

At what cost?

**A Lovells multi jurisdictional
guide to litigation costs**



Foreword

The cost of litigation is undoubtedly one of the greatest factors in persuading litigants either to settle, or just stay away from the courtroom altogether.

All judges are fallible, and no prudent litigant will go to law (or arbitration) with a belief in a guarantee of success. Costs, however, like death and taxes, are an inevitable consequence of suing or being sued.

So it is perhaps surprising that the incidence of costs in jurisdictions other than one's own home state is frequently so poorly understood by litigants – and their advisers.

I started my career in a field of marine insurance which was rather specialised. "F.D&D.", or "Freight, Demurrage and Defence" cover offered by a mutual insurer: a P&I Club. The claims involved requests for advice and support from the Club's in-house lawyers, but, more substantially, for coverage of legal costs incurred in disputes associated with the shipping industry. Freight and demurrage certainly formed a substantial part of the range of issues that gave rise to disputes, but by no means the whole picture. Disputes with insurers, agents, charterers, suppliers, port authorities, directors, surveyors, classification societies and all the rest spawned a huge volume of contentious activity; since the vessels concerned went all over the world, so did the claims. Within two years, my portfolio of active claims exceeded 2,000 files, on which lawyers all across the world were busily generating fees, invoicing the insured members, who passed the legal bills to the Club for settlement under their "Defence" coverage.

The lawyers' billing practices were many and varied; as was the quality and the frequency of proper advice, in many cases.

The costs, however, were invariably very active, as the members of the Club spurred on their lawyers to greater and faster efforts in the pursuit or defence of the claims. Bills of substantial proportions would build up. My job was to approve the claim for payment, but also to give direction where the economics or the merits of the dispute made no sense or were otherwise not in the interests of the Club's membership as a whole. It was a full time job in all senses.

Looking back, however, 30 years on, it is striking that I had no guidance or reference book whatsoever that could help me understand the basis on which these exotic foreign legal enterprises were entitled to bill their clients; court costs were regarded as a tax on litigation; and recovery of costs from the other side a rare and celebrated event. The costs of pursuing or defending claims were usually, if not always, ascertained only after they had been incurred, and with dozens of very active jurisdictions around the world's coast-lines, any attempt at a comprehensive analysis of costs regimes would have been a hopelessly expensive exercise. We flew by the seat of our office chairs, and by the life-long experience of our weary colleagues. By the end of two years, I had a working knowledge of the costs regimes of no more than a dozen overseas jurisdictions; but even with these, the depth and detail was patchy, and much of the learning anecdotal rather than studied.

I suspect that there are still today many risk managers, claims handlers, finance directors and entrepreneurs who find themselves embroiled in occasional or persistent bouts of litigation in the places of the world with which they are least familiar. Some will have studied the incidence of costs in great detail in some, but not all, of these jurisdictions. But a wide-ranging and systematic treatment of the issue of litigation costs around the world is unlikely to be available to the average litigant.

Prompted by the comprehensive study of the current regime of costs in England and Wales conducted by Lord Justice Rupert Jackson, it occurred to me and some of my litigation colleagues that there was an untapped fount of knowledge as regards costs, in the form of the network of legal experts with whom we were all regularly in touch, both through our own overseas offices or in correspondent law firms.

We determined to draw some of this learning together, and to explore the basics, the peculiarities and the similarities between litigation costs regimes in a wide range of jurisdictions, both those of a "common-law" or "Anglo-Saxon" ethos as well as "civil law" and codified regimes.

We were surprised and relieved in equal measure to learn of the similarities and the oddities that occurred around the world; many prejudices were confirmed; a few pre-conceptions overturned; much solid detail was garnered and collated by a team of contributors, correspondents, sub-editors and editors.

The results are contained in the volume you have before you:

At what cost? A Lovells multi jurisdictional guide to litigation costs

The Guide covers 56 jurisdictions. Its contents, methodology of analysis and some resulting themes and conclusions are summarised in the overview of findings on pages 4 – 7.

We offer it as a pilot study, albeit one of substantial proportions; we propose to extend the global coverage to other key jurisdictions in subsequent editions, and to deepen and broaden the range of topics by reference to the reactions of and feedback from our readership.

I should like to thank all of the contributors, their colleagues and firms who have allowed them to spend the time and effort in contributing to this report. For editorial infelicities, I offer our apologies; for any misunderstandings and persistent emails chasing for drafts, and comments, our thanks for your patience and persistence.

In particular, I should like to thank Graham Huntley, my co-editor and partner, but most of all, Sara Bradstock, the producer and director of this publication.

Peter Taylor, partner

Introduction and approach

The credit crunch sparked anticipation in many countries of an increased level of disputes. It also sharpened the attention in the business and legal worlds about the expense of litigation.

Our 2008 survey *The Shrinking World* showed that even before the onset of the credit crunch, General Counsel were concerned about the increasingly global nature of disputes. In particular, one-third of respondents (31%) noted a trend towards more multinational disputes. A slightly smaller number (25%) cited a lack of information about the relevant law and procedures across jurisdictions as one of the most significant issues facing them when managing such disputes.

It is therefore clear that businesses, and lawyers advising them, need to grapple with the expense of litigation as well as the variations in the costs regimes around the world designed to manage and enable recovery of the expense. This is so not only for corporations faced with often complex variations in the rules concerning recovery, funding opportunities, predictability and enforcement, but also for smaller claimants who can face an increasingly changing consumer scenario in different jurisdictions in which they may operate.

A comprehensive survey into the legal and procedural regimes for funding and recovering costs in all the major business jurisdictions is thus overdue and more needed now than ever before. It is therefore hoped that the Lovells' survey will be of real and practical assistance to businesses and lawyers around the world. Our aim is to provide a tool which will enable informed decisions to be taken as to where to conduct litigation in cases where costs are a central issue, and which exist. The choice is not a real choice without information and clarity, and our report has been structured in a way to achieve this.

The report therefore covers over 50 jurisdictions and benefits from input from expert lawyers to enable a comparison to be made of issues such as:

- the recoverability of litigation costs by both claimants and defendants
- the manner in which costs are recovered, if at all
- factors taken into account where fixed costs are recoverable only
- what "costs" are for the purposes of recoverability
- the enforcement of costs orders
- the setting off of costs orders
- interest on costs
- the types of permitted costs arrangements between client and lawyer
- the funding arrangements available in each jurisdiction – such as insurance, legal aid and third party funding.

The publication of this report in England and Wales comes hard on the heels on the review of costs carried out by the Right Honourable Lord Justice Jackson. As part of the research carried out, he and his team travelled to major jurisdictions to learn how costs were controlled and managed. The result of that was the most comprehensive review of costs ever carried out in England

and Wales, and a set of proposals which will mark the first truly significant attempt to manage costs through the procedural vehicle of litigation and the environment of regulation that is growing up in this country. If nothing else, this report will enable readers to compare how the developing regime in England and Wales compares to the major international jurisdictions.

Our basic approach was to compile information from and relating to each jurisdiction in response to a standard list of questions. We obtained input from each jurisdiction from two sources: the Dispute Resolution practices in each of Lovells' global offices, and from other jurisdictions we obtained answers to the standard questions from leading and senior litigation practitioners in law firms with known Dispute Resolution capability and reach. A full list of the law firms who participated in the project is set out later in the document.

Some countries have separate jurisdictions for separate states, most notably Australia, Canada and the United States. In those instances we have identified the key jurisdictions and obtained a similar level of input from leading practitioners. Despite the variations across each jurisdiction, broadly there is a common position throughout the country.

In some countries, such as the United Arab Emirates and the Ukraine, there are distinctly separate litigation jurisdictions. Therefore, in these instances the input has been obtained and reported on separately.

The input from each jurisdiction was obtained by using a standard questionnaire. This ensured consistency of approach. Lovells then assimilated the answers to the questions and issues raised into a common style and format, producing for each jurisdiction:

- very summary answers to questions seeking an affirmative or negative response, for example, "yes" or "no", which were then cross-referenced to:
- more detailed explanations for the answers applying to that jurisdiction which were then rechecked by the relevant practitioners in each jurisdiction.

The result is the quick reference table (pages 8 – 26), cross referenced to the country by country detailed responses (pages 28 – 193).

In order to ease review and assimilation of the information, the Guide uses common terminology to identify specific topics, issues or parties, even though different terminology is used across the jurisdictions. Thus, and by way of example, in both the questionnaire and this Guide:

- "**Costs**" means the costs incurred by a party during the course of litigation in connection to that litigation, and which include, but are not limited to, costs that the party has paid to its lawyers (including solicitors, counsel and advocates) to agents, to courts, to process servers and in respect of disbursements (for example, photocopying, expert witness, travel, translation, notarial services and witness attendance etc.)

- **“Lawyer”** is used to describe the legal adviser, including the solicitor, counsel, barrister, advocate, attorney or other legal practitioner
- **“Claimant”** is used to describe the party bringing the claim, including the plaintiff

unless the term is otherwise defined or specified within the relevant country commentary.

This Guide is written as a general guide only. It should not be relied upon as a substitute for specific legal advice.

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The information contained in this report is current as at February 2010.

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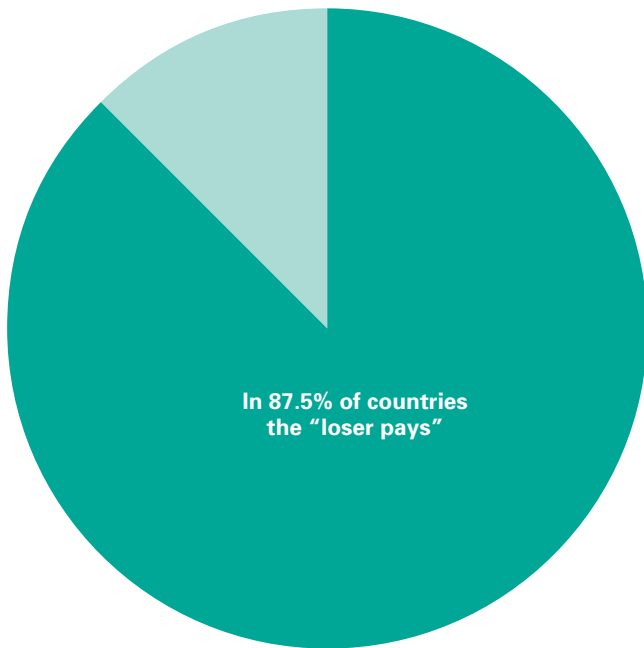
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Overview of findings

Figure 1: Jurisdictions where the “loser pays”



Surveyed jurisdictions where the “loser pays”

The global costs review reveals that some of the central features of the costs regime in England and Wales are present across the many of the world’s main business jurisdictions. Perhaps the most important feature is the general principle that the “loser pays”. This generally applies in 49 of the 56 surveyed jurisdictions (Figure 1). In a few others very limited costs may be “shifted” to the loser.

Perhaps the best known perceived example of a jurisdiction without a loser pays rule is the USA, but even this has to be treated with caution given that damages in that jurisdiction are often inflated to levels that more than compensate the costs incurred. Japan is a less well understood example of the jurisdiction where lawyers’ fees are not recoverable in any event. As a further contrast, in Taiwan, the fees are recoverable only when the lawyer has been appointed by the court.

In about 75% of jurisdictions the costs that can be recovered include most of the range of items that would normally be included within the recovery in England and Wales. Thus, lawyers’ fees, counsels’ fees, agency fees and disbursements such as copying charges and witness expenses are recoverable in the majority of instances where costs are permitted to be recovered (Figure 2).

As to the level of costs which may be recovered, here the variation is greater. Businesses will therefore wish to pay more attention to jurisdictions where costs recovered are closer to the full costs incurred by the business, in comparison to those jurisdictions where costs may be fixed or capped.

The survey established that in just under 40% of jurisdictions reviewed, the amount of costs recovered are fixed by reference to the value of the amount in dispute. In those instances there is a direct correlation between the value and the amount recovered.

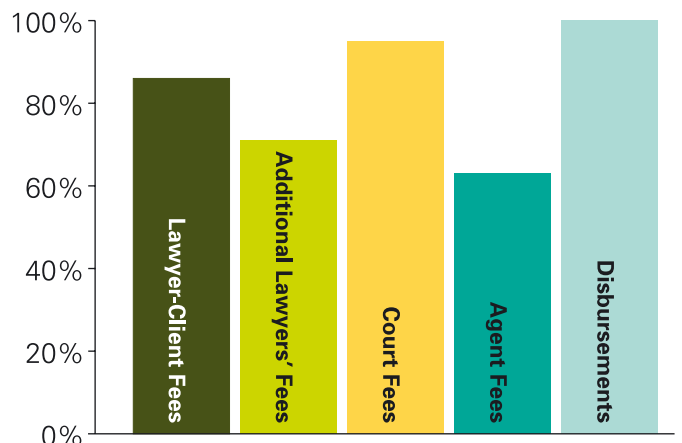
Many other jurisdictions (around 32%) treat the value in dispute, or the issues at stake, as a relevant factor in determining the amount of recoverable costs. However, in these additional instances for the most part those factors have relatively little weight in determining the overall reasonableness of costs.

England and Wales falls into this latter category. But even here, there is a growing trend towards emphasising the value of a dispute in determining the level of recoverable costs. This features highly in the list of conclusions and recommendations in the report of Lord Justice Jackson dated 14 January 2010. It is clearly a growing trend worldwide, albeit one which at the present time is having less impact on the largest and most complex business disputes than in smaller lower value cases.

Of particular interest for businesses is the widespread scope for a client to agree a special costs arrangement with its own lawyer, irrespective of the regulation of recoverable cost. This is permitted in around 89% of the jurisdictions reviewed (albeit with some limitations and/or restrictions). This includes, in nine jurisdictions, the scope for variations of “no win, no fee” arrangements (Figure 3).

Given the increasingly rigorous financial disciplines applying to businesses, it is notable that interim awards of costs can be obtained in 46% of jurisdictions, and to a more limited extent in a further 12% of jurisdictions. This leaves at least one-third of jurisdictions where costs can be recovered only when proceedings come to an end. But it will be of some comfort that in at least three-quarters of jurisdictions the conduct of a party can lead to costs being increased or decreased from the levels that would otherwise be recovered.

Figure 2: Jurisdictions allowing the recovery of the range of items normally recoverable in England and Wales



More worryingly, in around 16% of jurisdictions it would appear that interest is not payable on unpaid costs orders (Figure 4). This creates potentially serious business issues for parties unable to obtain the fruits of their litigation labour. Businesses should therefore make use of the information in our report on how costs awards are enforced globally.

Businesses wishing to enter into partnering relationships with third party funders to support litigation would be interested to note that over half of jurisdictions surveyed permit costs to be insured by a third party. In around 38% of further jurisdictions there is limited scope for this. The trend towards worldwide insurance costs is therefore strong and apparent (Figure 5). That said, our research establishes that in practice the market for insurance and the ability of the legal profession to take advantage of it means that the level of take-up is much more limited.

Outside insurance, there is more qualified scope for third parties to fund litigation claims. In around one-quarter of jurisdictions third parties are permitted to do so without significant qualification. In just under half of the jurisdictions surveyed the scope to do so exists, but is heavily qualified by what would appear to be appropriate levels of regulation (Figure 6).

These are some of the key findings which emerge. The review provides scope for many other themes and conclusions to be extrapolated.

Figure 3: Can a party agree with its own lawyer, a special costs arrangement?

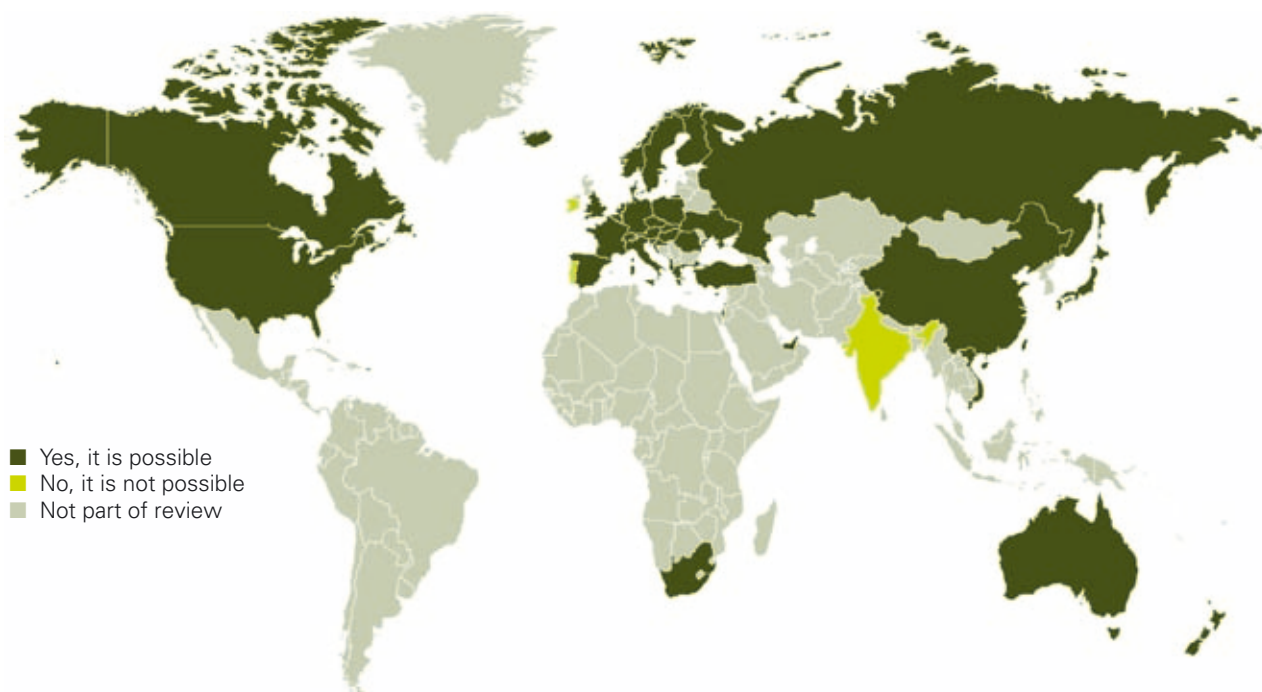


Figure 4: Is interest payable on unpaid costs?

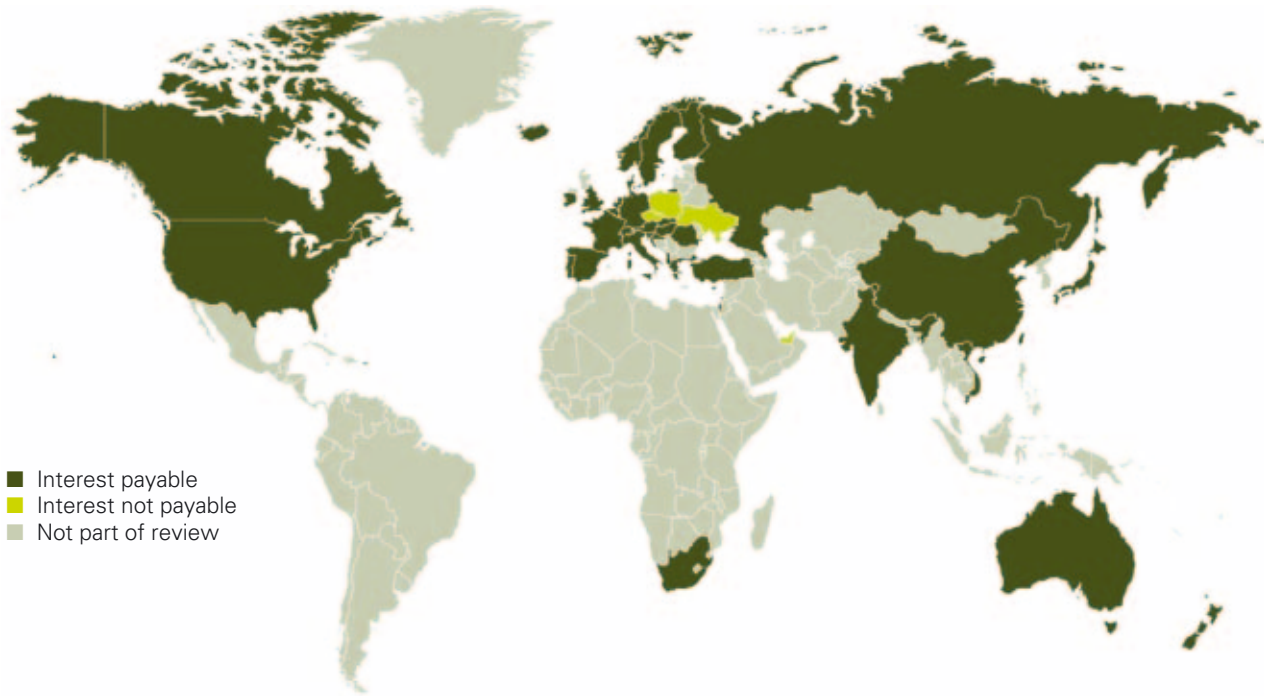


Figure 5: Can costs be insured?

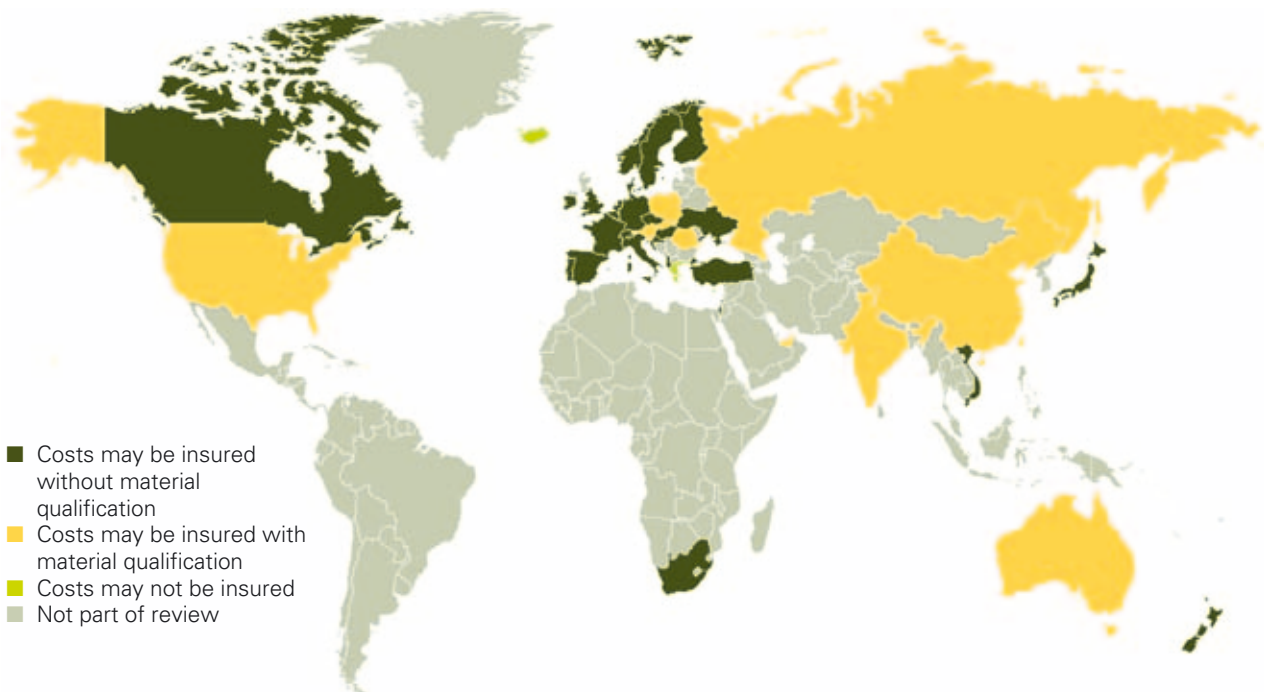
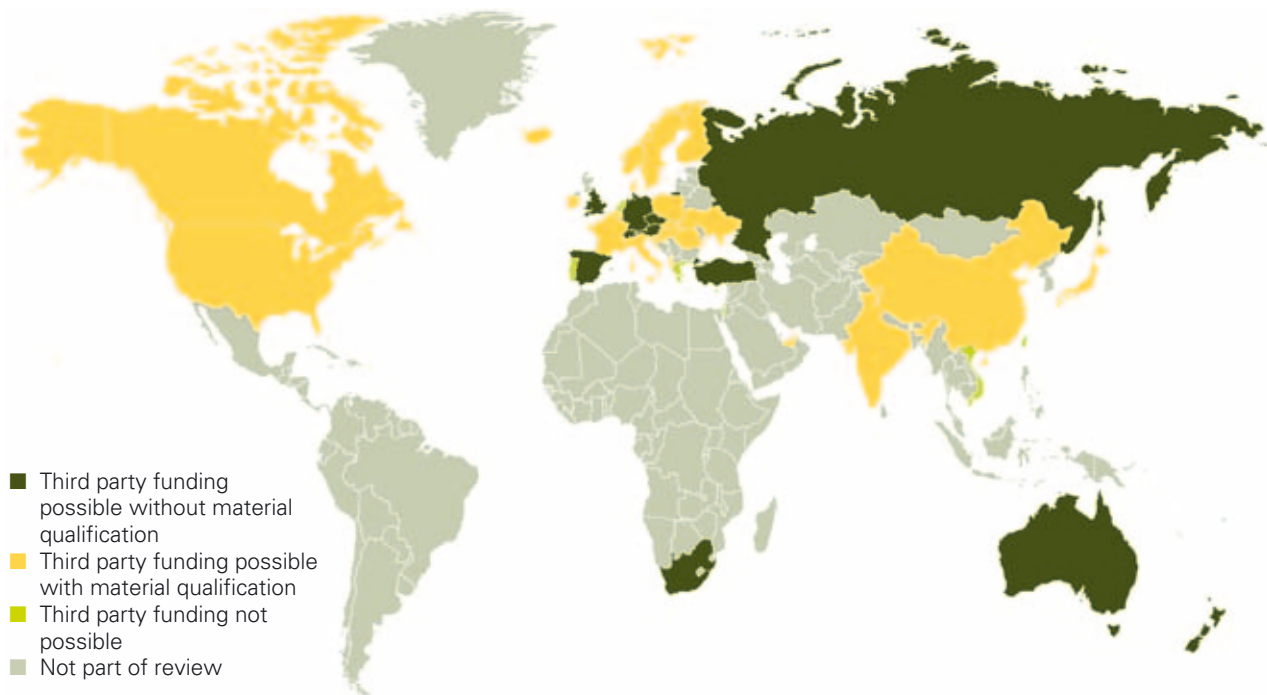


Figure 6: Is third party funding of claims available?



Country-by-country detailed responses

The following pages list our country-by-country findings in alphabetical order. Countries covered are:

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NOTES

In the following sections, the term “**costs**” (unless otherwise specified within a country section) is used to describe the costs incurred by a party during the course of litigation in connection to that litigation, and which include, but are not limited to, costs that the party has paid to its lawyers (including solicitors, counsel and advocates) to agents, to courts, to process servers and in respect of disbursements (for example, photocopying, expert witness, travel, translation, notarial services and witness attendance etc.).

The term “**lawyer**” (unless otherwise specified within a country section) is used to describe the legal adviser, solicitor, counsel, barrister, advocate, attorney or legal practitioner.

The term “**claimant**” (unless otherwise specified within a country section) is used to describe the party bringing the claim, including the plaintiff.

Cayman Islands

1. Recoverability of costs

1.1 Can costs be recovered by a party to civil litigation?

Yes.

The general principle is that a successful litigant ought to recover from the losing side its reasonable costs incurred in conducting the proceedings in an economical, expeditious and proper manner. The general principle will apply by default unless the court orders otherwise, and the court generally has power to determine whether, by whom, and to what extent costs are to be paid. The process of taxing a costs award (see questions 2.1 and 2.4 below) results in a successful party recovering a percentage (usually between 60-80%) of its actual costs incurred.

In general, payments into court by the defendant and without prejudice "Calderbank" offers will put the other side on risk of costs from the date of the payment/offer. Where the amount ultimately awarded is less than the payment in or the court considers that the without prejudice offer should have been accepted then the court can make an order relieving the paying in/offering party from liability for costs incurred after the date of the payment in or offer.

1.2 Does the losing party usually pay the successful party's costs?

Yes.

Costs are generally recovered from the losing party to the proceedings, but costs orders against third parties are also possible (for example, wasted costs orders against lawyers).

1.3 Can costs be ordered to be paid to, or by, a non-party?

Yes.

There is a need to distinguish between third parties who are affected by but not party to proceedings (for example, the recipient of a third party discovery order), and third parties who become party to a set of proceedings (for example, in contribution claims). In respect of the former, the person or body subject to the order will normally be entitled to recover reasonable costs of complying with it. These will be taxed if not agreed. In respect of the latter, a third party can recover costs – the court has power to make any such costs orders as it thinks just. Relevant considerations for the court in such cases include:

- If the plaintiff succeeds against the defendant who succeeds in turn against the third party, the third party will usually be liable for the defendant's costs, including those that the defendant will have had to pay to the plaintiff
- If the plaintiff is unsuccessful against the defendant, and in turn the defendant loses against the third party, the plaintiff will not necessarily be liable for the costs of the third party – for example, where the defendant should never have joined the third party to the proceedings
- The plaintiff will generally be liable for the costs of the third party if he loses and the defendant would have had in any event to join the third party to meet the plaintiff's claim

- Where both the plaintiff and the third party lose to the defendant, in general each will be responsible only for the costs of the claim to which they were a party.

The court has "full power to determine by whom and to what extent the costs are to be paid", which includes a discretion to award costs against non-parties to proceedings. Where a non-party not merely funds the proceedings but substantially also controls or is to benefit from them, and those proceedings fail, the non-party will normally be ordered pay the successful party's costs on the basis that he or she is "the real party" to the litigation. In deciding whether a director who is also a controlling or sole shareholder should be held liable for costs, the court will consider whether the director held a bona fide belief that (i) the company has an arguable defence; and (ii) whether it is in the interests of the company (rather than the director's own individual interests) to advance that defence; thus directors who control litigation to seek a personal benefit rather than in the interests of the company may be subject to non-party costs orders.

2. Details of recoverability of costs

2.1 On what basis are costs recoverable?

See answer to question 1.1 above. The court will generally make an order as to costs, and the actual amount recoverable will be ascertained either:

- By agreement between the parties. (The parties can generally agree the amount of costs to be paid, except in the situation where the proceedings were brought on behalf of a person under a disability – in the latter case the costs agreed must be sanctioned by a direction of the court); or
- By virtue of the fact that in a few situations fixed costs can be claimed (see the answer to question 2.2 below); or
- By assessment by the court (the party entitled to costs is entitled at his option either to an order that such costs shall be taxed if not agreed, or to have the amount of such costs assessed by the judge – where the latter is chosen the judge will make his own assessment of the amount of legal fees and disbursements which a reasonable litigant is likely to have incurred and award that amount. This is subject to considerations of proportionality and reasonableness, bearing in mind the amount at stake in the proceedings, their complexity and general importance. There are upper limits set by the rules as to the amount of costs that can be awarded on assessment, namely, US\$1,000 on an interlocutory application and US\$10,000 for the entire proceedings plus the court fees which have been paid by the successful party); or
- By taxation. (In a piece of litigation of any size the costs awarded will be taxed if not agreed by the parties. The judge will normally make a broad declaration of entitlement to costs in favour of one party, and leave the detailed assessment to the Clerk of the court for taxation. The judge can, however, give directions or guidelines as to how some or all of the costs of the proceedings are to be paid, leaving the balance to be taxed in the usual way. Generally speaking there are two distinct bases of taxation provided for in the Rules:

the standard basis and the indemnity basis. The key difference in the two bases emerges where the Clerk is in doubt as to the propriety of awarding an item – on the standard basis the doubt is resolved in favour of the loser, and vice versa on the indemnity basis. Also, on the indemnity basis the prescribed maximum hourly rates for recoverable legal fees (see question 2.4) do not apply. Costs will be taxed on the standard basis unless the court orders the indemnity basis, which it will only do in exceptional circumstances where the losing party has engaged in dishonest conduct amounting to an abuse of the process of the court. There are detailed guidelines contained in a Practice Direction governing how the Clerk must approach to task of taxation. Considerations of reasonableness and proportionality given the amount in issue, and the importance and complexity of the case, must be brought to bear by the Clerk when taxing costs, and the guidelines prescribe maximum hourly rates that can be awarded on the standard basis. The process is inquisitorial as opposed to adversarial).

2.2 Is the amount of recoverable costs fixed?

Yes, for certain proceedings the plaintiff has the right to claim fixed costs.

Fixed costs can be claimed where the court has given judgment in default (for example, where the defendant has failed to give notice of his intention to defend, or failed to file a defence), or for certain claims for liquidated sums (debt) actions. The prescribed amounts recoverable by way of fixed costs are so small, however, that the right to claim fixed costs is invariably waived in favour of assessment or taxation.

2.3 Is the amount of recoverable costs calculated by reference to the amount in dispute?

No.

However, the assessment or taxation of costs will generally be made subject to broad considerations of proportionality, and these will include (amongst other things) the amount in dispute and the importance and complexity of the case.

2.4 What can be recovered as “costs”?

Attorneys’ fees, court fees, reasonable travelling and hotel expenses for witnesses travelling to the Cayman Islands, and generally any expense is claimable as a disbursement on taxation if:

- it was reasonably and properly incurred by the successful party’s lawyer in the course of conducting the proceedings
- it is not an expense of a kind which is customarily included in the overheads reflected in a lawyer’s hourly rates and is therefore deemed to be reflected in the hourly rates charged by the successful party’s lawyer.

Answers to the specific questions below are subject to these general considerations and other detailed provision in the Rules.

Lawyer – client fees	Yes. However, taxation guidelines allow recovery of fees at prescribed rates (by reference to a lawyer’s post qualification experience) which are somewhat lower than prevailing market rates.
Additional lawyer fees (for example, counsel fees or trial advocate fees)	Yes, subject to the following important restrictions and qualifications in relation to foreign lawyers instructed by the parties: <ul style="list-style-type: none"> • their fees are not recoverable as disbursements • a foreign lawyer must be temporarily admitted as a Cayman attorney (which may be refused in some cases) and the fees are incurred after that admission • claims for foreign lawyers fees will be disallowed to the extent that there is any duplication of work done by the local attorneys • fees for work done by local lawyers instructing foreign lawyers are not recoverable, and fees for time spent/disbursements incurred in respect of written and oral communications between local and foreign lawyers are also not recoverable. <p>The overriding principle is that a paying party should not be required to pay more because the successful party has engaged a foreign lawyer than he would have been required to pay if the successful party had employed only local lawyers.</p>
Agency fees (for example, London agents, local agents, appellate lawyer, bailiff/process-server)	Yes.
Court fees	Yes.

Disbursements (including, but not limited to, photocopying, expert witness, travel, translation, notarial, witness attendance etc.) Yes.

Other expenses? Yes.

3. Particular costs issues

3.1 Can a party agree with its own lawyer, a special costs arrangement?

Yes to a certain extent only.

Litigation lawyers tend to charge according to hourly rates and through interim billing, rather than lump sums payable at the conclusion of litigation. Conditional fee agreements, where payment is dependent on a party's success in an action, require prior approval by the Grand Court, which is rarely sought or granted (except as part of liquidation funding arrangements); contingency fees or agreements whereby a lawyer shares in the proceeds of any monetary award granted by the court are absolutely prohibited. In any case, fees charged on any basis other than hourly rates will be disallowed on taxation.

3.2 Which tribunal resolves costs disputes and how?

There is provision in the Rules for a party dissatisfied with a decision of a taxing officer to ask for a judge of the Grand Court to review the decision. The review will be inquisitorial in nature. Apart from this review procedure, the Rules provide for an appeal to the Court of Appeal on costs issues only in limited circumstances. Permission must be obtained for the appeal, and the appellant must show that there is a point of construction of the rules of general importance to obtain such leave.

3.3 Can a party be required to provide security for costs (or some other sum) in advance of costs being decided?

Yes.

There is provision in the Rules for the court to make an order for security for costs against plaintiffs (claimants), which may result in a sum being deposited in a court account to be applied towards future costs orders.

4. Costs awards

4.1 Can interim awards of costs be obtained?

Yes.

See response to question 3.3 above.

4.2 Can an award of costs be increased or decreased by reference to such matters as a party's conduct of the case?

Yes.

In exercising its discretion as to costs the court will consider the conduct of the parties – for example, whether it was reasonable

for a party to raise or contest particular issues; the manner in which a party has pursued or defended his case or issue, and whether a claimant who has succeeded in his claim in whole or in part exaggerated his claim.

4.3 How are costs awards enforced?

Costs are made the subject of an award which is enforceable as a money judgment against the unsuccessful party. A judgment for payment of money may be enforced by:

- a writ of fieri facias; and/or
- garnishee proceedings; and/or
- a charging order; and/or
- the appointment of a receiver; and/or
- an order for committal; and/or
- a writ of sequestration; and/or
- an attachment of earnings order.

4.4 Can a costs award be set off against a monetary judgment?

At common law costs can be set off against a monetary judgment once the conditions for set off are satisfied. There is also express provision in the rules for set off of costs awards as between parties to the litigation.

4.5 Is interest payable on unpaid costs?

Yes.

Interest is payable from the date of service of a costs award, according to prescribed rates which are amended from time to time. The rate may differ depending on the currency in which judgment is given. The present rate of interest (effective from 1 December 2008) for Cayman Islands, US and Canadian dollars is 5%, and 7.75% for British Pound Sterling.

5. Costs of an appeal

5.1 Are costs of an appeal treated differently?

In general, no.

The costs rules for civil proceedings before the Grand Court also apply to the Court of Appeal.

6. Funding of civil and commercial claims

6.1 Can costs be insured?

After the event insurance may be available, but there is no established market for such coverage among local insurance providers.

6.2 Is legal aid available?

Yes.

Legal aid is available in civil litigation proceedings before the Grand Court. The Grand Court may grant a legal aid certificate entitling the litigant to either free or subsidised legal aid where it appears to the court that the person does not have the means to instruct a legal representative. Where the court is in doubt

regarding the financial means of a legal aid applicant, it must direct a legal aid officer to inquire into the applicant's means and make a report to the court. The fees and expenses of the legal representative are subject to prescribed limits and conditions laid down in regulations, and are payable by the Treasury.

6.3 Is third party funding of claims available?

Yes, subject to restrictions: see question 3.1 above.

It is possible for third parties to fund litigation, subject to the common law rules prohibiting maintenance and champerty. As stated above, conditional fee agreements are subject to prior approval by the court.

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