



## Giving you CONTROL<sup>™</sup> - Briefing note

Litigation can be an expensive business. Addleshaw Goddard LLP have developed a unique and innovative approach to funding litigation, called CONTROL<sup>™</sup>, which is an effective tool for managing litigation costs, reducing their impact, increasing certainty, and significantly transferring the costs risk to your opponent or others.

### WHAT ARE THE OPTIONS?

First we estimate how likely you are to win your case and how much work it is likely to involve. From this we can work out your total likely cost exposure and how much of that you can transfer. CONTROL<sup>™</sup> contains three ways to transfer a separate and distinct portion of your financial risk. A combination of all three methods can significantly reduce your financial exposure. Some cases are not suitable for these arrangements, but a significant number will be. The three ingredients are Conditional Fee Agreements (CFA), After The Event insurance policies (ATE) and Third Party Funding (TPF).

#### CFA

A CFA addresses your risk of paying your own costs of pursuing a case. A CFA is a binding legal agreement between you and Addleshaw Goddard LLP under which we agree to discount our fees by a percentage (usually between 10% to 50%) for all or part of the case from then on. If as a result of our work you achieve what we have agreed represents "success" in the case, we are entitled to charge our undiscounted rates plus a percentage "success fee". The result for you is that you have to pay us the small proportion of costs which we are usually unable to get back from the other side. The bulk of our charges are recoverable from the losing party, as part of the costs they are obliged to pay. In the meantime, during the period covered by the CFA, all you will have to pay us is:

- Our fees calculated at the CFA's discounted rate;
- Our expenses (which may include Counsel and experts' fees); and
- VAT.

If you lose the case, that is all you will ever pay us – you will have transferred to us a proportion of the risk in relation to your won costs if you did not win the case.

#### ATE

A CFA does not control your exposure to your opponent's costs if you lose the case. An ATE insurance policy, which can be purchased after a dispute has arisen, does achieve this. It indemnifies you against any liability to pay your opponent's legal costs and expenses if you lose. If you win the case, the premium for the ATE policy is recoverable as part of the costs the losing party is obliged to cover, but it is sometimes possible to agree with the ATE insurer that if you lose the case, the insurer will waive the premium. An ATE policy can be a powerful risk

transfer tool, shifting a significant degree of financial exposure away from you and on to the insurer if you lose.

#### TPF

A third party funder will provide funding for your legal team's costs and expenses (including Counsel's and expert's fees). If you lose the case, the funder will bear the costs and you will have nothing to repay. By entering into a TPF agreement, you transfer the financial exposure to some or all (at your option, you can "part third-party fund") of your own legal costs and expenses. You potentially incur no actual cost of running the day to day litigation. In return, however, the funder will require a share of your damages if you win.

### PUTTING IT ALL TOGETHER

We are obliged to tell your opponent when you enter into CFA, ATE or TPF arrangements. If your opponent is properly advised, this sends them powerful message because:

- a third party (ie not just you) has analysed the case and thought it sufficiently strong to back it with their own money; and
- it is in your opponent's best interests to address possible settlement sensibly and as early as possible, to limit the amount of any extra costs payable if they lose.

If you have a good case, by using any one of, or a combination of these methods, you could:

- define more clearly what financial risk you are exposed to in each of the potential outcomes of your case (CFA, ATE, TPF);
- pay a reduced rate (CFA or TPF) or nothing at all (ATE) to bring your dispute to Court; and
- exclude the risk, at effectively no cost, of paying your opponent's costs and expenses, if you lose (ATE).

### TAKE CONTROL<sup>™</sup>

This briefing paper addresses the main features of CONTROL<sup>™</sup>. There are other details, advantages and risks in entering into these arrangements that we would be happy to explain in more detail, as the need arises.

If you want to know more, either in the context of a specific dispute or for further information generally, please contact the national head of our Contentious group, Simon Twigden, on 020 7788 5020 or [simon.twigden@addleshawgoddard.com](mailto:simon.twigden@addleshawgoddard.com).