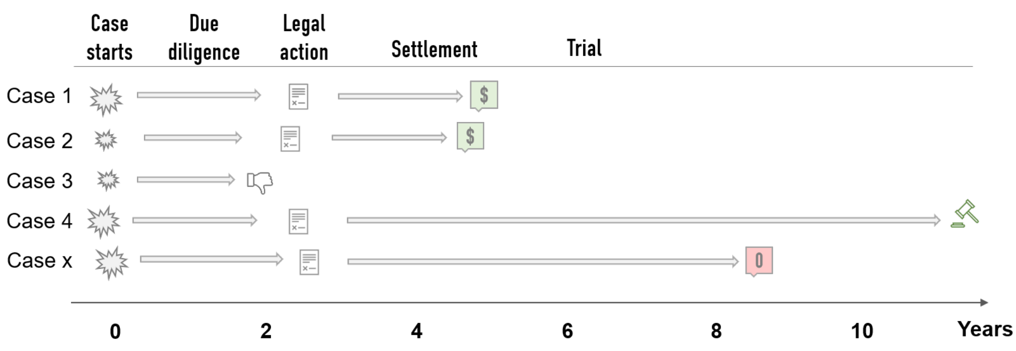

Figure 1: Illustrative life span of a litigation fund

Maturing means learning

A negative side effect of institutional litigation financing through investment funds is that certain legal cases take substantially longer than initially anticipated – in certain cases well beyond the life span originally agreed for a litigation fund. In the worst case, investment funds do not have enough cash available to continue funding long-lasting (but generally promising) legal cases. They have to find additional funding, either from existing or new investors – with the detrimental risk of substantially diluting existing investors' interests.

Many of these interests are in successful funds that have generated positive returns for investors where monies awarded in successful cases have already been distributed.

The advantage for investors in litigation financing: returns uncorrelated to the macroeconomic environment and financial markets.

Through these distributions, these tail end positions often have become small and irrelevant in the overall success of the fund's investment. Given the young age of the asset class, there is only a very limited secondary market for such fund interests available at present, particularly interests with an older vintage and a smaller size.

Multiplicity – your provider of liquidity

Multiplicity Partners has successfully emerged as a secondary buyer of illiquid private fund interests, ranging from well-established tail-end private equity, private debt and real estate funds to lesser-known niche strategies such as ILS (Insurance-linked Securities), shipping, or royalty related interests.

Multiplicity Partners is also an active buyer of tail-end litigation fund interests and provides liquidity solutions for investors that may no longer wish to participate in a litigation fund's ongoing cases. We have come across many tail end litigation funds and have profound insights into pricing and transferring such investments fairly. We have successfully concluded secondary transactions in litigation fund interests and are ready to offer solutions for existing litigation fund investors seeking liquidity.

Would you like to receive a quick indicative pricing for your asset? Or share your views on this article? Please write to Christoph today at cl@mpag.com, or call him at +41 44 500 4410.

Christoph Landolt is an investment manager with Multiplicity Partners. Christoph has more than 20 years of experience in the financial industry and as a private investor.

Before joining Multiplicity Partners, Christoph was Head Portfolio Management International at Bank Julius Baer where he was responsible for developing and leading the international portfolio management locations. Prior to that, he was CEO of a Swiss SME that was successfully sold and integrated into its new corporate parent. Christoph gained substantial experience in the alternative investment industry during his 10-year tenure at Man Investments where he held multiple positions both in Switzerland and the UK. He started his career at a dotcom company connecting venture capital investors with capital seeking companies.

Christoph holds a master's degree in Computer Science and Finance from the University of Zurich and is a CAIA Charterholder.

ABOUT MULTIPLICITY PARTNERS

Multiplicity Partners is an investment boutique specialised in providing liquidity solutions to holders of private market funds and distressed assets. The firm also offers a range of advisory and governance services across alternative assets.

Multiplicity Partners has been an active participant in the secondary market for fund interests and distressed assets since 2010. The team has successfully completed more than a hundred transactions across a wide range of illiquid and complex financial assets. Each partner contributes more than 15 years of relevant experience, giving us the collective capabilities to effectively identify, analyse and execute attractive investment opportunities in hard-to-value assets.

Multiplicity Partners was founded in 2010 and is based in Zurich, Switzerland.

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