

**HARBOUR**



LITIGATION  
FUNDING LTD

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(English version only)



**LITIGATION FUNDING 2014**

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# Harbour's Team



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CEO



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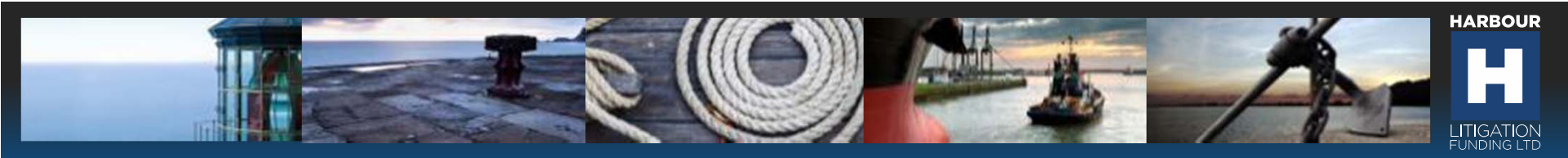
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Director



Michael Napier CBE QC  
Chairman of Board



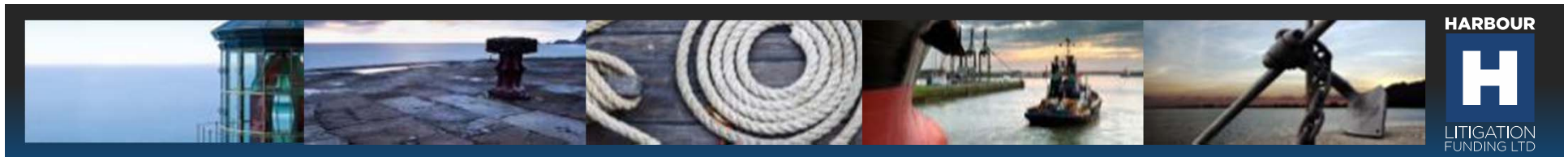
# Harbour's Experience

- Last year we invested £40m in litigation in England & Wales, common law jurisdictions and arbitrations with an aggregate claim value in excess of £1 bn.
- We have £180 million of capital for investment in litigation and arbitration claims.
- We have the most litigation funding experience in the UK.
- We are currently funding 40 cases and international arbitrations in various jurisdictions - England and Wales, Hong Kong (recently settled) the Channel Islands, Bermuda, Caribbean, New Zealand, Switzerland, Canada, Australia and the US.
- We have over 30 cases with more than £3bn claim value under review.



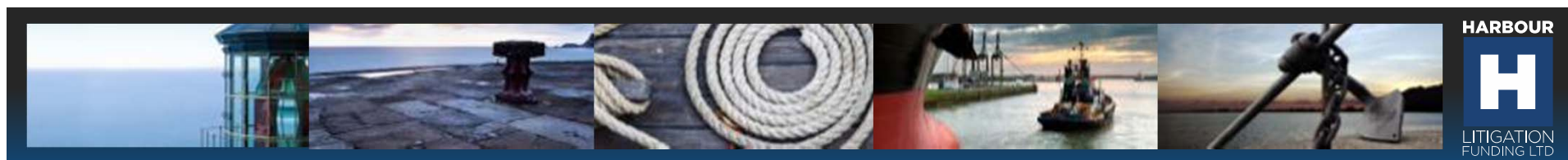
# What is Litigation Funding?

- Funding all the costs of a piece of litigation, including adverse costs, in return for a share of the proceeds.
- **Bills paid monthly in full throughout the case.**
- **No Conditional Fee Agreement required.**
- It is not insurance and covers a broad range of expenses.
- Really only for Claimants, though considered for counter-claimants.



# Why do you need to know about Litigation Funding?

- FTSE 100 spend on litigation dropped from £18.6 million in 2011 to 12.3 million in 2012. Legal Week survey 4/13, 120 General Counsel say their legal spend will drop a further 10% in 2013.
- We receive over 40 new enquiries each month for funding for claims over £3 million in claim value – often also looking for law firms to run those claims.
- There is a massive squeeze on legal expenditure for commercial litigation.
- Litigation is very expensive.
- You are losing business if you cannot find ways for good cases to proceed and generate fees for your firm.
- Clients expect you to find ways for them to cover the costs of litigation.
- Jackson reforms has costs at the top of everyone's agenda in the UK



# Hong Kong - Overview

- Case law specifically permits the use of litigation funding in certain contexts
- These are the public policy exclusions from Siegfried Unruh v Seeberger [2007] HKCU 246
  - Cases involving access to justice considerations
  - Common interest funding
  - Miscellaneous category of practices accepted as lawful, including insolvency and bankruptcy
- Reform and acceptance in the local courts on the horizon



# Maintenance and Champerty

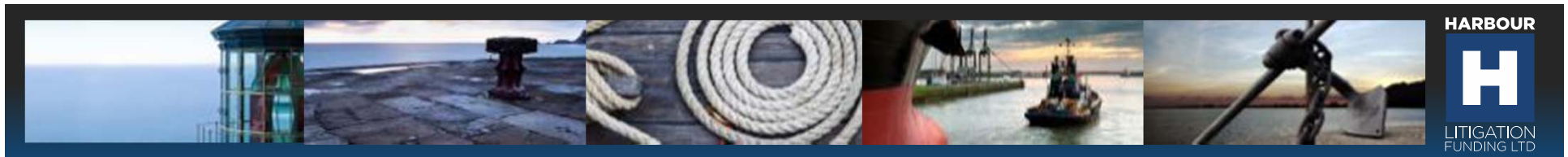
- Common law prohibition on maintenance and champerty was part of Hong Kong law prior to 1997 and remains applicable by virtue of Article 8 of the Basic Law
- There are public policy exclusions from the restrictions





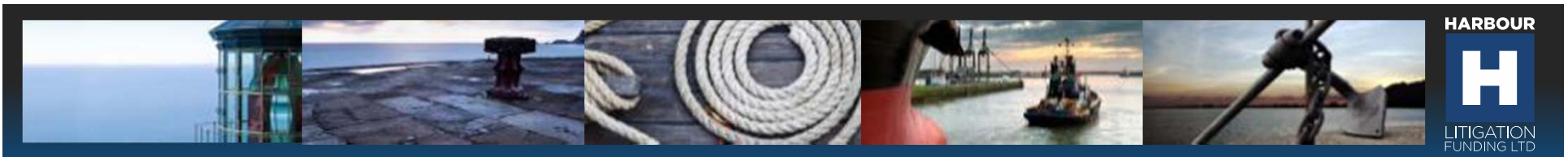
# Ribero P.J. in *Unruh v Seeberger*

“It is ... obvious that [the] access to justice category is not static. The development of policies and measures to promote such access is likely to enlarge the category and to result in further shrinkage in the scope of maintenance and champerty.”



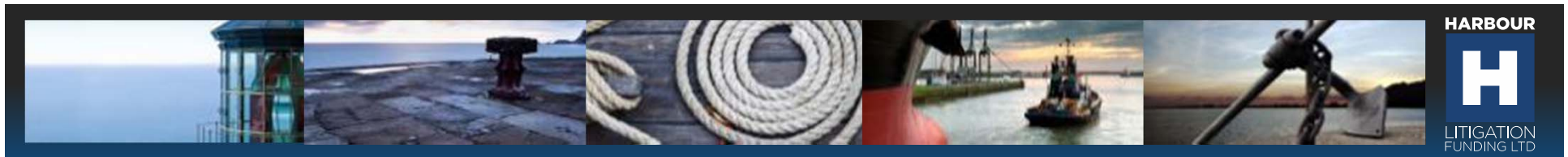
# *Unruh v Seeberger* continued...

- Traditional legal policies underlying maintenance and champerty continue to apply, but must be substantially qualified by other considerations
- The test is whether the arrangement poses a genuine risk to the integrity of the process which for now will be on a case by case basis



# Harbour Funding in Hong Kong

- Harbour funded a claim made by the liquidators of Pioneer Iron and Steel Group Company Limited, in liquidation in Hong Kong and the BVI, against an director who removed assets from the company, resulting in creditors shortfall of US\$80mm.
- Harbour's funding of the claim, which was run by Clifford Chance in Hong Kong, lead to the successful appointment of an interim receiver over substantial assets and an ultimately favourable settlement of the claim.

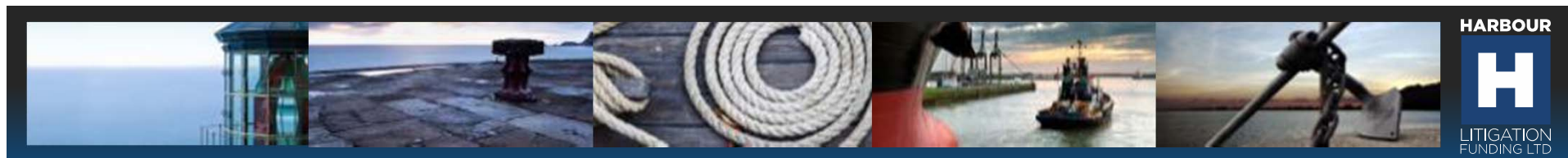


# Use in Arbitration

- Kaplan J in Cannonway Consultants Ltd v Kenworth Engineering Ltd [1995] 1 HKC 179:

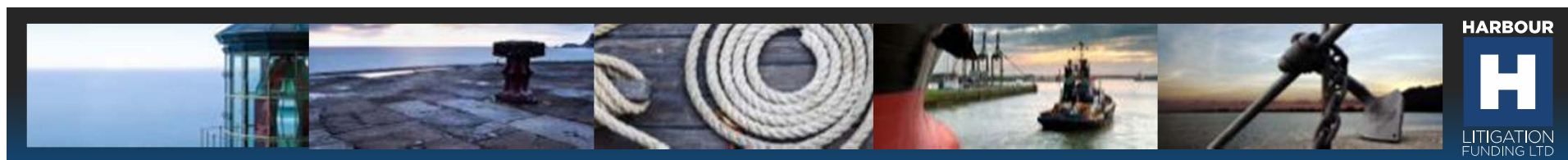
“If [the doctrine prohibiting maintenance] were to apply in the present case, it would be extending champerty from the public justice system to the private consensual system which is arbitration. The trend in recent years has been all been the other way.

... It seems to me unwise to make any extension to the law of champerty given that the reasons for its introduction have since passed”



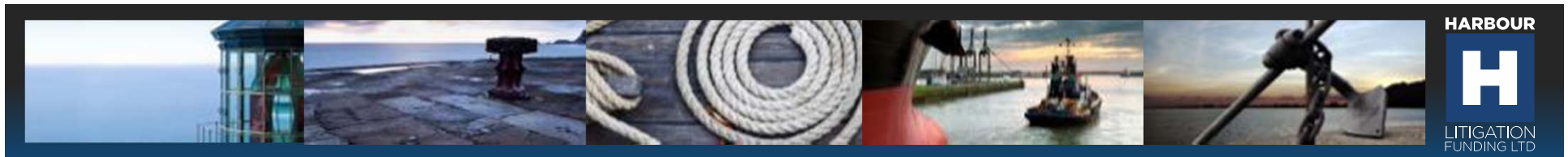
# Reform in Hong Kong

- Ribero PJ in *Winnie Lo v HKSAR* [2011] FACC:  
“I wish to raise for consideration the question whether and to what extent criminal liability for maintenance should be retained in Hong Kong ... [this] may involve taking a different view in respect of maintenance as opposed to champerty; and of criminal as opposed to tortious liability. It is in my view a fit topic to be referred to the Law Reform Commission.”
- The Law Reform Commission has fielded a group of litigators and arbitrators to form a subcommittee that is reviewing the current position of funding for arbitrations and to make recommendations for reform if appropriate. It is anticipated that the consultation will be completed this year.



# Who uses Litigation Funding?

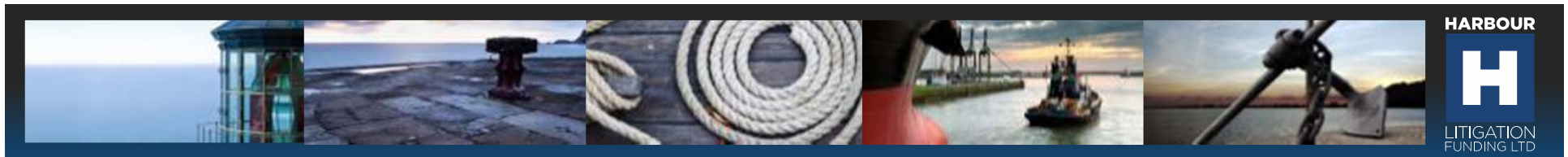
- Not just for those without funds
- Don't confuse your letter of engagement with communication.
- Harbour survey – 80% of lawyers surveyed said they discussed funding with their clients, fewer than 10% of in-house lawyers at large corporates said they had heard of it – clearly massive disconnect.
- We spend several million £ on each of the cases we fund.



# What Are the Funding Criteria?

Here are the 4 criteria we consider every time:

- Does the Defendant have the financial resources – can we identify where those assets are and what % of its overall net worth our claim represents?
- What are the legal merits of the claim? – this splits into position on liability and value – of which more on the next slide.
- What are the costs of pursuing the claim? – we always budget through to trial so that every defendant who is faced with a claim funded by us knows that the case is fully funded. We work with the legal team to understand the costs for solicitors, counsel, experts, adverse costs (whether by purchasing ATE insurance or paying money into court as security for costs) and any other costs.
- What is the capability and experience of the team? – we want the best teams working on our cases.



# What Types of Cases Can be Funded?

- Any case which has a potential damages or money outcome is a potentially good case for funding. The majority of our funded cases are for claimants. However there are situations where we will fund a defendant with a good counterclaim.
  
- This includes, but is not limited to, claims relating to:
  - competition claims – both cartel and abuse of dominant position claims
  - breach of contract – property disputes, procurement contracts, investment management disputes
  - arbitrations - we are funding LCIA, ICSID, ICC and Energy Charter Treaty arbitrations
  - insolvency claims
  - intellectual property and patents – damages claims for infringement of patent, breach of development agreements around patent for medical device
  - breach of fiduciary duty & breach of trust – for negligent administration of trusts
  - tax tribunal claims
  
- We are currently funding all of those types of cases.

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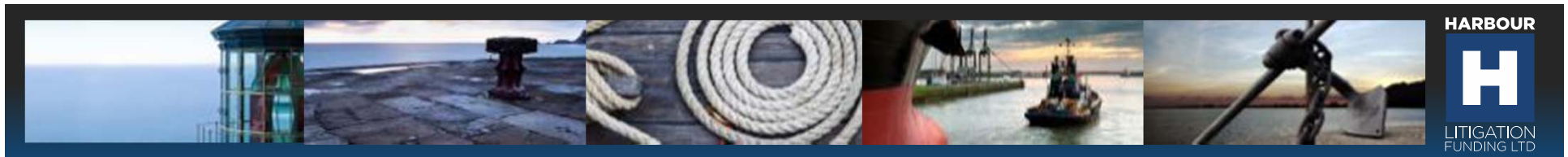
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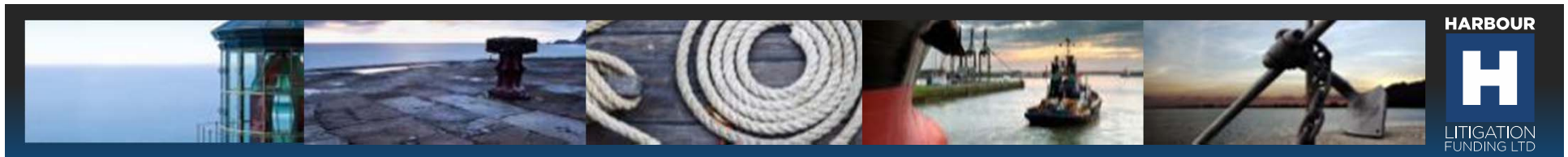
# Harbour's Charges

- The typical charge is a % of proceeds. The % charged typically increases over time. Minimum charge of multiple of what is spent at time matter concludes.
- The charge does not vary by level of risk of the case, but by the ratio of budgeted costs to realistic claim value. We fund difficult cases, but if a case doesn't pass muster, charging more doesn't make it more appealing to us.
- The client only pays Harbour on success (and never more than it recovers). All agreed costs up to the date the case is lost or discontinued are borne by Harbour.
- The client (no matter what their financial circumstances) is gaining a % of a claim which would have amounted to nothing without funding.



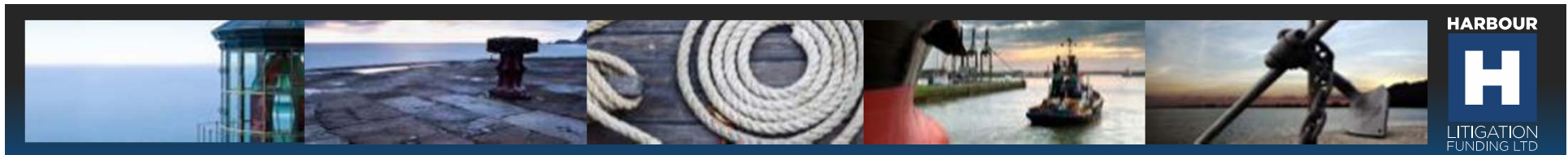
# Harbour's Process

- **Stage 1**
  - No form to fill in, but we will always focus on our 4 key criteria.
  - Initiate with phone call or email setting out a summary of the case.
  - Client signs Common Interest and Confidentiality Agreement.
  
- **Stage 2**
  - We will give you a no or a maybe within 48 hours of your first contact with us.
  - We will cover the costs required to get the case in shape to present to our Investment Committee e.g. cost of counsel's opinion or valuation report.
  - Letter Of Intent signed in which financial terms are set out.



# Harbour's Process (cont.)

- **Stage 3**
  - Case of sufficient merit to present to our Investment Committee.
  - Investment Committee meets once a month and all cases put forward are subjected to detailed discussion.
  - If the Investment Committee recommends the case for funding, we immediately enter into a funding agreement with the client and the funds are available for payment immediately.



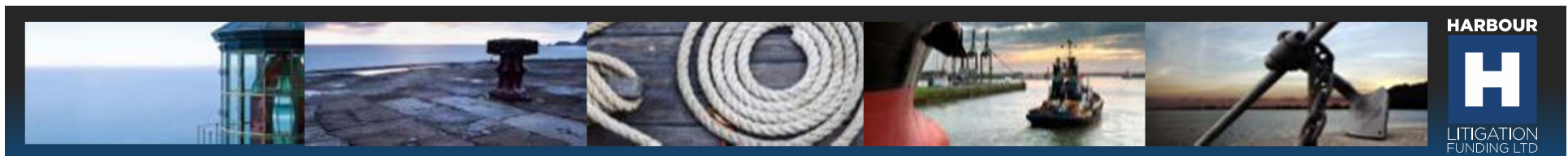
# Budgeting and Fixed fees – our budget document

- We have developed an easy to use budget document.
- This document also generates a timeline.
- We now aim to operate all our cases on a fixed fees basis.
- What does fixed fee mean to Harbour and for you?



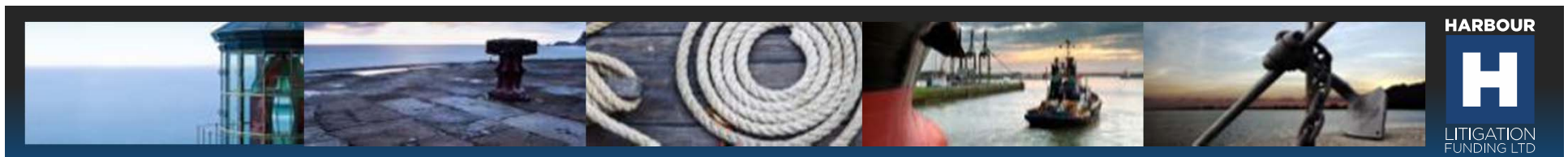
# The Investment Agreement – key provisions

- **Harbour Fund's investment** - Harbour Fund will pay the budgeted legal costs, including adverse costs, which are incurred in connection with the Claim as they fall due. Some claimants do not always want all of the costs funding.
- **Conduct of Claim** - The conduct and control of the Proceedings rests with the claimant.
- **Settlement of Claim** - The decision to settle or continue with the Claim rests with the claimant.
- **Harbour Fund's share of the proceeds on success** – Is set out in the LOI and IA.
- **No success** - If the claimant does not receive any proceeds, the monies invested by the Harbour Fund are not required to be repaid.
- **Termination** - Harbour Fund is entitled to terminate its investment if, during the proceedings, there has been a material adverse decline in the prospects for success in the Claim. The claimant has a right to have the termination decision mediated.
- **Failure to follow solicitors' reasonable legal advice** - If the claimant abandons, withdraws or discontinues all or part of the proceedings other than on the basis of reasonable legal advice obtained from the solicitors, the claimant will generally be required to repay the Harbour Fund all sums it has invested in the Claim.



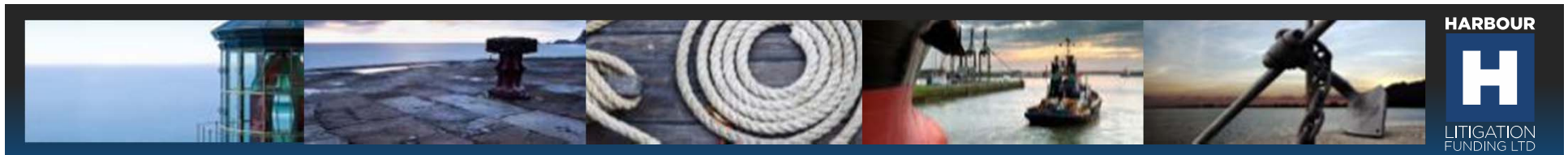
# Privilege & Disclosure of Funding Agreement

- Common interest/litigation privilege protects exchanges between the parties.
- There is no requirement to disclose the funding agreement to the opposing party.
- However we think it makes tactical sense to do so.
- Fact of funding is not a defence to the action enabling it to be stayed.



# What is our role when the case is up and running?

- Claimant is obliged to consult with Harbour and to act reasonably throughout .
- We receive a monthly report throughout the life of the case – typically submitted with the bills which are also paid monthly throughout.
- Our involvement typically includes:
  - attending key strategy meetings;
  - review key documents; and
  - being copied on key exchanges and documents received.
- It does not involve:
  - attending mediations or settlement discussions.
  - imposing a settlement number which the claimant has to accept.



# Discontinuance

- Not all of the cases that we fund go well, despite them being given good prospects of success at the outset.
- We have the right to terminate funding if there is a material adverse decline in the prospects of success.
- What does that mean? Enforceability, merits and value all declining in a way that is obvious for all to see.
- When we discontinue a case or lose at trial our investment is lost.
- Because it is usually obvious when a case needs to be discontinued, there is little tension created (just disappointment for all concerned).
- If there is genuine disagreement, then the claimant has, under our terms, the right to activate the QC mediation clause.





# Future for Funding in Hong Kong

- Expected to see greater use of funding generally and in non insolvent cases
- Use in arbitrations under review but difficult to see why it wouldn't be permitted
- Question will be extent of regulation – follow UK or Australia or something completely new
- Competitive advantage to be gained by HK
- Court always has helpful oversight role where funding used

