

# Litigation Funding Options: Checklist (Ireland)

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Tables showing differences among the various methods of funding available to parties to civil litigation in Ireland.

This Checklist summarises the position regarding funding options available to a party to civil litigation in Ireland. The funding of litigation by third parties with no prior connection to the case is not generally permitted in Ireland as a result of the rules against maintenance and champerty.

Maintenance is the funding of litigation in which the funder has no interest. Champerty is the funding of litigation in exchange for a share of the proceeds of that litigation. Although the rules against maintenance and champerty have either been abolished or significantly eroded in other common law jurisdictions, they remain both criminal

offences and civil wrongs or torts in Ireland under the [Maintenance and Embracery Act 1634](#), which was retained in Ireland by the [Statute Law Revision Act 2007](#).

The superior courts in Ireland have considered the impact of the Maintenance and Embracery Act 1634 in several cases between 2013 and 2018 and have continued to affirm the rules.

The tables below set out the differences between the various methods of funding available to parties to a civil litigation in Ireland, and the advantages and disadvantages of each method. It includes links to related content for further guidance.

## Self-Funding

### Legal Position

The funding of litigation by unconnected third parties is not generally permitted in Ireland as a result of the rules against maintenance and champerty. On this basis, the most common form of funding of litigation in Ireland is self-funding.

The estimated costs associated with self-funding are set out by the instructed solicitor.

In Ireland, solicitors are required by law to provide information regarding the basis on which they charge their fees for their services. These fees are set out in a cost notice and include a breakdown of:

- Legal costs already incurred.
- Fixed costs (for example, certain court fees that are a fixed amount).
- The likely costs that the solicitor thinks will be incurred in dealing with the case (that is, barristers' fees or phone and postal charges).
- The VAT amount to be charged.
- The basis for the costs (that is, how the fees are to be calculated).

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<b>Legal Position</b>	<p>The calculations are based on specific factors that are set out in legislation, including:</p> <ul style="list-style-type: none"><li>• The complexity or novelty of the issues involved.</li><li>• The skill or specialism of knowledge applied.</li><li>• The amount of time and labour reasonably spent.</li><li>• The urgency attached to the matter.</li></ul> <p>If a solicitor becomes aware that the legal costs in a case are likely to increase significantly from what was set out in the costs notice, then they must provide an updated costs notice.</p> <p>The law that deals with this matter is section 150 of the <a href="#">Legal Services Regulation Act 2015</a>. These rules came into force on 7 October 2019.</p>
<b>Advantages</b>	Self-funding permits a claimant to have financial control over the litigation and all the related decision making.
<b>Disadvantages</b>	Self-funding can be a barrier to accessing justice. This is because many individuals or companies may not be in a financial position to pursue a course of action because of the high cost of litigation together with the risk that if a claim is unsuccessful, an individual or company may have to bear the costs of the successful party, as well as their own legal costs. This means that a claimant with a legitimate claim may not be able to proceed with litigation.
<b>Constraints and Challenges</b>	The financial constraints of litigation can affect an individual or company's ability to access justice and remedy a wrong. Civil legal aid can assist individuals in some instances, but there are constraints on eligibility.

## Conditional or Contingency Fee Agreements

<b>Legal Position</b>	<p>Irish lawyers are expressly prohibited from charging fees by reference to a percentage of damages awarded (section 149(1)(a), <a href="#">Legal Services Regulation Act 2015</a>).</p> <p>Litigation lawyers can enter into arrangements known as “no foal, no fee” or “no win, no fee” arrangements. These are conditional arrangements with clients, where payment by the client to the solicitor is conditional on the success of the case. However, these arrangements are more commonly used in individual personal injury and medical negligence claims.</p>
<b>Advantages</b>	The client, who may not otherwise be in a financial position to take a claim, benefits from not being liable to discharge their solicitor's legal fees if they are unsuccessful. This increases access to justice in appropriate cases.
<b>Disadvantages</b>	<p>The client may still be liable to discharge outlays and the legal costs of the other party if they are unsuccessful.</p> <p>Lawyers are less likely to take on higher risk cases where these fee arrangements are in place. Consequently, this limits the number of cases that can benefit from this option.</p>

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### Constraints and Challenges

As these arrangements are conditional, lawyers only enter them if they are almost certain that they will win or settle. This can be difficult to determine at the outset and lawyers are unlikely to recover the time that it takes to assess the case. Therefore, the types of cases that can benefit from this form of fee arrangement are limited.

See [Practice Note, Third-Party Litigation Funding: Overview \(Ireland\)](#).

## Legal Costs and Expenses Insurance

### Legal Position

After the event insurance (ATE) is a form of litigation or legal expenses insurance that is taken out to cover specific litigious proceedings after the event. An ATE insurance policy is generally tailored to a specific dispute but may be structured to cover adverse legal costs awarded to the other side (if the case is unsuccessful or abandoned) and security for costs. The policyholder's own legal fees, expenses, and disbursements can also be covered, although insurers will not always pay these out during the litigation, opting instead to pay the policyholder only if it is unsuccessful.

ATE insurance has garnered a level of acceptance in Ireland. In *Greenclean Waste Management v Leahy* [2014] IEHC 314, ATE insurance policies were held not to offend the rules of maintenance and champerty.

### Advantages

ATE insurance removes the risks associated with losing a case and an adverse costs award.

If the client negotiates a contingency premium, then the premium is contingent on success and is therefore only paid by the client if and when they win the case.

### Disadvantages

Typically, ATE insurers only consider cover where there is a good (that is, more than 60%) prospect of success. Consequently, this limits the number of cases that can benefit from this option.

The premium for ATE insurance policies can be very high in instances of high value litigation.

Premiums for ATE policies can also be payable as a deposit, with the entire amount being discharged when the insurance is first taken out, and not recoverable if the insured is unsuccessful.

### Constraints and Challenges

In some instances, most commonly if the case is lost, the insurers elect to pay the policyholder only and the lawyers are required to recover their fees directly from the client.

See [Practice Note, Third-Party Litigation Funding: Overview \(Ireland\)](#).

### Third-Party Litigation Funding

#### Legal Position

Third-party litigation funding is not generally permitted in Ireland. The rules against maintenance and champerty exist under the Maintenance and Embracery Act 1634 and prohibit third-party funding by third parties who have no legitimate interest in the proceedings.

In what was the first Irish case to directly consider third-party funding in Ireland, both the High Court and Supreme Court in *Persona Digital Telephony Ltd v The Minister for Public Enterprise & Others* [2016] IEHC 187 confirmed that the centuries-old common law principles of maintenance and champerty remain in force and that any changes to the law in this area must be driven by the legislature.

Calls for reform in relation to the law around third-party litigation funding in Ireland have continued to grow, and it appears likely that there will be a significant amount of change in the near future.

In particular, the [Review of the Administration of Civil Justice: Review Group Report](#) (Kelly Report) recommended the introduction of legislation to allow liquidators, receivers, and administrators under the [Insurance \(No 2\) Act 1983](#), the Official Assignee, and trustees in bankruptcy to fund proceedings that are intended to increase the pool of assets available to creditors. Although this represents a significant and welcome change in the insolvency arena, where funding litigation can be an especially significant issue, publication of a bill has not been forthcoming to date.

However, a new private members' bill, the [Third-Party Funding Contracts \(Certain Proceedings\) Bill 2024](#), if enacted as currently drafted, would permit third-party funding of certain insolvency proceedings intended to increase the pool of assets available to creditors. It envisages the use of Ministerial regulations to prescribe criteria, including as to transparency in relation to funders and recipients, that third-party funding contracts would need to meet for this purpose. It would also permit third-party funding for certain other proceedings (defined in section 2(2) of the bill), including proceedings concerning environmental protection, climate change, or the protection of consumer interests.

The issue of funding of litigation that has as its purpose consumer protection has gained particular prominence since the introduction of a framework for consumer representative actions in Ireland, pursuant to the [Representative Actions for the Protection of the Collective Interests of Consumers Act 2023](#).

While professional "for profit" third-party funding arrangements are currently unlawful, third parties who have a legitimate interest in proceedings, such as shareholders or creditors of a company involved in proceedings, can lawfully fund them, even when the funding may indirectly benefit them. This was confirmed in *Thema International Fund v HSBC International Trust Services (Ireland) Ltd* [2011] IEHC 357.

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### Legal Position

Lastly, legislation confirming that the prohibition on third-party funding does not apply to international commercial arbitration is included in the [Courts and Civil Law \(Miscellaneous Provisions\) Act 2023](#), amending the [Arbitration Act 2010](#), and which was signed into law on 5 July 2023. Although the relevant provisions are yet to be commenced, the passing of this legislation brings welcome clarity to the legality of third-party funding of international commercial arbitrations.

For more information on the development of the law in relation to third-party litigation funding, see [Practice Note, Third-Party Litigation Funding: Overview \(Ireland\): Recent Developments](#).

### Advantages

The [Irish Law Reform Commission](#) (LRC), in its consultation paper, has identified four arguments in favour of allowing third-party litigation funding:

- To improve access to justice.
- To improve equality of arms between parties in cases where one party has the benefit of significant financial resources compared with the other and can force the weaker party to accept an unsatisfactory settlement.
- To help increase the pool of assets available to creditors in insolvency proceedings.
- To address an inconsistency in the law, whereby corporate entities can effectively engage in third-party funding under another name by issuing shares or transferring ownership of the company to fund its participation in dispute resolution.

### Disadvantages

- The perceived disadvantages are that it:
- Might allow for the over commercialisation of litigation and turn the process into a profit-making exercise.
- Might encourage the bringing of vexatious and meritless disputes.
- May cause funded parties to be under-compensated, as the funder may take their return on investment, with the result that the funded party is not fully compensated for any harm suffered.
- May lead to an increase in legal costs.
- May lead to an increase in the price of insurance premiums.
- Is not appropriate in all types of disputes.

### Constraints and Challenges

The current general prohibition on third-party litigation funding is counterintuitive to increasing access to justice in Ireland and poses challenges to both ordinary citizens and businesses that may not have the necessary funds to litigate their action to a close.

See [Practice Note, Third-Party Litigation Funding: Overview \(Ireland\)](#).

## Legal Aid

### Legal Position

A limited form of aid is available in civil litigation through the [Legal Aid Board](#). The Board provides civil legal advice and representation to people who cannot afford to pay for a solicitor. To qualify for civil legal aid, the applicant must satisfy financial eligibility requirements and pay a contribution towards the legal costs, unless the contribution obligation has been waived based on the applicant's financial resources (section 29, [Civil Legal Aid Act 1995](#) (as amended)).

The development of the civil legal aid system has been identified by the Chief Justice of Ireland, Mr. Justice O'Donnell, as a key target towards increasing access to justice for claimants who may not currently be eligible for civil legal aid. A working group, the Civil Legal Aid Review Group, has been established for this purpose.

### Advantages

Legal aid increases access to justice in the areas of law that it applies to.

### Disadvantages

To qualify for legal aid, strict financial eligibility requirements must be met.

Certain areas of law, such as defamation, employment, conveyancing, and property disputes, are excluded.

### Constraints and Challenges

A challenge highlighted by the Board is the maintenance of the downward trajectory in terms of the number of individuals waiting for legal aid services.

See [Practice Note, Third-Party Litigation Funding: Overview \(Ireland\)](#).

## Crowdfunding

### Legal Position

There is currently no provision for crowdfunding or damages-based agreements in Ireland as there is in England and Wales. These forms of funding offend the rules against champerty and maintenance.

### Advantages

Not applicable.

### Disadvantages

Not applicable.

### Constraints and Challenges

Not applicable.

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