

SINGULARITY

LEGAL



LITIGATION FINANCE

Privileged and Confidential

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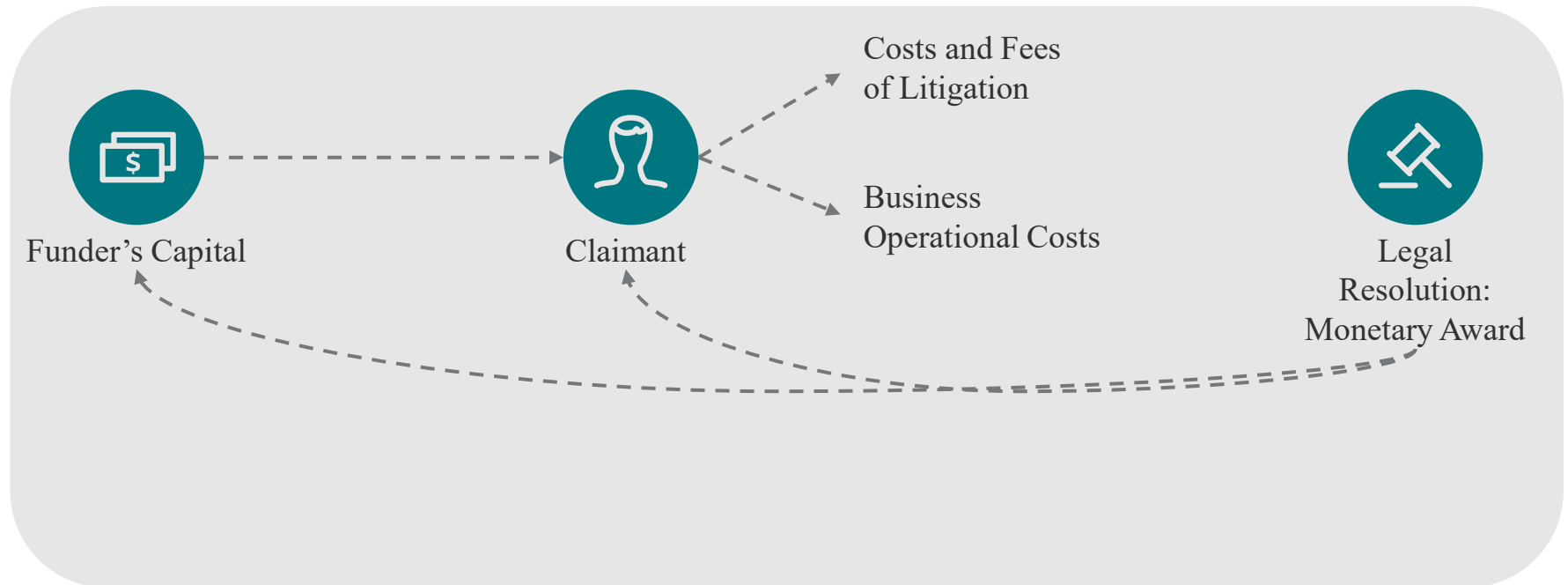
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What is Litigation Finance?

What is Litigation Finance?

Litigation Finance is third-party funding obtained by a company from a financier, to pay for the litigation costs incurred during a dispute. Funder may also act as a general contractor to help strategies and manage the dispute and the cost.

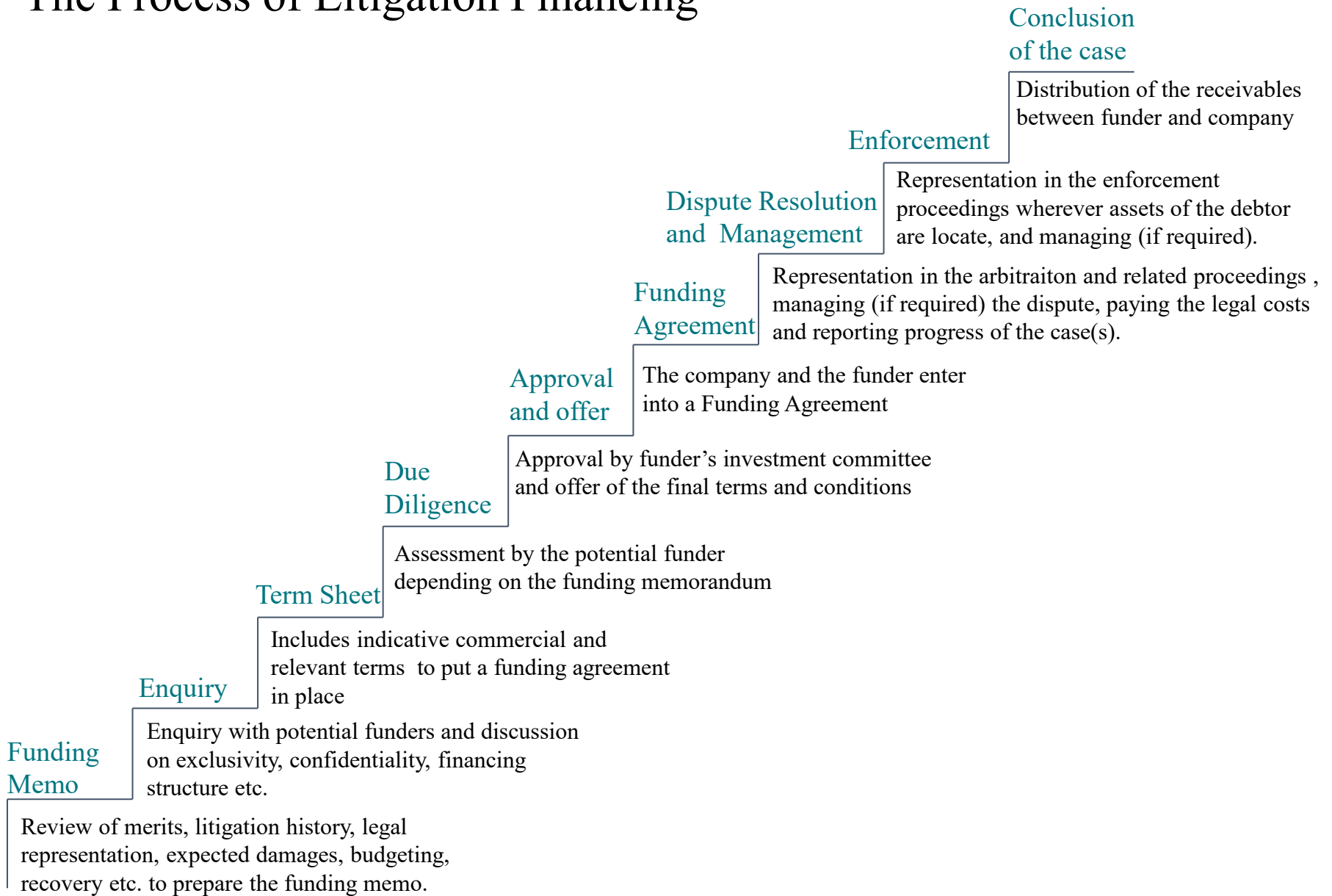


This type of funding adjudges the value of legal claims even before they can be recovered before a court or tribunal.

In this arrangement, the financier is entitled to an agreed upon share in the monetary settlement received by the company, if the litigation is favourable.

The Process of Litigation Financing

The Process of Litigation Financing



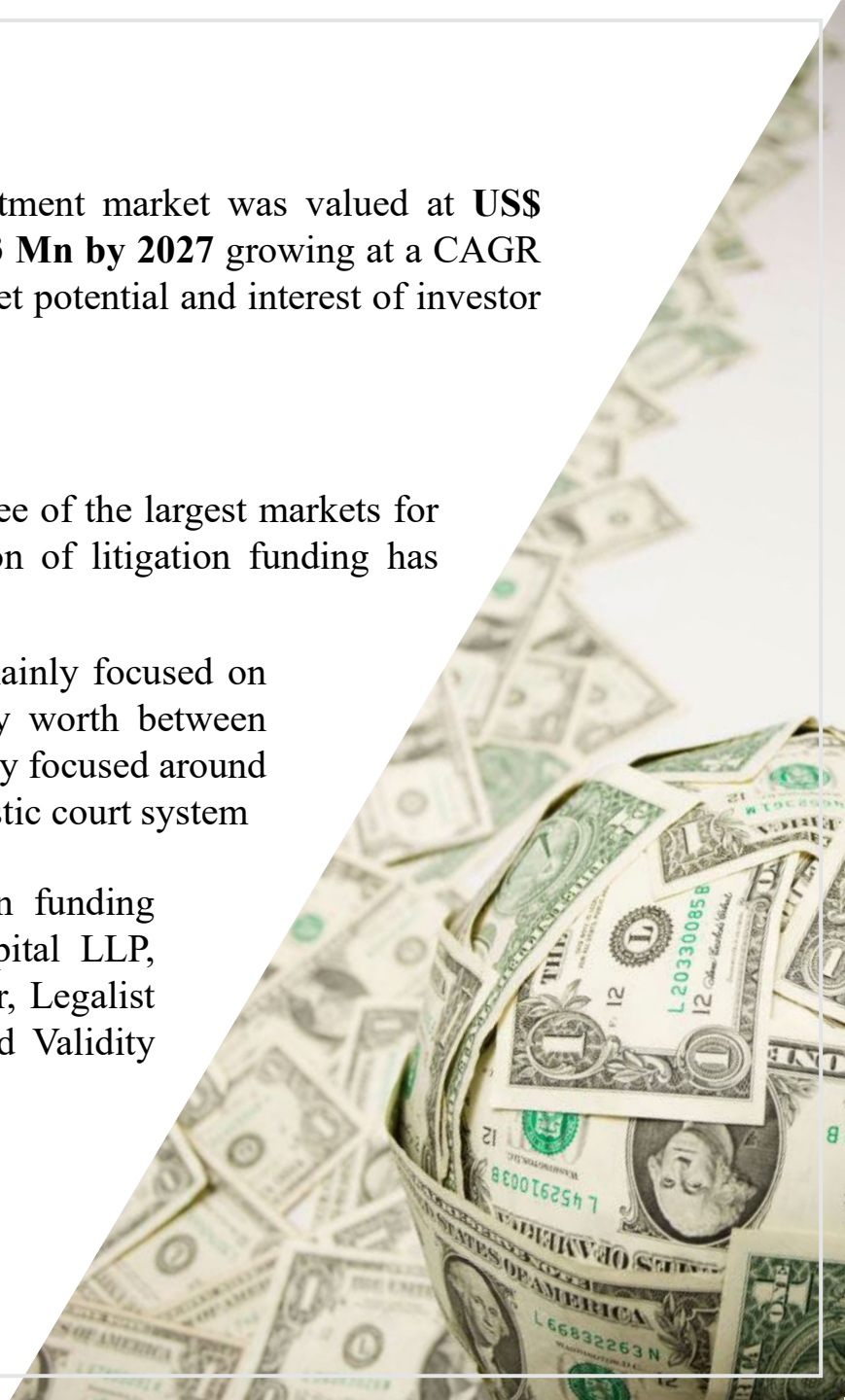
A Global Perspective

A Global Perspective

According to CISION, the global litigation funding investment market was valued at **US\$ 10,916.3 Mn** in 2018 and is expected to reach **US\$ 22,373.3 Mn by 2027** growing at a CAGR of 8.3% over the forecasted period owing to increased market potential and interest of investor groups beyond high-net-worth individuals.

Evolution of Litigation Financing in the Global Market

- **Australia, United Kingdom and United States** are three of the largest markets for commercial litigation financing. However, the evolution of litigation funding has been different in each of these geographies.
- The market for litigation funding in US and UK has mainly focused on high value cross-border arbitration disputes – typically worth between **US\$ 50 – 100 million** and the Australian market is mainly focused around helping claimants finance action claims within the domestic court system
- Some of the major operators in the Global Litigation funding market are Augusta Ventures Ltd, Balance Legal Capital LLP, Burford Capital, Fulcrum Credit Partners LLC, Harbour, Legalist Litigation Funding Ltd, Omni Bridgeway, Therium and Validity Finance
- Further, Singapore and Hong Kong are some of the potential growth markets wherein amendments are being made to overturn the erstwhile prohibitions on use of litigation financing



Landscape in India

Litigation Finance in India

Concerns have been raised about the legality of litigation financing in India. **However, third-party funding or litigation financing has never been considered void, illegal or against public policy in India**, as is evidenced by Indian case law. A recent judgement of the Supreme Court on litigation financing in *Bar Council of India v. AK Balaji* (2018), acknowledged that “there appears to be no restriction on third-parties (non-lawyers) funding the litigation and getting repaid after the outcome of the litigation”.

Although the Indian litigation financing industry is in its nascent stages, there is tremendous scope for this market in the country. Recognising this, major global players have now come together to form the “**Indian Association for Litigation Finance**” (“IALF”).

The potential of litigation finance in India is attributable to varied advantages, some of which are listed below:



Non-recourse transactions

No obligation to repay if settlement award is not received



Levelling the playing field

Makes funding accessible to all firms, irrespective of their size or market share



Sharing the financial risk of litigation

Shifts risk to third party financier who has significant expertise in litigation



Unlocking the value of contingent litigation assets

Allows companies to use funds for core business activities instead of for payment of legal fees

Facilitators of Litigation Finance in India



Improvement of speed and procedure of litigation

India has seen rapid reforms in the commercial litigation and arbitration landscape from 2015 such as the establishment of separate Commercial Courts and Divisions, appointment of judges experienced in commercial disputes and strict timelines and grave repercussions on failure to comply with such timelines, vide the Commercial Courts Act 2015, etc.



Overhauled/ Amended laws and regulations

The introduction of Insolvency and Bankruptcy Code 2016 (IBC) has overhauled liquidation laws in India. This has facilitated the creditors to institute proceedings for insolvency resolution within a time bound deadline.

The latest amendment to the Consumer Protection Act in India, empowers consumers to initiate class-action lawsuits and opt for mediation. This is a development which might lead to increased demand for third party litigation financing in India.



Dealing with stressed assets

Infrastructure and EPC sector is laden with stressed assets and dealing with such assets can be time consuming and affects short-term liquidity requirements. As a resort to this, many operators in these sectors are entering into litigation financing arrangements.



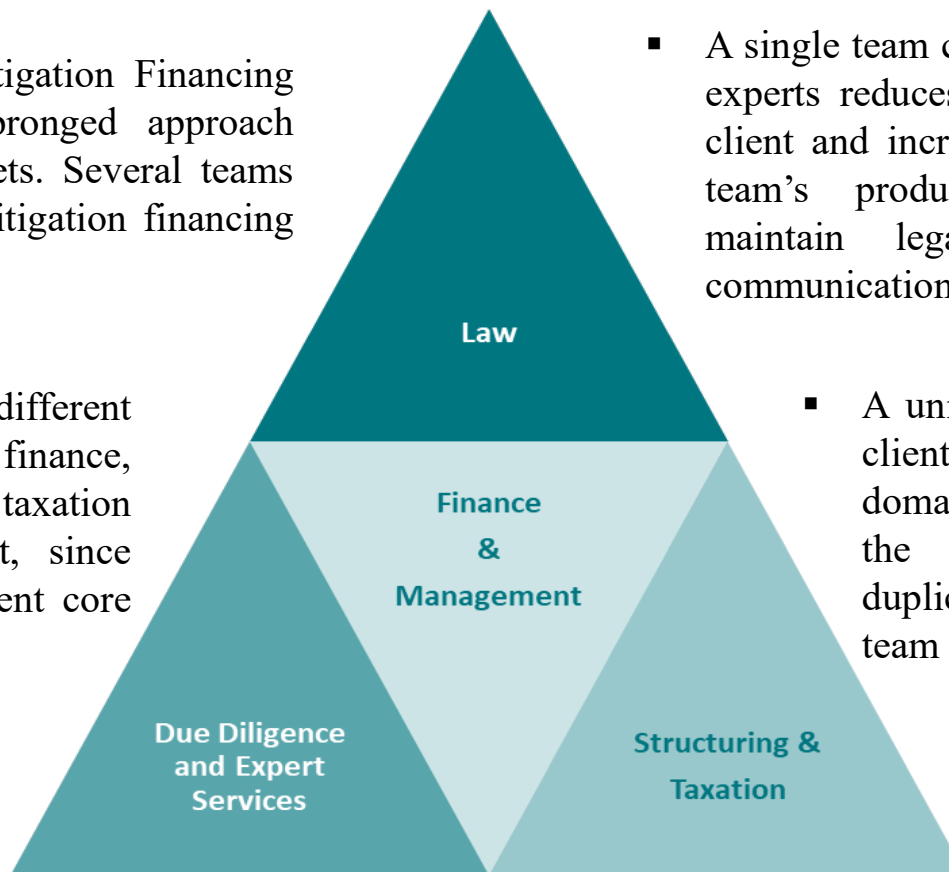
Liquidity crisis due to Covid-19

The Covid-19 pandemic has severely affected many businesses leading to a liquidity crisis. This might potentially cause businesses to opt for third-party litigation financing.

Litigation Finance: Interdependent Modularity

Litigation Finance: Interdependent Modularity

- The process of Litigation Financing requires a multi-pronged approach and diverse skill-sets. Several teams are involved in a litigation financing arrangement.
- Experts from different fields such as law, finance, due diligence and taxation are inter-dependent, since they possess different core domain expertise.

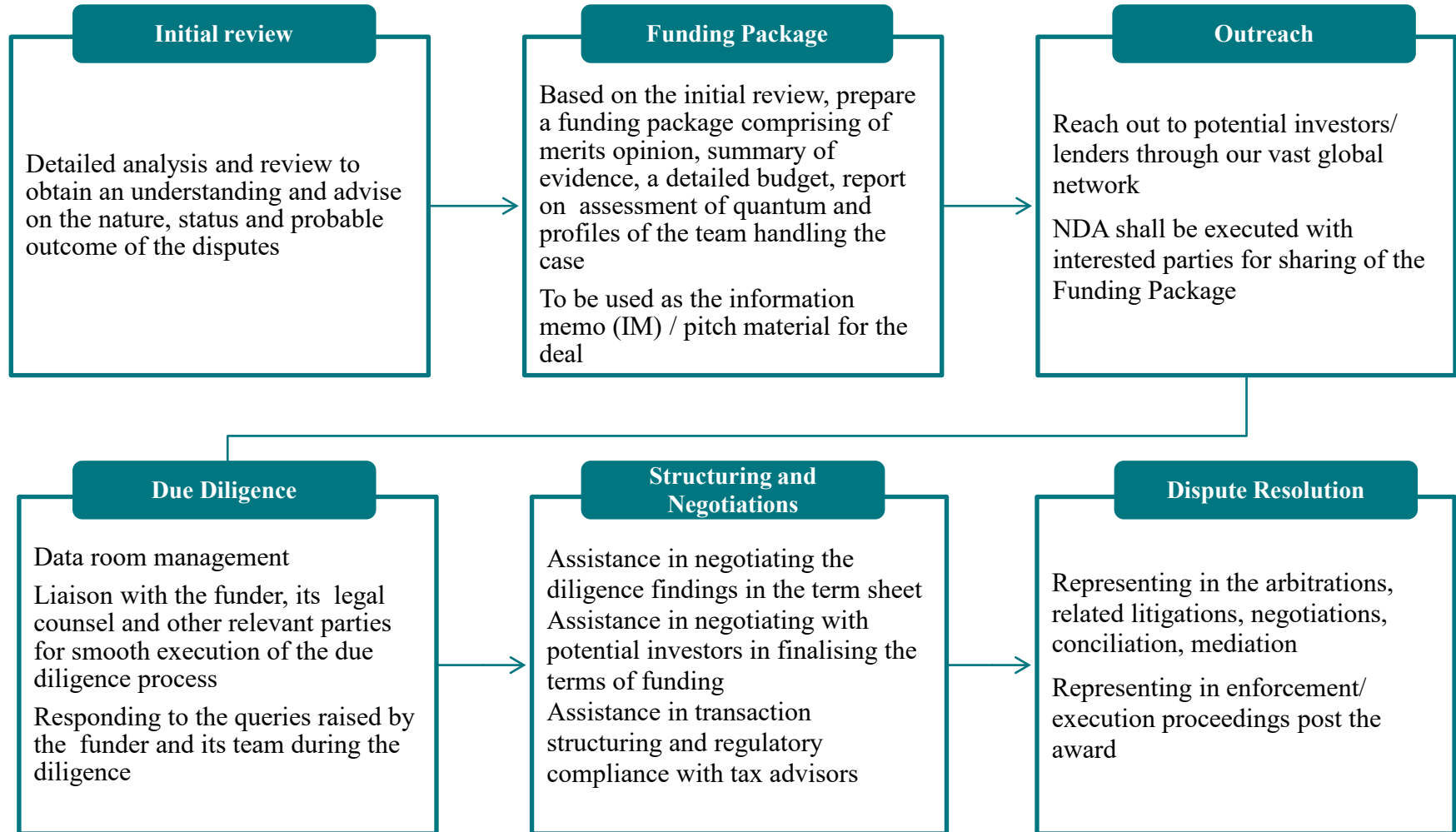


- A single team consisting of all required experts reduces costs and time of the client and increases the quality of the team's product. This also helps maintain legal privilege on all communication relating to the project.
- A unified team also helps the client benefit from the best domain expertise from across the board, without any duplication of work within the team of different experts.

It is thus essential to deploy experts in an interdependent but modular team

Our Services

Litigation Finance: How we can help



Litigation Finance: How we can help

Potential Investors: Some of the global litigation financiers Singularity has a relationship with



Legal Due Diligence: How we can help



Assess Contractual Tenability of the Claim

- Review contractual provisions to identify rights and claims of the parties
- Identify red flags affecting the tenability of the claims



Assess merits and legal quantum

- Determine whether the claim is based on established legal principles
- Assess the award or judgment of the debtor against third parties, and its enforceability
- Review availability of documentary evidence and extent of reliance on oral testimony
- Opine of measure, causation, mitigation and value of the quantum



Assess Collectability and Asset Recovery

- Identify assets of the respondent which can be pursued for recovery
- Identify assets in other jurisdictions where the judgement may be enforceable



Prepare funding package

- Preparing IM comprising of merits opinion, summary of evidence, a detailed budget, report on assessment of quantum and profiles of the team handling the case
- Tailoring the package as per internal requirement of different funders

Due Diligence: How we can help

The Pre-Transaction Stage

Our services would be provided at the pre-transaction stage as well as at the post-transaction stage. Due Diligence at the pre-transaction stage would be conducted at a portfolio level and would depend on the degree of depth of the evaluation required.



Assess Contractual Tenability of the Claim

Determine the merit of the claim based on contractual framework by reviewing contractual provisions to:

- Identify which claim components may be admissible
- Identify the relevant clause/s under which the relevant claim made may be tenable



Evaluate Documentary Evidence

Assess the strength of the claim based on evidentiary records by reviewing:

- supporting documents to prove the occurrence of the claim event
- communications and transmittals in order to assess if the relevant protocol stipulated by contractual provisions were followed



Validate Legal Quantum of Claim

Evaluate the claim value and robustness of the claim computation by:

- assessing the impact of claim events on claim value using the But-For vs Actual approach whereby the difference in value/profit is the damage compensation claim
- examining the methodology and accuracy of the claim basis underlying information and records available

Due Diligence: How we can help

The Post-Transaction Stage

At the post transaction stage, a detailed analysis will be conducted at a claim level since it is likely that each claim under the portfolio will be under a separate litigation/arbitration.



Assess Contractual Tenability of the Claim

- Determine the robustness of the claim based on contractual framework and contractual provisions
- Identify admissible claim components and relevant clause(s) under which the claim made may be tenable



Evaluate Documentary Evidence

- Assess the merit of the claim based on supporting documents to verify occurrence of the claim incident.
- Reviewing communications to assess if the contractually specified relevant protocol were adhered to



Validate Legal Quantum of Claim

- Assessing the impact of claim events on claim value using the But For vs Actual approach in which, the difference in value/profit is the value of the damage compensation claim
- Assessing the methodology, accuracy and reliability of the claim and the underlying assumptions basis underlying information, historical trends, third party analysis and independent internal budget



Lead Counsel

- Acting as lead counsel in the proposed adjudication and recovery proceedings

Structuring and Taxation: How we can help



Ideating options for funding

- Evaluate alternate funding instruments (Annexure 1)
- Examine tax and regulatory framework for identified options
- Review transaction documents from tax and regulatory perspective



Assess merits and commercial requirements

- Tenure of funding
- Commercials on return on investment
- Cost and benefit analysis for company from tax and regulatory perspective
- Any other commercial considerations



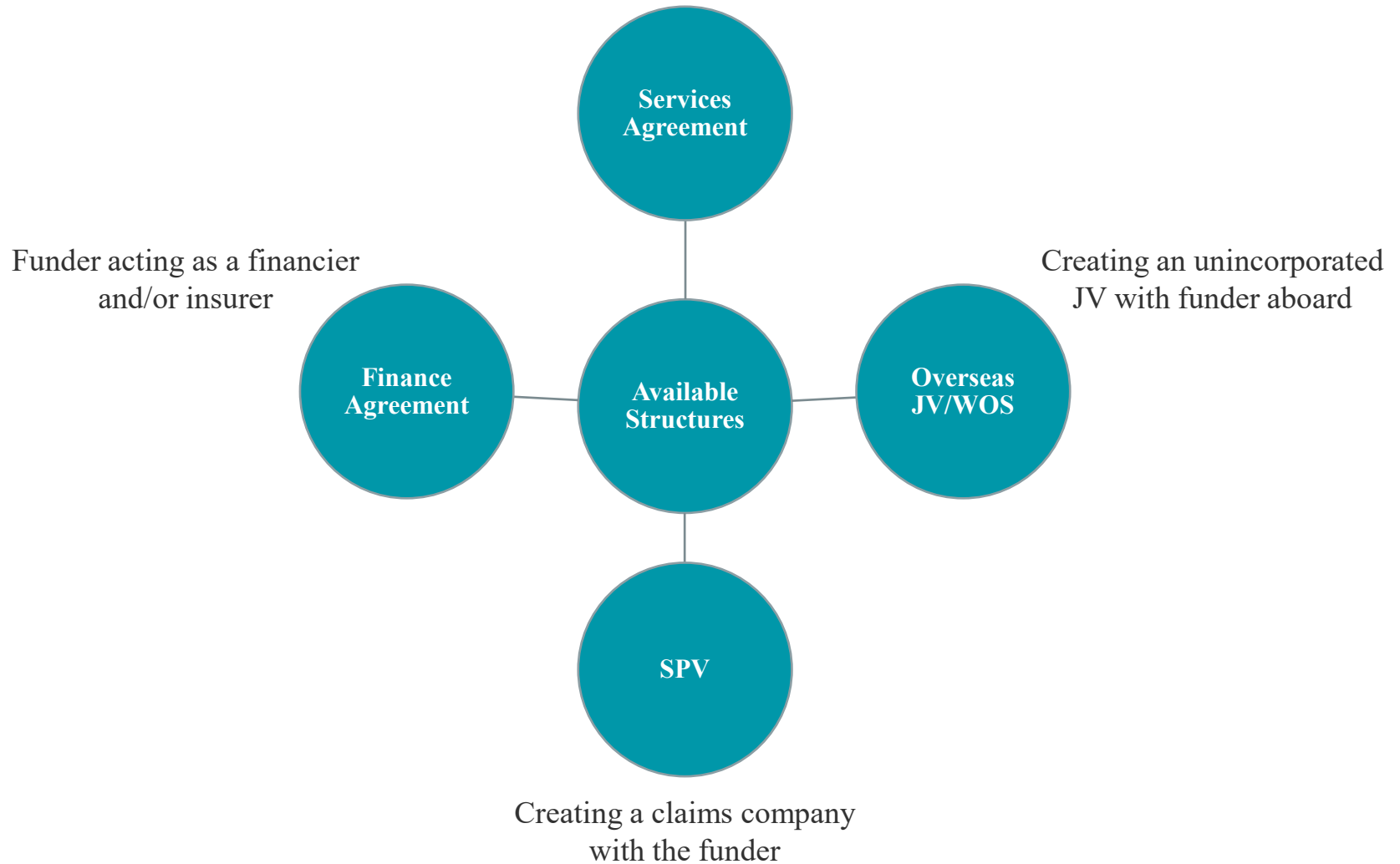
Regulations covered

- Income Tax Act 1961 (read with relevant rules)
- Companies Act 2013
- Indian Exchange Control Regulations (to the extent relevant)
- SEBI Regulations (to the extent relevant)
- Foreign Exchange Management Act 1999

Structuring and Taxation: How we can help

Evaluation of Funding Option

Funder acting as a general contractor,
responsible for management, finance and
insurance



Dispute Resolution: How we can help



Arbitration

- Representing in the arbitraiton
- Acting as lead counsel



Litigation

- Representing in related proceedings including bank guarantee disputes and interim measures
- Representing in enforcement and execution proceedings



Alternative Dispute Resolution

- Representing in mediation (ad-hoc, domestic and international rules), conciliation and negotiation
- Drafting and negotiating consent terms and settlement agreement



Global Enforcement and Debt Recovery

- Advising of global asset search to legally identify potential recoverable assets
- Representing in enforcement and execution proceedings wherever the assets are found

Dispute Resolution: Reach

Experience: Some of the courts and arbitral institutions Singularity has experience in



Select Credentials

Finance & Strategy

Litigation Finance – Sell side

S Energy Co. Raising finance for a billion dollar dispute against a state-owned entity	S Oil & Gas Co. Raising finance for US\$ 300 million dispute against Indian public sector undertaking	S Broadcasting Co. Raising finance for multi-million dollar dispute	S Shipping Co. Raising finance for an insurance litigation against Indian underwriter under H&M policy	S Oil & Gas Co. Raising finance for a multi-million dollar dispute in relation to a Rig Conversion project
S National Banking Raising litigation finance for resolution of non-performing assets by monetising claims and decisions	S BIT Raising finance for multi-million dollar dispute in relation to appropriation of investment	S International Banking Raising litigation finance for international debt recovery	S Class Action Raising finance for a series of class-action disputes arising from mismanagement of Banks	S Class Action Raising finance for a arbitration against a cryptocurrency exchange

Due Diligence & Deal Counsel

Litigation Finance – Buy Side

Sector	The Client	Background	How Singularity Assisted?
Construction	Global Litigation Funder (Independent assessment of claims)	Singularity assisted the client in independently assessing the merits of a portfolio (US\$ 300 million) concerning infrastructure projects in Saudi Arabia	<ul style="list-style-type: none"> Assessed the tenability of the claims raised in the arbitration by reviewing the contractual framework and entire documentation Assessed the recoverability of the claims in the portfolio by conducting international asset searches Prepared detailed opinions on the viability of the funding portfolio
Construction	Global Litigation Funder (Independent assessment of claims)	Singularity assisted the client in independently assessing the merits of a portfolio (US\$ 1 billion) concerning 10 mega infrastructure projects	<ul style="list-style-type: none"> Assessed the tenability of the claims raised in the arbitration by reviewing the contractual framework and entire documentation Assessed the recoverability of the claims in the portfolio by conducting asset searches Prepared detailed opinions on the viability of the funding portfolio
Construction	Construction Company (Independent assessment of claims)	The client was constructing several oil tankage platforms for an Indian state owned enterprise and wanted assessment of claims in relation to termination of the contracts	<ul style="list-style-type: none"> Assessed the tenability of the claims that could be raised in the arbitration by reviewing the contractual framework and entire documentation Prepared an opinion and advised the client to settle the dispute rather than referring the dispute to arbitration
Energy	Global litigation funder (Independent assessment of claims)	Singularity assisted the client in independently assessing the recoverability from an Indian state-owned entity under an arbitral award	<ul style="list-style-type: none"> Assessed the recoverability of the claims in the portfolio by conducting asset searches in various jurisdictions including India, USA, France, and Singapore Prepared a detailed opinion and advised the client on the merits and the drawbacks of purchasing the arbitral award

Structuring and Taxation

Advisory

S

Litigation Funder

Advising on entry strategies into and structures for the Indian Market

S

Global Litigation Funder

Advising for investments in portfolio comprising of several large infrastructure projects

US\$ 1 billion

S

Global Litigation Funder

Advising for investments in a contractor's dispute against Employer in Saudi Arabia

US\$ 250 million

S

Global Litigation Funder

Advising for investments in a sub-contractor's claim against main contractor in O&G project.

US\$ 45 million

S

Power Distribution Co.

Advising Turkey's largest power distributor in setting up 500 MW LNG power plant in Aceh Indonesia

S

Coal Mining Co.

Advising on a coal mining and infrastructure joint venture with local partners in Indonesia

S

Defense Co.

Advising an Israeli defense company in a joint venture with an Indian company

S

Dredging Co.

Advising in a joint venture with a Malaysian Company

Dispute Resolution

Arbitration

Sector	The Client	Background	How Singularity Assisted?
Energy and Resources	Power Generation Company	Shareholder dispute (US\$ 1 billion) with a South Korean sovereign power company, in relation to coal-based thermal power plants.	<ul style="list-style-type: none"> • Representing the client in the arbitration (SIAC Rules, Singapore seated, Indian law) • Successfully assisted the client in getting the counterparty's majority claims dismissed under the early dismissal provision in the SIAC rules • Assisted in raising litigation finance for the arbitration
Oil and Gas	Singaporean and Indian Oil and Gas company	Dispute (US\$ 250 million) under an EPC contract for conversion of a mobile offshore drilling unit into a mobile offshore production unit	<ul style="list-style-type: none"> • Representing the client in the arbitration (India seated, Indian law) • Assisted in raising litigation finance for the arbitration
Construction	Indian Heavy Engineering Company	Dispute (US\$ 100 million) under an EPC contract for construction of a biofuel plant in the Philippines	<ul style="list-style-type: none"> • Represented the client in the arbitration (SIAC Rules, Singapore seated, English law) • Assisted the client in settling the dispute
Energy and Resources	Two Singaporean Oil and Gas Joint Ventures	Dispute (US\$ 300 million) against its Indian ex-managing director of the O&G division and his companies for breach of fiduciary duties and non-compete agreement.	<ul style="list-style-type: none"> • Assisted in obtaining interim reliefs from Emergency arbitrator appointed under the SIAC rules. • Represented the client in the arbitration (SIAC Rules, Singapore seated, Singapore law) • Assisted in raising litigation finance for the arbitration • Assisted the client in settling the dispute
Construction	Singaporean and Indian Oil and Gas company	Dispute against the consortium partner for a rig conversion project in Abu Dhabi	<ul style="list-style-type: none"> • Represented the client in the arbitration (SIAC Rules, Singapore seated, Singapore law) • Assisted in raising litigation finance for the arbitration

Dispute Resolution

Arbitration

Sector	The Client	Background	How Singularity Assisted?
Private Equity & Finance	Indian investor	Dispute against the English joint venture partner with respect to his investment in an English bespoke jewellery designing software company	<ul style="list-style-type: none"> • Investigation and financial audit to identify the entire fraud by the joint venture partner • Advising for dispute resolution strategy call with respect to arbitration (London seated, English law) • Assisted the client in settling the dispute
Construction	Turkish construction company	Dispute (US\$ 20 million) under an EPC contract for road construction in Kazakhstan	<ul style="list-style-type: none"> • Advising the client in an emergency arbitration (SIAC Rules, Singapore seated, Kazakh law)
Media and Entertainment	Singaporean and Indian promoters	Dispute (US\$ 135 million) under a shareholders' agreement and channel management services' agreement for agreed sum, breaches and and diversion of the customer base	<ul style="list-style-type: none"> • Representing the client in the proposed arbitration (SIAC Rules, India seated, Indian law) • Assisting in raising litigation finance for the arbitration
Private Equity & Finance	Individual investors	Disputes (US\$ 1 billion) against majority shareholders under a shareholders' agreement of a company involved in the development of a technology park, for fraud and oppression.	<ul style="list-style-type: none"> • Investigation and legal audit to identify the entire fraud perpetrated by the majority shareholder (India seated, Indian law) • Assisted the client in settling the dispute
Oil and Gas	Indian Oil and Gas company	Dispute (US\$ 2 million) under a project management agreement for a rig conversion project	<ul style="list-style-type: none"> • Represented the client in the (India seated, Indian law) • Assisted in raising litigation finance for the arbitration • Assisted the client in settling the dispute

Dispute Resolution

Litigation

Sector	The Client	Background	How Singularity Assisted?
Energy and Resources	Singaporean and Indian Oil and Gas company	Dispute (US\$ 15 million) under and EPC contract and with respect to the wrongful invocation of performance bank guarantees	<ul style="list-style-type: none"> • Representing the clients in a proceeding under Section 9 of the Arbitration and Conciliation Act, 1996 (Bombay High Court) • Assisted in raising litigation finance for the arbitration
Energy and Resources	Singaporean and Indian Oil and Gas company	Dispute (US\$ 9.2 million) under the consortium agreement between Indian, Singaporean and UAE partners for conversion of a mobile drilling unit into an offshore production unit	<ul style="list-style-type: none"> • Strategic counsel and advising the client (Abu Dhabi Courts) • Successfully assisted the client in vacating the order suspending the opponent's performance guarantees
Resources and Infrastructure	Singaporean and Indonesian companies	Disputes (US\$ 50 million) against the former managing director and local partner handling a Singaporean companies' coal and logistics division in Indonesia	<ul style="list-style-type: none"> • Investigation, data mining and asset research strategy to identify the entire fraud. • Strategic counsel and advising the client (Singapore High Court and Jakarta courts) • Securing mareva injunction on the assets the hostile directors from courts in Singapore. • Assisted the client in settling the dispute
Banking & Finance	Two Singaporean Companies	Dispute (US\$ 20mn) for non-payment under facility agreement between an Indian Bank and two Singaporean companies	<ul style="list-style-type: none"> • Strategic counsel and advising the client (Singapore High Court) • Successfully defended the client in a summary judgment application
Shipping	Singaporean company	Dispute (SGD 1.8 million) under a charter-party settlement agreement between two Singaporean and Italian shipping companies	<ul style="list-style-type: none"> • Strategic counsel and advising the client (Singapore High Court) • Successfully defended the client and obtained costs

Dispute Resolution

Litigation

Sector	The Client	Background	How Singularity Assisted?
Energy and Resources	Indian Oil and Gas company	Dispute under a drilling services' agreement between two oil and gas companies	<ul style="list-style-type: none"> • Representing the client (National Company Law Tribunal)
Oil and Gas, Banking	South Korean bank	Dispute between an Indian company and a South-Korean bank under a performance bank guarantee	<ul style="list-style-type: none"> • Representing the client (Gujarat High Court) • Raised the issue of service under the Hague Service Convention, and the matter is pending
Construction and Infrastructure	Singaporean and Indonesian companies	Disputes under an EPC contract for civil construction in Lucknow	<ul style="list-style-type: none"> • Representing and advising the clients in a proceeding under Section 11 of the Arbitration and Conciliation Act, 1996 (Bombay High Court and Abu Dhabi Courts) • Successfully defended the opponent's contention of unlawful arbitration agreement
International Trade	Indian fiber exporter	Dispute (€ 46000) against a leading Singapore supplier of yarns for recovery of dues	<ul style="list-style-type: none"> • Strategic counsel and advising the client (Singapore State Court) • Successfully assisted the client in recovering of dues with interest
Shipping and Insurance	Indian shipping company	Dispute (US\$ 18 million) under a hull and machinery insurance policy against an Indian underwriter	<ul style="list-style-type: none"> • Advising the client for the dispute (UK High Court, Queen's Bench Division) • Assisting in raising litigation finance for the arbitration

Dispute Resolution

Dispute board, Mediation, Conciliation and Negotiation

Sector	The Client	Background	How Singularity Assisted?
Energy and Resources	Power Generation Company	Shareholder dispute (US\$ 1 billion) with a South Korean sovereign power company, in relation to coal-based thermal power plants.	<ul style="list-style-type: none"> • Represented the client in the mediation before the Singapore International Mediation Centre .
Resources and Infrastructure	Singaporean and Indonesian companies	Disputes against the former managing director and local partner handling a Singaporean companies' coal and logistics division in Indonesia	<ul style="list-style-type: none"> • Assisted the client to get the hostile directors to resolve the disputes through formal mediation • Represented the client in the mediation under the auspices of the Rules of the Singapore Mediation Centre
Oil and Gas	Two Singaporean Oil and Gas Companies	Dispute against its former managing director and his companies for diversion of monies and opportunities	<ul style="list-style-type: none"> • Represented the clients in the settlement negotiations • Assisted the client in drafting settlement agreement, consent terms and consent award • Assisted the client in remittance of settlement proceeds
Construction	Indian Heavy Engineering Company	Dispute against employer with respect to withholding of completion certificates and invocation of bank guarantees	<ul style="list-style-type: none"> • Assessed the contractual framework to determine the validity of Employer's objections to withholding of certificates on completion of works and the invocation • Strategised obtaining injunction from Turkish Courts while simultaneously preparing for emergency arbitration under the ICC rules • Prepared a memorandum for client to be used in the settlement meeting.
Manufacturing	Indian rope manufacturer	Dispute against private equity seeking exit by invoking put option	<ul style="list-style-type: none"> • Assisted the client in drafting consent terms, settlement agreement • Assisted the client in settlement negotiation

Due Diligence & Deal Counsel

Dispute board, Mediation, Conciliation and Negotiation

Sector	The Client	Background	How Singularity Assisted?
Construction	Indian Heavy Engineering Company	Assisted the client in settlement negotiations with respect to withholding of completion certificates and invocation of bank guarantees	<ul style="list-style-type: none"> Assessed the contractual framework to determine the validity of Employer’s objections to withholding of certificates on completion of works and the invocation Briefed a leading Turkish law firm to obtain injunction from Turkish Courts while simultaneously preparing for emergency arbitration under the ICC rules Preparing memorandum for client to be used in settlement meeting.
Energy and Resources	Power Generation Company	Assisted the client in the mediation proceedings under the aegis of Singapore International Mediation Centre	<ul style="list-style-type: none"> Assessed the contractual framework and the documentation to determine the tenability of the claims and the counter-claims Represented the client in the mediation
Energy and Resources	Power Generation Company	Clients were in a dispute with their managing director and local partner in Indonesia who had hatched plan to take-over the entire coal operations and strip our clients of their investment Indonesia	<ul style="list-style-type: none"> Investigation, data mining and asset research strategy to identify the entire fraud. Securing Mareva injunction on the assets the hostile directors from courts in Singapore. Assisted the client to get the hostile directors to resolve the disputes through formal mediation Represented the client in the mediation

Dispute Resolution

Enforcement and Execution

Sector	The Client	Background	How Singularity Assisted?
International Trade and Business	UAE aircraft services company	SIAC award and Singapore High Court Judgment in the client's favour against an Indian helicopter services company in a dispute under a settlement agreement	<ul style="list-style-type: none"> • Advising the client in the execution of the judgment before the Bombay High Court. • Advising the client in enforcement of the award before the Bombay High Court • Advising the client in receiving details of assets from the Singapore High Court
International Trade and Business	Indian manufacturing companies	SIAC awards against our client obtained by a Mauritian private equity relating to put option	<ul style="list-style-type: none"> • Advising the client in defending the execution proceedings • Assisting the client in settling the dispute
Media and entertainment	Indian media company	SIAC emergency arbitrator's award obtained against our client, arising out of a dispute under an investment agreement with a Hong Kong bank's private equity arm	<ul style="list-style-type: none"> • Representing the client in defending the enforcement proceedings before the Bombay High Court
Oil and Gas	A State	The enforcement proceedings arose out of the investment tribunal's award of US\$ 50 billion in favour of an Oil Company	<ul style="list-style-type: none"> • Representing the client in the enforcement proceedings • Successfully resisted enforcement proceedings before the Delhi High Court as the underlying award was set aside. • The proceedings were withdrawn
Technology and software	American company	The enforcement proceedings arose out an AAA award against an Indian company	<ul style="list-style-type: none"> • Representing the client in the enforcement proceedings

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