

**MINUTES OF MEETING**  
**WORKING GROUP OF THE IALF**  
**16 MARCH 2021 – 15 April 2021**

**Attendees**

**By video** Prateek Bagaria, Tom Glasgow, Dilip Massand, Alain Grec, Montek Mayal, Sameer Jain, Abhinav Bhushan

**By Email** Justice AK Sikri, Ms. Sindhu Sivakumar, Ms. Pallavi Bhakru, Mr. Sanjay Desai, Mr. Shashnak Garg, Mr. Sharan Jagtiani

- Agenda**
1. Reading of the IALF founding charter & discussion on scope of matters to be handled by self-regulation, and matters to be left for external regulation
  2. Discussion on the first 100-day plan for IALF:
    - (a) Business Plan
    - (b) Growth Plan
    - (c) International affiliations & engagement with other industry bodies such as ILFA, ALF, etc.
    - (d) Memberships
    - (e) Consistency of messaging, market education and engagement with authorities
  3. Discussion on the formal structure and registration of IALF.
  4. Making sub-committee for preparation of:
    - (a) Articles of Association of the IALF.
    - (b) Rules for membership of IALF.
    - (c) Codes of Conduct for Third-Party Funders and lawyers respectively for B2B and B2C segments.
    - (d) Guidelines pertaining to third-party funding for arbitral institutions and courts.
    - (e) Procedure for hearing complaints against member funds of IALF.
  5. Fixing schedule for placing documents before WG for debate and approval.
  6. Discussing recommendations for filling the following positions:
    - (a) Board of Directors: This body will be responsible for inducting members into the IALF, promoting knowledge and education in litigation finance, and developing best practices.

- (b) Dispute Resolution Board: This body will be responsible for hearing complaints as per the procedure established by the Working Group, as well as sanctioning members for misconduct.
  - (c) Chief Executive Officer: To work under the directions of the board of directors to fulfil the objectives of the IALF.
  - (d) Chief Disciplinary Officer: To act as a secretariat and registry to the Dispute Resolution Board.
7. Any other items.
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## PROCEEDINGS

### Agenda Item 1

Mr. Bagaria opened the discussion for this issue, reminding the Working Group that a note of this has been made in the Founding Charter itself, taking from Mr. Grec's views. The Charter recognizes that external regulation may be important to protect the interest of unsophisticated litigants seeking funding.

Mr. Grec then expanded on his concern. The funding industry needs legitimacy and reliability, especially in matters such as origin of capital, amongst others. In these matters, self-regulation (where you are both judge and party in your cause) does not create a credible image, even if the IALF does a very good job of it. If the funding industry has to prove that it can ease (as opposed to create) access to justice for everyone, then some amount of external regulation is required. He therefore expressed his very strong opinion that "core issues" should be decided by an external body (a public body or a judge).

The members then discussed this item at length.

The issues up for external regulation include KYC norms, capital availability, equity capital regime, traceability, procedures, conflict of interest: the discussion went on whether to leave these issues for self-declaring justifications (with the permanent doubt about a possible bias) , or to refer to an external regulating body, which would ensure legitimacy and safety (to the judicial system, to the tribunal, to the funded parties, to their lawyer counsels as well as to the investors themselves) about these core items.

There were points made in favour of being externally regulated. One benefit of this is that tribunals and judges will see funding as credible, and are more likely to award funding costs in a cost order. Another benefit is to avoid a knee-jerk adverse reaction to extensive self-regulation. Further, external regulators could also be approached whenever the IALF is not able to reach agreement on an issue for self-regulation within itself.

At the same time, members flagged concerns with external regulation. There was general agreement that there should not be over-regulation, which can be an administrative nightmare. Further, it was important that the regulator be knowledgeable and competent. Litigation finance is a complex industry, with many diverse products, and the regulator

must be able to understand this diversity. Lastly, an external regulator, once involved, would try to regulate all areas it considers important, and only secondary and less important areas will be left for self-regulation.

A midway was reached whereby, the IALF could begin with making a blueprint for regulation and a ‘white paper’, and then approach the regulator to initiate a dialogue about external regulation. This way, the IALF would have an opportunity to agree on whether it wants litigation finance to be fit into a particular mold, or be regulated as a *sui generis* transaction, and accordingly, what requirements are reasonable. Once this is done IALF could liaise with the regulator and the judiciary as one voice for the industry.

Some members also expressed the view that the members of the IALF should avoid issues such as class action funding in their initial dialogues with the regulator, which may require more than one regulator’s buy-in due to issues of consumer protection. This was largely acceptable for the initial phases of development IALF and Indian litigation finance market. However, IALF was mindful that some domestic litigation finance players may see this as a good market to explore development of, and IALF should take up the responsibility to set market standards for such ventures.

As far as the choice of regulator was concerned, Mr. Bagaria pointed out that the real choice would be between the RBI or SEBI. While RBI works well with known products, a lot of community representations need to be made about unknown products to guide RBI.

## **Agenda Item 2**

Mr. Bagaria contextualized this discussion by pointing out that the IALF has already drawn a large audience, and this momentum can be capitalized by having a plan to do activities beyond just making the core instruments of the IALF.

In the discussion, members came to the view that it was important to first create the core instruments of the IALF, so that the organization makes it clear what they are about. Any knowledge dissemination or substantive activities may follow immediately after. Similarly, inviting more members could also wait till the core instruments are prepared.

As far as international affiliations are concerned, Mr. Bagaria pointed out that if the IALF intended to align itself with other bodies, the core instruments of the IALF may also need to be aligned. However, Mr. Glasgow explained that he has been part of the discourse in the International Legal Finance Association, and their approach would be to liaise with regional/local bodies, rather than to have chapters in each country. Therefore, no formal association need be materialized at this early stage. At the same time, Mr. Glasgow could help start an informal dialogue.

Lastly, on consistency on messaging, the members agreed that the major point was to not alienate the corporate market by funding class actions in the interim.

## **Agenda Item 3**

Mr. Bagaria explained that in India, societies, trusts and associations have unsophisticated regulators. On the other hand, companies have a sophisticated and predictable regulator. It is true that companies have reporting and transparency obligations, as well as liabilities for promoters/directors. But despite this, the Indian Arbitration Forum and some other such bodies have been formed as company. The IALF could follow the same path.

Mr. Jain agreed, and opined that a non-profit company would be a suitable structure for the IALF.

Members agreed that a Section 8 company will be the most suitable structure for the IALF.

#### **Agenda Item 4**

The members agreed that the core instruments need to be prepared within 45 days.

Some suggestions were made on division of responsibilities:

- Mr. Glasgow volunteered to help prepare the codes of conduct for third-party funders and lawyers respectively for B2B and B2C segments and the guidelines pertaining to third-party funding for arbitral institutions and courts.
- Mr. Bhushan volunteered to help with the guidelines pertaining to third-party funding for arbitral institutions and courts, and the procedure for hearing complaints against member funds of IALF
- Mr. Massand volunteered to help with the rules of membership.
- Mr. Jain and Mr. Mayal agreed to help with the articles of association.
- Mr. Alain Grec volunteered to help mapping the core issues that may give rise of complaints, the escalation process to a regulating body (for the scope of issues under regulator competence) and the escalation process for self-regulated issues, and consequently the procedure for hearing complaints against member funds of IALF.
- Mr. Bagaria volunteered to help prepare the codes of conduct for third-party funders and lawyers respectively for B2B and B2C segments and with the rules of membership.

All other members of the working group are encouraged to assist these members in completing the task at hand. The working group will work under the Chairmanship of Justice AK Sikri.

#### **Agenda Item 6**

Mr. Bagaria suggested that the day-to-day affairs can be broken down into committees. Each committee could be responsible for specific items of work. These can be helmed by directors who are members of the working group. He also suggested there could be a group of Young IALF members. He also opined that increasing gender diversity was important.

Mr. Glasgow suggested that faster rotation of roles could address issues of inclusiveness. Mr. Bagaria agreed and added that operational roles should have a longer tenure to properly execute plans.

Members discussed this at length, proposed that to the extent possible Indian citizens should head/chair the committees, and proposed to restructure the current leadership of IALF as below:

- (a) **Board of Advisors**- Comprising of stalwarts from the industry involved in Litigation Finance including lawyers, advisors, funders and adjudicators
- (b) **Directors** – Divided as per responsibility
  - i. Finance and Compliance

- ii. Membership
- iii. Regulatory Liaison
- iv. Judicial Liaison
- v. Communication and PR
- vi. Education and Development
- vii. International Affiliations
- viii. Complaints
- ix. Young IALF

(c) **Committee:** Chaired by a director and comprising of the members from the membership of IALF

Members decided that the discussion on the Disciplinary Officer could wait till the procedure for complaints was prepared.

**Agenda Item 7**

The members congratulated the success of the IALF launch and its reach, and thanked Mr. Bagaria for his contribution to that.

The members noted that there were many requests from more litigation funders, service providers and law firms for membership. They agreed that this could wait till the IALF formally opens its doors for membership, so as to avoid paralysis due to too many views.

The members then concluded the meeting.

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