

CODE OF BEST PRACTICES

INTRODUCTION

This Code sets out Bentham IMF's best practices for the funding of commercial litigation.

THE CODE IS INFORMED BY FOUR PRINCIPLES:

Fairness	Ensure that the commercial litigation funding investment process is characterised by good faith and fair dealing among litigants, counsel and the public, while providing increased access to justice.
Transparency	Establish clear expectations on matters of importance to all stakeholders and encouraging the education of the judiciary, the bar and the general public about commercial litigation funding.
Accountability	Clarify the roles of stakeholders, and seek alignment of their respective interests.
Responsibility	Require and encourage compliance with existing legal and ethical rules that reflect the values of the legal system.

BEST PRACTICES

BETWEEN FUNDER AND THE PUBLIC

The funder shall seek to educate the judiciary, the bar and the general public about commercial litigation funding.

The funder shall devote executive time and resources to pro bono projects for those unable to pay for their own legal services.

BETWEEN FUNDER AND LITIGANTS' COUNSEL

The funder shall not induce a litigant's counsel to breach their professional duties.

The funder shall not provide any legal advice or legal services to a litigant.

The funder shall preserve the confidentiality and/or privileged nature of all information and documentation relating to a litigant's dispute to the extent that the law permits, and subject to the terms of any confidentiality or non-disclosure agreement agreed between the funder and a litigant.

The funder shall not pay referral fees to counsel who refer potential clients.

The funder shall not knowingly allow a lawyer or law firm representing a litigant or expert retained, to invest in the funder.

The funder shall not make false or misleading statements about its products or services.

BETWEEN FUNDER AND LITIGANTS

The funder shall not make false or misleading statements about its products or services.

All litigation funding arrangements (“LFAs”) must set out the anticipated legal budget, indicate the return to the funder, and be written in as clear and concise manner as possible.

The funder must provide a recommendation that a litigant obtain independent legal advice as to the meaning and effect of the LFA, and the LFA shall state that a litigant acknowledges having received and understood the recommendation.

The LFA shall state plainly whether and in what circumstances the funder may:

- Manage a litigant’s litigation expenses;
- Receive notice of and provide input on any settlement demand and/or offer, and any response; and
- Terminate the LFA and the consequences of such termination on funding and returns.

The LFA shall state plainly whether and in what circumstances the funder may be entitled to participate in a litigant’s settlement decisions. For example, subject to agreement between the parties, the LFA may provide that a litigant, counsel and the funder shall consult in good faith as to the appropriate course of action to take in connection with all settlement demands or offers.

The LFA shall state plainly whether and in what circumstances the funder may terminate the LFA. If it does so permit, the document may provide that such termination is permissible when:

- The funder reasonably determines that an event or circumstances has occurred that has a material adverse effect on the merits of the litigation or its prospects of commercial success;
- A litigant materially breaches the LFA; or
- A litigant’s counsel withdraws or seeks to withdraw from the engagement.

LFAs must include an independent, transparent and prompt process for resolving disputes between the parties to the LFA.

RELATING TO FINANCIAL STRENGTH

At all times, the funder shall maintain sufficient financial resources to meet its obligations to fund all disputes they have agreed to fund, and in particular shall maintain at all times the ability to:

- Pay all accrued funding obligations under all current LFAs; and
- Pay all debts as and when they become due and payable.

CONTACT

250 The Esplanade, Suite 127
Toronto, ON, M5A 1J2
T: +1 416 583 5720
E: cio@benthamimf.ca

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