

HKI Arb Webinar:

“Managing The Cost Of Disputes And Monetising Claims: A Primer On Dispute Funding And Recovery”

Tuesday, 25 January 2022 | 6:00pm (HKT)



Marjolein van den Bosch-Broeren
Head of Enforcement - Asia
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Omni Bridgeway



Ruth Stackpool-Moore
Investment Manager
Omni Bridgeway

Introductions – with you today



Cheng-Yee Khong 鄭靜儀
Associate Investment Manager
HONG KONG

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- Heads the Hong Kong office and is responsible for due diligence and management of funded matters across Asia and EMEA.
- Founding Director and Counsel at International Chamber of Commerce International Court of Arbitration Secretariat (Asia) and managed over 1,000 arbitrations.
- Practised litigation and arbitration at Freshfields (London and Paris), Shook Lin & Bok (Kuala Lumpur).



Ruth Stackpool-Moore
Investment Manager
SINGAPORE

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- Responsible for origination, due diligence and management of funded matters throughout Asia
- Former Managing Director at an exclusive broker to a global litigation funder in the Asia Pacific region, Managing Counsel at Hong Kong International Arbitration Centre
- Dual Australian and UK qualified lawyer with extensive experience in the dispute resolution teams of Debevoise & Plimpton in London, Orrick in Paris and Coudert Brothers in Paris and Sydney



Marjolein van den Bosch-Broeren
Head of Enforcement – Asia
SINGAPORE

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- Responsible for the strategic assessment and management of cross-border litigation, arbitration and enforcement activities throughout Asia.
- Admitted to the Amsterdam Bar and the New York Bar.
- Previously worked with Houthoff and Stibbe, two premier Benelux law firms, and with Aboitiz Equity Ventures, Inc. in Manila.
- Fluent in Dutch and English, and understands German, French and Tagalog.

Agenda

- Introduction to Omni Bridgeway
- Third party funding in Hong Kong
- The role of funders
- Enforcement and recovery funding
- Questions

About Omni Bridgeway

The global leader in managing and financing legal risks



- World's largest dispute finance team
- World-wide networks
- Local knowledge, cultural sensitivity
- Seasoned litigators, corporate counsel, barristers, arbitrators
- Recovery, business intelligence & asset-tracing specialists
- Economists, financial experts

180+ Specialists located throughout the world

30+ Languages

Why choose Omni Bridgeway?

"We and the client chose Omni Bridgeway... not only on the competitive financial terms being offered, but due to their knowledge and experience in international arbitration, which counsel can benefit from to optimise the case presentation."

PARTNER, DECHERT LLP, ASIA



1099
Total
investments^{2,3}

315
Active
investments³

784
Completed
investments^{2,3}

A\$2.2b
Funds under
management

All data as at 31 December 2020.

1 | Success rate by number of completed investments.

2 | Investment information covers legacy IMF Bentham and ROLAND Progress Finance since 2001 and legacy Omni Bridgeway since 1995.

3 | Portfolio investments counted as single investments.

- Funded^{1,2} and/or managed (litigation, arbitration and/or enforcement and recovery)
- Assessed²
- Omni Bridgeway cities

HKI Arb | 25 January 2022

“... understand the culture of the places in which they’re operating and listen to people.”

DIRECTOR, SINGAPORE LAW FIRM

The world’s leading arbitration funding team

- Pioneers of arbitration funding in Asia
- Funded arbitration claims and award enforcements in 100+ jurisdictions
- Experience navigating leading arbitral centres (New York, Paris, London, Singapore, Hong Kong)
- Former arbitration specialists from leading law firms and leaders of arbitral institutions
- Former arbitrators
- Unmatched experience recovering against counter-parties in ‘challenging’ jurisdictions

Chambers AND PARTNERS

CHAMBERS AND PARTNERS:

The only Band 1 Australia,
South East Asia, Canada (2021)
Band 1 Europe (2021)
Band 1 US (2018-2021)
The only Band 1 APAC (2019, 2020)
Band 4 UK (2020, 2021)
Band 1 – Global Asset Tracing
& Recovery (2020, 2021)
Band 2 US – Intellectual Property (2021)

WVL

WHO’S WHO LEGAL THOUGHT LEADERS:

25 team members recognised (2021)
22 team members recognised (2020)

WHO’S WHO LEGAL ARBITRATION:

2 team members recognised (2020)
1 team member recognised (2022)

Third Party Funding in Hong Kong

Third party funding for arbitration in Hong Kong

LEGAL FRAMEWORK

Legislation effective 1 February 2019

- Arbitration and Mediation (TPF Amendment) Bill (2017)
- Part 10A Arbitration Ordinance (Cap.609)
 - TPF for arbitration and related proceedings
 - Broad definition of funder
 - Mandatory disclosure of funding
 - Lawyers can't fund own cases

Code of Conduct issued 1 February 2019

- Establishes standards for funders including:
 - Minimum capital adequacy
 - Funder not to control conduct of arbitration
 - Conflict management procedures
 - Obligation to remind funded party to disclose
 - Funder liability to be set out in funding agreement
- Applies to Hong Kong seated arbitrations or work done in Hong Kong on arbitrations elsewhere

Institutional Rules

- New provisions in 2018 HKIAC Administered Arbitration Rules (disclosure, confidentiality, costs)
- Reflect legislative developments in Hong Kong
- Safeguard enforceability of awards
- Maintain international best practice

Why permit TPF in Hong Kong?

- Clarification
- Access to justice
- Financial risk management
- Competitiveness of Hong Kong as a seat

Sophisticated solutions

Dispute finance

Single-case

Capital for legal fees or expenses to support a single case or arbitration. Includes working capital, debt satisfaction and other items.

Portfolio

Capital for legal fees to support multiple cases or arbitrations of a law firm or company.

Multi-party

Finance for an action against a defendant by group (or its representative/s) with the same or similar claims (non US).

Defence-side funding

Funding the defendant (as opposed to claimant).

Working capital

Up-front finance for law firms and corporates (with optional claims management services) with a limited recourse return from the prosecution of pre-identified legal claims.

Enforcement

Finance and management to enforce a client's existing legal rights.

Claims monetisation

Purchase of (full/partial) legal rights from counterparty, monetising the legal asset (eg portion of favourable judgment/award while appeal pending), becoming owner of asset with rights to prosecute/ recover.

Downside risk management

Indemnity for the downside risk of litigation, including potential case and adverse costs.

Third party funding: HKIAC experience



Number of funded cases

Funding disclosed in ten arbitrations to date



Geographical origin of funded parties

Hong Kong, British Virgin Islands, Canada, Cayman Islands, Cyprus, the UK, Malaysia, UAE, Singapore, USA and PRC



Value of funded claims

Total value: over USD 1bn
Highest value: USD 717m
Lowest value: USD 5.25m



Role of funded party

In 9 of 10 cases the funded party was a claimant



Disclosing document

In 7 out of 10 funded cases the funding arrangement was disclosed in the Notice of Arbitration



Seat

England and Wales
Hong Kong
Russia

The Role of Funders

Benefits of Dispute finance

Pursue legal rights without cost or risk



MANAGE
CASH FLOW



IMPROVE
FINANCIAL
STATEMENTS



UNLOCK
VALUE IN
INTANGIBLE ASSETS



OUTSOURCE
RISK



SUPPLEMENT
RESOURCES AND
AFFORD LEADING
REPRESENTATION



ACCESS
WORLD-WIDE
NETWORK



ENHANCE
REPUTATION



GAIN ACCESS
TO JUSTICE



LEVEL THE
PLAYING FIELD



OBTAIN OBJECTIVE
ASSESSMENT AND
STRATEGIC INSIGHTS

Who uses our finance and strategic expertise?

- Companies
 - Multi-nationals and conglomerates
 - Listed entities and SOE's
 - SME's
 - PE firms
 - In-house counsel, financial controllers
 - Across industries (financial services, construction / infrastructure etc.)
- Law firms, barristers, accountants, insolvency practitioners
- Individuals
- Group claimants

...all turn to Omni Bridgeway to pursue legal rights and recover monies owed to them.



Three-step finance

1 Preliminary Discussions

- Non Disclosure Agreement
- Initial Assessment

2 Indicative Terms

- Further due diligence if needed

3 Approval, Offer and Funding Agreement

Funding information

Investment Criteria

- Good prospects
- Economically viable
- Recoverability

Key Features

- Any stage funding – investment at outset, during arbitration or award enforcement
- Seed funding for proving up claims – public examinations, counsels advice, other expert reports
- Alignment of interests to ensure probability of success is high

Key elements of Funding Agreement

- Costs to be funded – including adverse costs and security for costs orders
- Omni Bridgeway's return on investment and priority of payments from any recoveries
- Extent of Omni Bridgeway's ongoing involvement, including settlement
- Conflict management procedures
- Confidentiality and privilege

Working together

We collaborate with professional advisers to tailor finance packages for clients by:

- working efficiently and collaboratively from day one, towards mutual objectives throughout the funding relationship
- maintaining strong and clear communication
- understanding the professional adviser's brief and the client's imperatives

"The best funders we've ever worked with... very good adviser and... sounding board."

PARTNER, LEADING LAW FIRM

"They're really diligent. They master their brief. Engage on a case in a way that's informed. [We] Feel like partners."

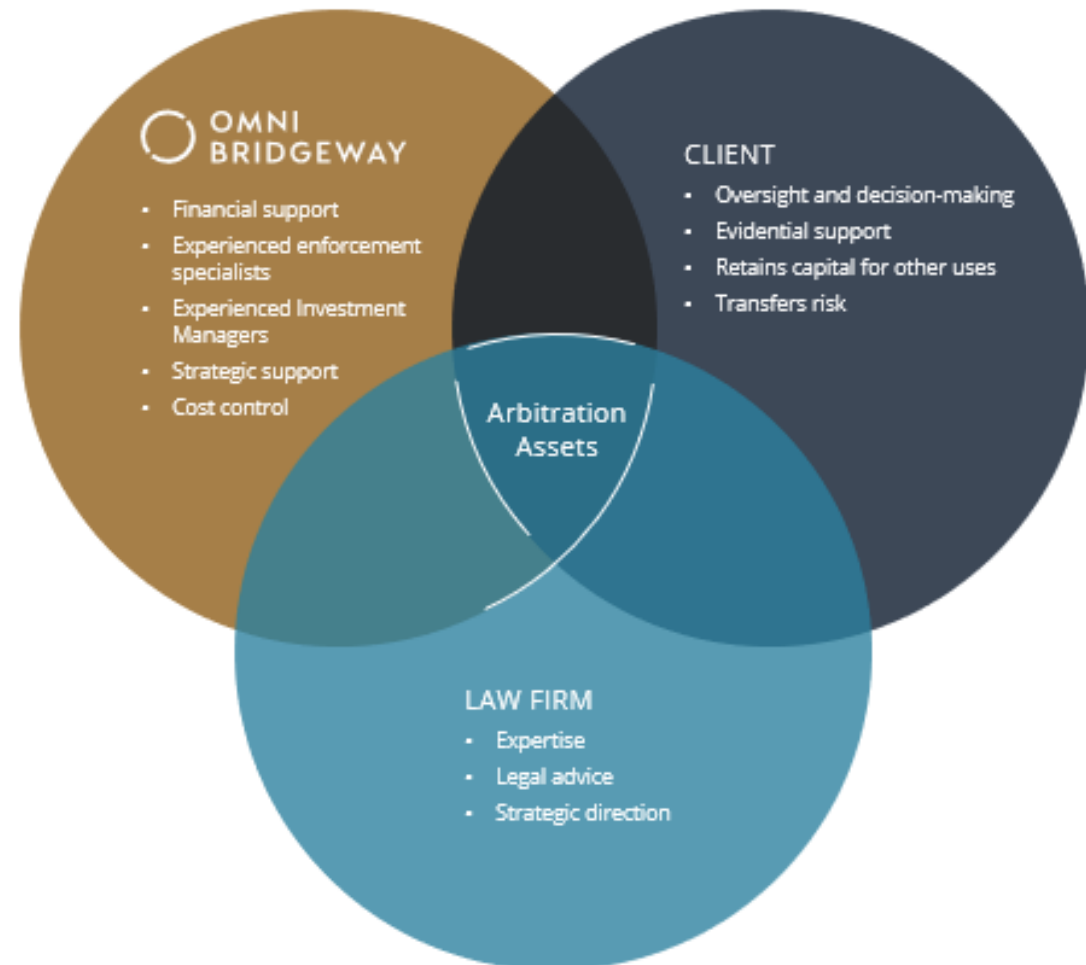
PARTNER, LEADING LAW FIRM

"It genuinely feels like a team working on a project together."

PARTNER, LEADING LAW FIRM

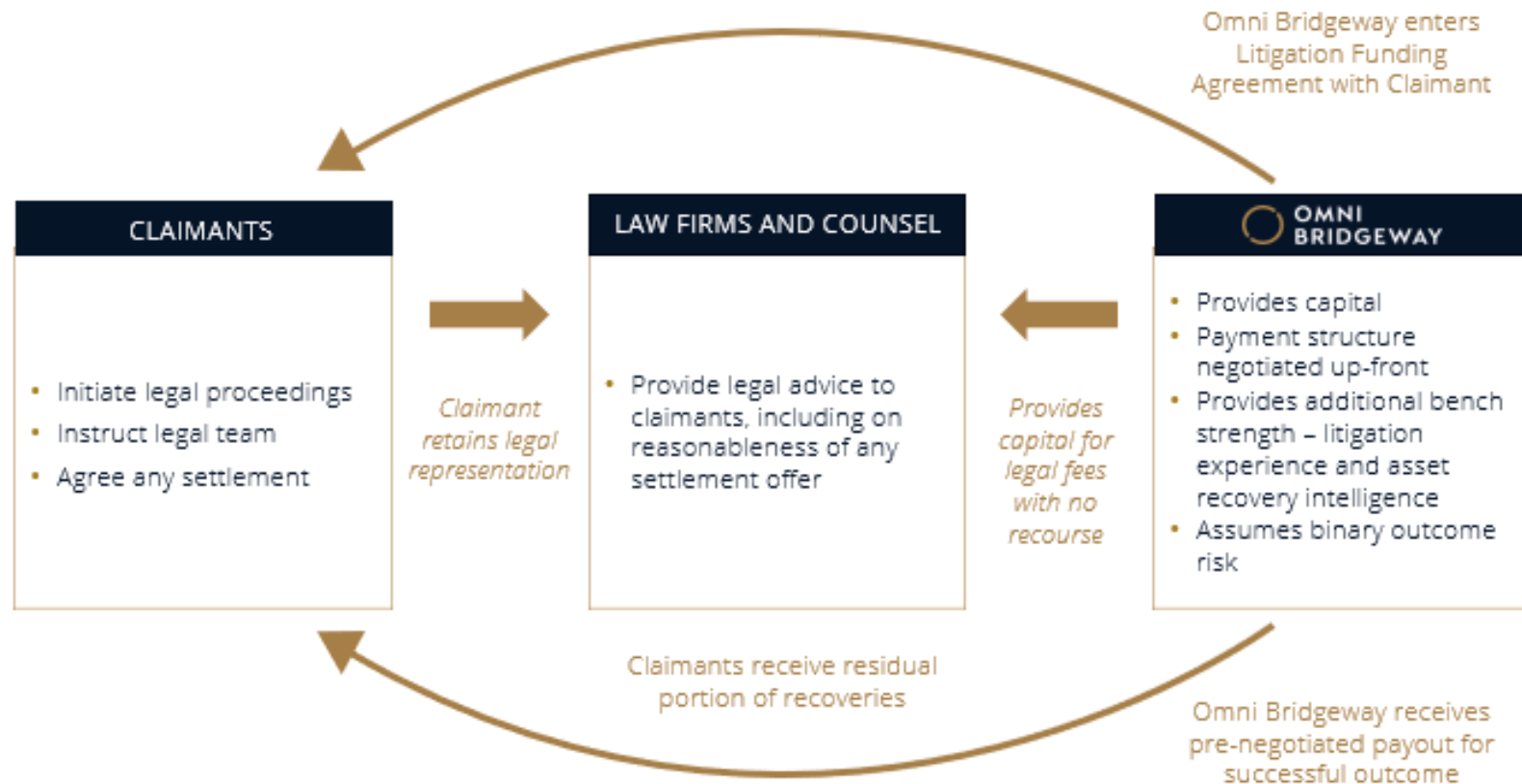
"The sophistication and experience... having funded many difficult and complicated cases before, was great."

PARTNER, LEADING LAW FIRM



Dispute resolution finance model

Information and capital flow



Enforcement and recovery financing

The road to recovery and obstacles to avoid

Achieving a favourable judgment or arbitral award feels like success until it isn't honoured.

When debtors hide assets or prolong proceedings, Omni Bridgeway's experienced enforcement and asset recovery specialists help recover monies owed to you.

Common pitfalls

- Ignorance of time limitation issues and the different national rules that apply
- Waiting for the award debtor to pay and trusting "promises" to do so in the near future
- Waiting with enforcement actions until the setting-aside or annulment proceedings at the place of arbitration are concluded
- Pursuing recognition and enforcement in only one jurisdiction at a time (as opposed to adopting a comprehensive enforcement strategy)



Our enforcement services

①

Recovery / enforcement

- Funding and management of enforcement actions for unpaid arbitration awards or judgments
- No recovery no fee, non-recourse – we cover all costs and share the financial recovery

②

Purchase claims

- For clients seeking immediate cash
- Single claims or portfolios (eg non-performing loans or pools of unrecovered insurance claims)

③

DARP

- JV with International Finance Corporation (IFC) World Bank for Distressed Asset Recovery for MENA banks

How we deliver results for clients

Multi-faceted strategies
to create leverage...

- Asset enforcement
 - eg High value/low impact or low value/high impact
- Non-asset / financial leverage
 - eg Trade relations, financial ratings
- Diplomacy
- Legal
 - eg Impact on other arbitrations

Across Jurisdictions

- Ex-parte versus inter-partes jurisdictions
- Time limitation considerations
- Sequencing of jurisdictions based on arbitration friendliness for recognition
- Timing of asset seizures between jurisdictions

The value of
30+ years' experience

- Public and proprietary databases
- Politics and publicity
- Regional customs & cultures
- Networks & connections
- Decades' experience successfully negotiating with Heads of State / government officials

Un-matched
experience
recovering against
counter-parties in
'challenging'
jurisdictions,
including against
sovereign States and
quasi-sovereign
entities since 1986

The world's most experienced enforcement team

- Enforcements in 100 jurisdictions across APAC, the Americas, Europe, MENA
- 100+ claims against sovereign & quasi-sovereign debtors across APAC, the Americas, Europe, MENA
- 100's of successful settlement negotiations (including with sovereigns)
- 50+ specialists
- 25+ languages
- Civil and Common Law litigators and enforcement lawyers
- Economists
- In-house asset-tracing and intelligence professionals



The only dispute financier selected by
IFC World Bank as partner for global
Distressed Asset Recovery Program (DARP)

Chambers
AND PARTNERS

CHAMBERS AND PARTNERS:
Band 1 ranking Global
Asset Tracing & Recovery (2020)

Questions?



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Talk to your clients
about their needs



Meet to explore how we
can help you / your clients



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