At what cost?
A Lovells multi jurisdictional guide to litigation costs
About us

Operating from 29 offices in Europe, Asia, the Middle East and the United States, Lovells is one of the world’s leading international law firms. We advise many of the world’s largest corporations, financial institutions and governmental organisations.

We regularly act on complex matters involving a client’s regulatory affairs, multi-jurisdictional transactions and business ventures as well as some of the most high-profile commercial disputes.

With over 115 partners and 400 associates with litigation capabilities operating from 22 offices in 17 jurisdictions, the Lovells’ Dispute Resolution group is a truly global practice. Lovells is recognised as one of the leading international law firms for all major litigation, international arbitration and dispute resolution work. Our Dispute Resolution practice is unmatched in terms of its size, international reach and breadth of experience.

Subject to regulatory clearance, from 1 May 2010 we will be combining with US-based international law firm Hogan & Hartson to form a new firm, Hogan Lovells. The new firm will have around 2,500 lawyers operating out of more than 40 offices around the world. We believe that it will build on the recognised and highly-regarded strengths of both Hogan & Hartson and Lovells.

Hogan Lovells will offer:

- a unique, high quality transatlantic capability, with extensive reach into the world’s financial and commercial centres
- particular and distinctive strengths in the areas of dispute resolution, regulatory, antitrust, corporate, finance, intellectual property and real estate
- access to a significant depth of legal knowledge and resource in many key industry sectors, including energy, financial services, telecommunications media and technology, life sciences and pharmaceuticals, consumer goods, real estate, transport, natural resources and infrastructure.

For existing clients of Lovells, the combination will bring either new or greater access to legal advice across the US in cities such as Washington DC, New York, Houston, Los Angeles and San Francisco as well as new markets around the world including Abu Dhabi, Berlin and Caracas.
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Foreword

The cost of litigation is undoubtedly one of the greatest factors in persuading litigants either to settle, or just stay away from the courtroom altogether.

All judges are fallible, and no prudent litigant will go to law (or arbitration) with a belief in a guarantee of success. Costs, however, like death and taxes, are an inevitable consequence of suing or being sued.

So it is perhaps surprising that the incidence of costs in jurisdictions other than one’s own home state is frequently so poorly understood by litigants – and their advisers.

I started my career in a field of marine insurance which was rather specialised. “F.D&D.”, or “Freight, Demurrage and Defence” cover offered by a mutual insurer: a P&I Club. The claims involved requests for advice and support from the Club’s in-house lawyers, but, more substantially, for coverage of legal costs incurred in disputes associated with the shipping industry. Freight and demurrage certainly formed a substantial part of the range of issues that gave rise to disputes, but by no means the whole picture. Disputes with insurers, agents, charterers, suppliers, port authorities, directors, surveyors, classification societies and all the rest spawned a huge volume of contentious activity; since the vessels concerned went all over the world, so did the claims. Within two years, my portfolio of active claims exceeded 2,000 files, on which lawyers all across the world were busily generating fees, invoicing the insured members, who passed the legal bills to the Club for settlement under their “Defence” coverage.

The lawyers’ billing practices were many and varied; as was the quality and the frequency of proper advice, in many cases. The costs, however, were invariably very active, as the members of the Club spurred on their lawyers to greater and faster efforts in the pursuit or defence of the claims. Bills of substantial proportions would build up. My job was to approve the claim for payment, but also to give direction where the economics or the merits of the dispute made no sense or were otherwise not in the interests of the Club’s membership as a whole. It was a full time job in all senses.

Looking back, however, 30 years on, it is striking that I had no guidance or reference book whatsoever that could help me understand the basis on which these exotic foreign legal enterprises were entitled to bill their clients; court costs were regarded as a tax on litigation; and recovery of costs from the other side a rare and celebrated event. The costs of pursuing or defending claims were usually, if not always, ascertained only after they had been incurred, and with dozens of very active jurisdictions around the world’s coast-lines, any attempt at a comprehensive analysis of costs regimes would have been a hopelessly expensive exercise. We flew by the seat of our office chairs, and by the life-long experience of our weary colleagues. By the end of two years, I had a working knowledge of the costs regimes of no more than a dozen overseas jurisdictions; but even with these, the depth and detail was patchy, and much of the learning anecdotal rather than studied.

I suspect that there are still today many risk managers, claims handlers, finance directors and entrepreneurs who find themselves embroiled in occasional or persistent bouts of litigation in the places of the world with which they are least familiar. Some will have studied the incidence of costs in great detail in some, but not all, of these jurisdictions. But a wide-ranging and systematic treatment of the issue of litigation costs around the world is unlikely to be available to the average litigant.

Prompted by the comprehensive study of the current regime of costs in England and Wales conducted by Lord Justice Rupert Jackson, it occurred to me and some of my litigation colleagues that there was an untapped fount of knowledge as regards costs, in the form of the network of legal experts with whom we were all regularly in touch, both through our own overseas offices or in correspondent law firms.

We determined to draw some of this learning together, and to explore the basics, the peculiarities and the similarities between litigation costs regimes in a wide range of jurisdictions, both those of a “common-law” or “Anglo-Saxon” ethos as well as “civil law” and codified regimes.

We were surprised and relieved in equal measure to learn of the similarities and the oddities that occurred around the world; many prejudices were confirmed; a few pre-conceptions over-turned; much solid detail was garnered and collated by a team of contributors, correspondents, sub-editors and editors.

The results are contained in the volume you have before you:

At what cost? A Lovells multi jurisdictional guide to litigation costs

The Guide covers 56 jurisdictions. Its contents, methodology of analysis and some resulting themes and conclusions are summarised in the overview of findings on pages 4 – 7.

We offer it as a pilot study, albeit one of substantial proportions; we propose to extend the global coverage to other key jurisdictions in subsequent editions, and to deepen and broaden the range of topics by reference to the reactions of and feedback from our readership.

I should like to thank all of the contributors, their colleagues and firms who have allowed them to spend the time and effort in contributing to this report. For editorial infelicitudes, I offer our apologies; for any misunderstandings and persistent emails chasing for drafts, and comments, our thanks for your patience and persistence.

In particular, I should like to thank Graham Huntley, my co-editor and partner, but most of all, Sara Bradstock, the producer and director of this publication.

Peter Taylor, partner
Introduction and approach

The credit crunch sparked anticipation in many countries of an increased level of disputes. It also sharpened the attention in the business and legal worlds about the expense of litigation.

Our 2008 survey The Shrinking World showed that even before the onset of the credit crunch, General Counsel were concerned about the increasingly global nature of disputes. In particular, one-third of respondents (31%) noted a trend towards more multinational disputes. A slightly smaller number (25%) cited a lack of information about the relevant law and procedures across jurisdictions as one of the most significant issues facing them when managing such disputes.

It is therefore clear that businesses, and lawyers advising them, need to grapple with the expense of litigation as well as the variations in the costs regimes around the world to manage and enable recovery of the expense. This is so not only for corporations faced with often complex variations in the rules concerning recovery, funding opportunities, predictability and enforcement, but also for smaller claimants who can face an increasingly changing consumer scenario in different jurisdictions in which they may operate.

A comprehensive survey into the legal and procedural regimes for funding and recovering costs in all the major business jurisdictions is thus overdue and more needed now than ever before. It is therefore hoped that the Lovells’ survey will be of real and practical assistance to businesses and lawyers around the world. Our aim is to provide a tool which will enable informed decisions to be taken as to where to conduct litigation in cases where costs are a central issue, and which exist. The choice is not a real choice without information and clarity, and our report has been structured in a way to achieve this.

The report therefore covers over 50 jurisdictions and benefits from input from expert lawyers to enable a comparison to be made of issues such as:

- the recoverability of litigation costs by both claimants and defendants
- the manner in which costs are recovered, if at all
- factors taken into account where fixed costs are recoverable only
- what “costs” are for the purposes of recoverability
- the enforcement of costs orders
- the setting off of costs orders
- interest on costs
- the types of permitted costs arrangements between client and lawyer
- the funding arrangements available in each jurisdiction – such as insurance, legal aid and third party funding.

The publication of this report in England and Wales comes hard on the heels on the review of costs carried out by the Right Honourable Lord Justice Jackson. As part of the research carried out, he and his team travelled to major jurisdictions to learn how costs were controlled and managed. The result of that was the most comprehensive review of costs ever carried out in England and Wales, and a set of proposals which will mark the first truly significant attempt to manage costs through the procedural vehicle of litigation and the environment of regulation that is growing up in this country. If nothing else, this report will enable readers to compare how the developing regime in England and Wales compares to the major international jurisdictions.

Our basic approach was to compile information from and relating to each jurisdiction in response to a standard list of questions. We obtained input from each jurisdiction from two sources: the Dispute Resolution practices in each of Lovells’ global offices, and from other jurisdictions we obtained answers to the standard questions from leading and senior litigation practitioners in law firms with known Dispute Resolution capability and reach. A full list of the law firms who participated in the project is set out later in the document.

Some countries have separate jurisdictions for separate states, most notably Australia, Canada and the United States. In those instances we have identified the key jurisdictions and obtained a similar level of input from leading practitioners. Despite the variations across each jurisdiction, broadly there is a common position throughout the country.

In some countries, such as the United Arab Emirates and the Ukraine, there are distinctly separate litigation jurisdictions. Therefore, in these instances the input has been obtained and reported on separately.

The input from each jurisdiction was obtained by using a standard questionnaire. This ensured consistency of approach. Lovells then assimilated the answers to the questions and issues raised into a common style and format, producing for each jurisdiction:

- very summary answers to questions seeking an affirmative or negative response, for example, “yes” or “no”, which were then cross-referenced to:
- more detailed explanations for the answers applying to that jurisdiction which were then rechecked by the relevant practitioners in each jurisdiction.

The result is the quick reference table (pages 8 – 26), cross referenced to the country by country detailed responses (pages 28 – 193).

In order to ease review and assimilation of the information, the Guide uses common terminology to identify specific topics, issues or parties, even though different terminology is used across the jurisdictions. Thus, and by way of example, in both the questionnaire and this Guide:

- “Costs” means the costs incurred by a party during the course of litigation in connection to that litigation, and which include, but are not limited to, costs that the party has paid to its lawyers (including solicitors, counsel and advocates) to agents, to courts, to process servers and in respect of disbursements (for example, photocopying, expert witness, travel, translation, notarial services and witness attendance etc.)
“Lawyer” is used to describe the legal adviser, including the solicitor, counsel, barrister, advocate, attorney or other legal practitioner.

“Claimant” is used to describe the party bringing the claim, including the plaintiff unless the term is otherwise defined or specified within the relevant country commentary.

This Guide is written as a general guide only. It should not be relied upon as a substitute for specific legal advice.

The content of this publication has been created by the individual contributors. The views expressed are theirs and unless specifically stated are not those of Lovells LLP. Whilst every care has been taken to ensure the accuracy of this work, it is not intended to replace legal advice and no responsibility for claims, losses or damages arising out of any use of this work or any statement in it can be accepted by the authors or Lovells LLP.

The information contained in this report is current as at February 2010.

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Overview of findings

The global costs review reveals that some of the central features of the costs regime in England and Wales are present across the many of the world’s main business jurisdictions. Perhaps the most important feature is the general principle that the “loser pays”. This generally applies in 49 of the 56 surveyed jurisdictions (Figure 1). In a few others very limited costs may be “shifted” to the loser.

Perhaps the best known perceived example of a jurisdiction without a loser pays rule is the USA, but even this has to be treated with caution given that damages in that jurisdiction are often inflated to levels that more than compensate the costs incurred. Japan is a less well understood example of the jurisdiction where lawyers’ fees are not recoverable in any event. As a further contrast, in Taiwan, the fees are recoverable only when the lawyer has been appointed by the court.

In about 75% of jurisdictions the costs that can be recovered include most of the range of items that would normally be included within the recovery in England and Wales. Thus, lawyers’ fees, counsels’ fees, agency fees and disbursements such as copying charges and witness expenses are recoverable in the majority of instances where costs are permitted to be recovered (Figure 2).

As to the level of costs which may be recovered, here the variation is greater. Businesses will therefore wish to pay more attention to jurisdictions where costs recovered are closer to the full costs incurred by the business, in comparison to those jurisdictions where costs may be fixed or capped.

The survey established that in just under 40% of jurisdictions reviewed, the amount of costs recovered are fixed by reference to the value of the amount in dispute. In those instances there is a direct correlation between the value and the amount recovered.

Many other jurisdictions (around 32%) treat the value in dispute, or the issues at stake, as a relevant factor in determining the amount of recoverable costs. However, in these additional instances for the most part those factors have relatively little weight in determining the overall reasonableness of costs.

England and Wales falls into this latter category. But even here, there is a growing trend towards emphasising the value of a dispute in determining the level of recoverable costs. This features highly in the list of conclusions and recommendations in the report of Lord Justice Jackson dated 14 January 2010. It is clearly a growing trend worldwide, albeit one which at the present time is having less impact on the largest and most complex business disputes than in smaller lower value cases.

Of particular interest for businesses is the widespread scope for a client to agree a special costs arrangement with its own lawyer, irrespective of the regulation of recoverable cost. This is permitted in around 89% of the jurisdictions reviewed (albeit with some limitations and/or restrictions). This includes, in nine jurisdictions, the scope for variations of “no win, no fee” arrangements (Figure 3).

Given the increasingly rigorous financial disciplines applying to businesses, it is notable that interim awards of costs can be obtained in 46% of jurisdictions, and to a more limited extent in a further 12% of jurisdictions. This leaves at least one-third of jurisdictions where costs can be recovered only when proceedings come to an end. But it will be of some comfort that in at least three-quarters of jurisdictions the conduct of a party can lead to costs being increased or decreased from the levels that would otherwise be recovered.

Figure 1: Jurisdictions where the “loser pays”

Surveyed jurisdictions where the “loser pays”

In 87.5% of countries the “loser pays”

Figure 2: Jurisdictions allowing the recovery of the range of items normally recoverable in England and Wales
More worryingly, in around 16% of jurisdictions it would appear that interest is not payable on unpaid costs orders (Figure 4). This creates potentially serious business issues for parties unable to obtain the fruits of their litigation labour. Businesses should therefore make use of the information in our report on how costs awards are enforced globally.

Businesses wishing to enter into partnering relationships with third party funders to support litigation would be interested to note that over half of jurisdictions surveyed permit costs to be insured by a third party. In around 38% of further jurisdictions there is limited scope for this. The trend towards worldwide insurance costs is therefore strong and apparent (Figure 5). That said, our research establishes that in practice the market for insurance and the ability of the legal profession to take advantage of it means that the level of take-up is much more limited.

Outside insurance, there is more qualified scope for third parties to fund litigation claims. In around one-quarter of jurisdictions third parties are permitted to do so without significant qualification. In just under half of the jurisdictions surveyed the scope to do so exists, but is heavily qualified by what would appear to be appropriate levels of regulation (Figure 6).

These are some of the key findings which emerge. The review provides scope for many other themes and conclusions to be extrapolated.

Figure 3: Can a party agree with its own lawyer, a special costs arrangement?
Figure 4: Is interest payable on unpaid costs?

- Interest payable
- Interest not payable
- Not part of review

Figure 5: Can costs be insured?

- Costs may be insured without material qualification
- Costs may be insured with material qualification
- Costs may not be insured
- Not part of review
Figure 6: Is third party funding of claims available?

- Third party funding possible without material qualification
- Third party funding possible with material qualification
- Third party funding not possible
- Not part of review
### Quick reference table

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<th>Australia</th>
<th>Austria</th>
</tr>
</thead>
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<tr>
<td>Q1.1 Can costs be recovered by a party to civil litigation?</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Q1.2 Does the losing party usually pay the successful party’s costs?</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Q1.3 Can costs be ordered to be paid to, or by, a non-party?</td>
<td>Yes</td>
<td>Not generally</td>
</tr>
<tr>
<td>Q2.1 On what basis are costs recoverable?</td>
<td>A party is entitled to the costs of any issue on which it succeeds. However, State and Federal courts can apportion costs</td>
<td>Costs are recoverable pursuant to statute. Indicators of the amount in dispute, the amount of legal papers and the number and duration of court hearings</td>
</tr>
<tr>
<td>Q2.2 Is the amount of recoverable costs fixed?</td>
<td>Yes, in certain cases only</td>
<td>Yes, for legal fees</td>
</tr>
<tr>
<td>Q2.3 Is the amount of recoverable costs calculated by reference to the amount in dispute?</td>
<td>Not strictly, but within the court’s discretion</td>
<td>Yes</td>
</tr>
<tr>
<td>Q2.4 What can be recovered as “costs”?</td>
<td>Most</td>
<td>Most</td>
</tr>
<tr>
<td>Q3.1 Can a party agree with its own lawyer, a special costs arrangement?</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Q3.2 Which tribunal resolves costs disputes and how?</td>
<td>The method for resolving costs disputes varies according to jurisdiction</td>
<td>A party can challenge the other party’s record of costs. The first instance court rules on challenges in its judgment. Appeal can be made to a second instance court, which decides without hearing from the parties</td>
</tr>
<tr>
<td>Q3.3 Can a party be required to provide security for costs (or some other sum) in advance of costs being decided?</td>
<td>Yes, in some circumstances security for costs orders may be sought</td>
<td>Yes, court fees are paid in advance and if security for costs is granted</td>
</tr>
<tr>
<td>Q4.1 Can interim awards of costs be obtained?</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Q4.2 Can an award of costs be increased or decreased by reference to such matters as a party’s conduct of the case?</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Q4.3 How are costs awards enforced?</td>
<td>Costs may be enforced as judgments</td>
<td>As for judgments</td>
</tr>
<tr>
<td>Q4.4 Can a costs award be set off against a monetary judgment?</td>
<td>The court has a discretion to set off a costs award against a monetary judgment</td>
<td>Yes, in principle</td>
</tr>
<tr>
<td>Q4.5 Is interest payable on unpaid costs?</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Q5.1 Are costs of an appeal treated differently?</td>
<td>Sometimes</td>
<td>No</td>
</tr>
<tr>
<td>Q6.1 Can costs be insured?</td>
<td>In limited circumstances</td>
<td>Yes, though rare among corporates</td>
</tr>
<tr>
<td>Q6.2 Is legal aid available?</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Q6.3 Is third party funding of claims available?</td>
<td>Yes</td>
<td>Yes</td>
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<th>The Bahamas</th>
<th>Belgium</th>
<th>Bermuda</th>
<th>Canada</th>
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<tr>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
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<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Yes, exceptionally</td>
<td>Yes, as an intervenener</td>
<td>Yes</td>
<td>Yes, in limited circumstances</td>
</tr>
<tr>
<td>Costs are awarded at the discretion of the judge, who may assess costs but usually refers them to the Registrar. Costs are not ordered pursuant to a tariff</td>
<td>The court awards costs on the basis of a statutory scale. The judge has power to vary the award depending on various factors, including the complexity of the claim and the financial position of the losing party</td>
<td>Costs are recoverable at the court’s discretion. In exercising its discretion, the court shall consider offers of contribution, payments into court and written offers, and may consider misconduct or neglect</td>
<td>The court has broad discretion in awarding costs. The court can consider such factors as the experience and fees of the party’s lawyer and the reasonable costs for a particular step in proceedings</td>
</tr>
<tr>
<td>No</td>
<td>Yes, in certain cases only</td>
<td>Yes, in certain cases only</td>
<td>Yes, in most cases</td>
</tr>
<tr>
<td>Yes, in part</td>
<td>Yes</td>
<td>Not strictly</td>
<td>Not strictly</td>
</tr>
<tr>
<td>Most</td>
<td>Most</td>
<td>Most</td>
<td>Most</td>
</tr>
<tr>
<td>Yes</td>
<td>Yes, with limitations</td>
<td>No</td>
<td>Yes, with restrictions</td>
</tr>
<tr>
<td>By a Registrar of the Supreme Court on a taxation</td>
<td>By the judge in charge of the main dispute between them</td>
<td>The registrar of the Supreme Court resolves costs disputes in a hearing</td>
<td>Usually the court that hears the matter also resolves costs disputes. Exceptionally, an ‘assessment officer’ does so</td>
</tr>
<tr>
<td>Sometimes. Usually on a finding by the court of inappropriate behaviour</td>
<td>Yes, if security for costs is granted</td>
<td>Yes, if security for costs is granted</td>
<td>Yes, if security for costs is granted</td>
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<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
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<tr>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>As for the judgment</td>
<td>As for money judgments</td>
<td>By a writ of fieri facias, garnishment, appointing a receiver and an order for committal</td>
<td>Methods include a writ of seizure and sale, garnishment, a writ of sequestration and appointing a receiver</td>
</tr>
<tr>
<td>Yes</td>
<td>Yes</td>
<td>Yes, costs orders can be set off against each other</td>
<td>Yes</td>
</tr>
<tr>
<td>Yes</td>
<td>Yes</td>
<td>Yes, at the court’s discretion</td>
<td>Yes</td>
</tr>
<tr>
<td>Similar, but costs are taxed by a Registrar of the Court of Appeal No</td>
<td>Yes, in respect of appeal to Cour de Cassation Yes</td>
<td>At the court’s discretion Yes, in principle</td>
<td>At the court’s discretion Yes</td>
</tr>
<tr>
<td>No, in respect of civil claims Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>No, not generally Yes, but only in exceptional circumstances No</td>
<td>Yes, but only by a party with a genuine interest in the proceedings</td>
<td>Yes, but only by a party with a genuine interest in the proceedings</td>
<td></td>
</tr>
<tr>
<td>Question</td>
<td>Cayman Islands</td>
<td>China</td>
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<td>No</td>
<td></td>
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<td>Q2.1 On what basis are costs recoverable?</td>
<td>A successful litigant generally recovers from the losing side its reasonable costs incurred in conducting proceedings in an economical, expeditious and proper manner</td>
<td>Court fees and disbursements are recovered in line with statute, and lawyers’ fees generally by agreement between the parties. Other costs are recoverable at the court’s discretion</td>
<td></td>
</tr>
<tr>
<td>Q2.2 Is the amount of recoverable costs fixed?</td>
<td>Yes, for certain proceedings the plaintiff can claim fixed costs</td>
<td>Generally no</td>
<td></td>
</tr>
<tr>
<td>Q2.3 Is the amount of recoverable costs calculated by reference to the amount in dispute?</td>
<td>No</td>
<td>Generally no</td>
<td></td>
</tr>
<tr>
<td>Q2.4 What can be recovered as “costs”?</td>
<td>Most (there are restrictions on foreign lawyers’ fees)</td>
<td>Most (not agency fees)</td>
<td></td>
</tr>
<tr>
<td>Q3.1 Can a party agree with its own lawyer, a special costs arrangement?</td>
<td>Yes, to an extent</td>
<td>Yes, with limitations</td>
<td></td>
</tr>
<tr>
<td>Q3.2 Which tribunal resolves costs disputes and how?</td>
<td>A judge of the Grand Court reviews the costs decision made by the taxing officer. There is also a limited right to appeal to the Court of Appeal on costs issues</td>
<td>The court hearing the case will deal with costs disputes, considering the agreement between parties, the division of liability, actual costs and alternative compensation</td>
<td></td>
</tr>
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<td>As for money judgments</td>
<td>As for the judgment. New measures include travel restrictions, garnishment and attachments</td>
<td></td>
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<tr>
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<td>Yes</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>Q4.5 Is interest payable on unpaid costs?</td>
<td>Yes</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>Q5.1 Are costs of an appeal treated differently?</td>
<td>Generally, no</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>Q6.1 Can costs be insured?</td>
<td>Yes, in principle, but no established market</td>
<td>Yes, but rare</td>
<td></td>
</tr>
<tr>
<td>Q6.2 Is legal aid available?</td>
<td>Yes</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>Q6.3 Is third party funding of claims available?</td>
<td>Yes, subject to restrictions</td>
<td>Not prohibited, but not practiced</td>
<td></td>
</tr>
</tbody>
</table>

Detailed response on page 48 52
<table>
<thead>
<tr>
<th></th>
<th>Croatia</th>
<th>Cyprus</th>
<th>Czech Republic</th>
<th>Denmark</th>
</tr>
</thead>
<tbody>
<tr>
<td>Can costs be insured?</td>
<td>Yes, in principle, but no</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Is legal aid available?</td>
<td>Yes</td>
<td>Yes</td>
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<td>Yes</td>
</tr>
<tr>
<td>Can costs be ordered to be paid to, or by, a non-party?</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>On what basis are costs recoverable?</td>
<td>Generally, no</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Does the losing party usually pay the successful party's costs?</td>
<td>No</td>
<td>Yes</td>
<td>Generally no</td>
<td>No</td>
</tr>
<tr>
<td>Can costs be recovered by a party to civil litigation?</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
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<td>Yes</td>
</tr>
<tr>
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<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Can an award of costs be set off against a monetary judgment?</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>How are costs awards enforced?</td>
<td>As for money judgments</td>
<td>As for the judgment</td>
<td>As for money judgments</td>
<td>As for the judgment</td>
</tr>
<tr>
<td>Can interim awards of costs be obtained?</td>
<td>Yes</td>
<td>Yes, but not customary</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Can a party agree with its own lawyer, a special costs arrangement?</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Can a party be required to provide security for costs (or some other sum) in advance of costs being decided?</td>
<td>Yes, to an extent</td>
<td>Yes, with limitations</td>
<td>Yes, but only for unnecessary costs</td>
<td>No</td>
</tr>
<tr>
<td>Which tribunal resolves costs disputes and how?</td>
<td>A judge of the Grand Court</td>
<td>A judge of the Grand Court</td>
<td>A judge of the Grand Court</td>
<td>A judge of the Grand Court</td>
</tr>
<tr>
<td>Costs decisions above DKK 10,000 can be appealed to the High Court. High Court decisions require a special exemption for appeal to the Supreme Court</td>
<td>Normally the successful party is awarded costs. Expenses (translation, witnesses etc.) are generally recovered in full and lawyers’ fees at the court’s discretion and usually in part</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Costs are assessed in the main proceedings. The costs award can be challenged in appellate proceedings</td>
<td>The losing party reimburses the successful party. Lawyers’ fees are usually recovered following a tariff but the court has discretion to assess cases on a more individual basis</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Generally no, but there are cost limits for certain actions by lawyers</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes, partly</td>
<td>Yes</td>
</tr>
<tr>
<td>Costs orders are disputed by appeal against the costs decision. The appeal court can change or overrule the first instance costs decision</td>
<td>Yes, but contingency deals are prohibited</td>
<td>Yes, with limitations</td>
<td>Yes, with limitations</td>
<td>Yes, with limitations</td>
</tr>
<tr>
<td>A copy of the bill of costs is served with a demand for payment on the paying party</td>
<td>As for money awards</td>
<td>As for the judgment</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Court fees are charged directly. Costs awards can be enforced by account seizure</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Court fees are charged directly. Costs awards can be enforced by account seizure</td>
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</tr>
<tr>
<td>A copy of the bill of costs is served with a demand for payment on the paying party</td>
<td>As for money awards</td>
<td>As for the judgment</td>
<td></td>
<td></td>
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<td>Yes, with limitations</td>
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<td>Yes, with limitations</td>
</tr>
<tr>
<td>A copy of the bill of costs is served with a demand for payment on the paying party</td>
<td>As for money awards</td>
<td>As for the judgment</td>
<td></td>
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</tr>
</tbody>
</table>
At what cost? A Lovells multi jurisdictional guide to litigation costs

<table>
<thead>
<tr>
<th>Question</th>
<th>Dubai – United Arab Emirates</th>
<th>International Finance Centre</th>
</tr>
</thead>
<tbody>
<tr>
<td>Q1.1 Can costs be recovered by a party to civil litigation?</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Q1.2 Does the losing party usually pay the successful party’s costs?</td>
<td>Yes, but to a limited extent</td>
<td>Yes</td>
</tr>
<tr>
<td>Q1.3 Can costs be ordered to be paid to, or by, a non-party?</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Q2.1 On what basis are costs recoverable?</td>
<td>Discretionary</td>
<td>The court has discretion as to the apportionment and amount of costs, but must consider all circumstances</td>
</tr>
<tr>
<td>Q2.2 Is the amount of recoverable costs fixed?</td>
<td>No</td>
<td>Yes, in certain cases only</td>
</tr>
<tr>
<td>Q2.3 Is the amount of recoverable costs calculated by reference to the amount in dispute?</td>
<td>Yes</td>
<td>Yes, as part of the court’s discretion</td>
</tr>
<tr>
<td>Q2.4 What can be recovered as “costs”?</td>
<td>Some (nominal lawyers’ fees, court fees and court expert fees)</td>
<td>Most</td>
</tr>
<tr>
<td>Q3.1 Can a party agree with its own lawyer, a special costs arrangement?</td>
<td>Yes, in limited circumstances</td>
<td>Yes</td>
</tr>
<tr>
<td>Q3.2 Which tribunal resolves costs disputes and how?</td>
<td>There are no costs disputes or separate costs awards as the costs are determined in the final judgment</td>
<td>The Registrar or an appointed judicial officer of the court has the power of the court to make detailed assessments of costs</td>
</tr>
<tr>
<td>Q3.3 Can a party be required to provide security for costs (or some other sum) in advance of costs being decided?</td>
<td>No</td>
<td>Yes, if security for costs is granted</td>
</tr>
<tr>
<td>Q4.1 Can interim awards of costs be obtained?</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Q4.2 Can an award of costs be increased or decreased by reference to such matters as a party’s conduct of the case?</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Q4.3 How are costs awards enforced?</td>
<td>As part of the judgment</td>
<td>As for judgments (by a charge over property, attachment, execution and appointing a receiver)</td>
</tr>
<tr>
<td>Q4.4 Can a costs award be set off against a monetary judgment?</td>
<td>Not applicable; there is no separate costs award</td>
<td>Yes</td>
</tr>
<tr>
<td>Q4.5 Is interest payable on unpaid costs?</td>
<td>Generally, no</td>
<td>No</td>
</tr>
<tr>
<td>Q5.1 Are costs of an appeal treated differently?</td>
<td>No</td>
<td>At the court’s discretion</td>
</tr>
<tr>
<td>Q6.1 Can costs be insured?</td>
<td>Possibly</td>
<td>Yes, not prohibited</td>
</tr>
<tr>
<td>Q6.2 Is legal aid available?</td>
<td>Not in civil matters</td>
<td>Yes, but the system is entirely voluntary</td>
</tr>
<tr>
<td>Q6.3 Is third party funding of claims available?</td>
<td>Yes, not prohibited</td>
<td>Yes, not prohibited</td>
</tr>
</tbody>
</table>

Detailed response on page 67 69 71 74 77 80
<table>
<thead>
<tr>
<th>Eastern Caribbean States and BVI</th>
<th>England and Wales</th>
<th>Finland</th>
<th>France</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Yes, but only in limited</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>circumstances</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Costs can be quantified in four</td>
<td>Discretionary:</td>
<td>The court can order compensation for costs.</td>
<td>Procedural costs are assessed by law and usually borne by the losing party. Article 700 costs are discretionary; the judge considers the economic position of the losing party.</td>
</tr>
<tr>
<td>ways. In most commercial cases,</td>
<td>the court is</td>
<td>Generally the losing party compensates the successful party’s legal fees and costs in full.</td>
<td></td>
</tr>
<tr>
<td>costs are quantified under the</td>
<td>required to have regard to all circumstances, and certain factors such as conduct, compliance with pre-action protocols, part success and offers to settle.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>prescribed costs regime, which</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>is based on the value of the</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>claim</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yes, in certain cases</td>
<td>Yes, in certain cases only</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Yes, in certain cases</td>
<td>Yes, as part of the court’s discretion</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Most, pursuant to the</td>
<td>All</td>
<td>Most</td>
<td>Most</td>
</tr>
<tr>
<td>prescribed costs system</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yes</td>
<td>Yes, with restrictions</td>
<td>Yes</td>
<td>Yes, but contingency fees are forbidden</td>
</tr>
<tr>
<td>The High Court deals with</td>
<td>The paying party can dispute any item on the bill of costs. The hearing takes place before a costs officer.</td>
<td>The same court that hears the main proceedings simultaneously resolves costs disputes.</td>
<td>Article 700 costs can only be challenged by appealing the judgment. For other costs, the payer challenges them by request to the President of the court hearing the case.</td>
</tr>
<tr>
<td>disputes. The dispute will be</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>heard by the judge who dealt</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>with the main dispute or, in</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>some jurisdictions, by a master</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yes</td>
<td>Yes, if security for costs is granted</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Yes, but only in limited</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>circumstances</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yes, for prescribed costs</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Various methods, including the</td>
<td>As for money judgments</td>
<td>In accordance with the Finnish Enforcement Code. The judgment need not be final for a cost award to be enforced.</td>
<td>The successful party seizes a bailiff to recover the amount due.</td>
</tr>
<tr>
<td>sale/possession of land/goods,</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>charging orders, attachments</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>and appointing receivers</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Yes, but only by agreement</td>
<td>At the court’s discretion</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>between the parties or a</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>court order</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yes, in most Eastern Caribbean</td>
<td>At the court’s discretion</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>states</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Generally yes</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yes, but the market is limited</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Not for civil litigation</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>There is no established market</td>
<td>Yes, but it is unregulated</td>
<td>Yes, but not common</td>
<td>Yes, but not customary</td>
</tr>
<tr>
<td>71</td>
<td>74</td>
<td>77</td>
<td>80</td>
</tr>
</tbody>
</table>
### Q1.1 Can costs be recovered by a party to civil litigation?
- **Germany:** Yes
- **Gibraltar:** Yes

### Q1.2 Does the losing party usually pay the successful party’s costs?
- **Germany:** Yes
- **Gibraltar:** Yes

### Q1.3 Can costs be ordered to be paid to, or by, a non-party?
- **Germany:** Yes, as an intervener
- **Gibraltar:** Yes

### Q2.1 On what basis are costs recoverable?
- **Germany:** A costs order is rendered by a court officer on application by the parties. The order is based on the statutory tariff rate and in accordance with the value of the dispute.
- **Gibraltar:** The CPR applies; costs payable by one party to another are at the discretion of the court, which must have regard to certain factors, such as the conduct of the parties, offers to settle and part success in a claim.

### Q2.2 Is the amount of recoverable costs fixed?
- **Germany:** Yes
- **Gibraltar:** Yes, in certain cases

### Q2.3 Is the amount of recoverable costs calculated by reference to the amount in dispute?
- **Germany:** Yes
- **Gibraltar:** Yes

### Q2.4 What can be recovered as “costs”?
- **Germany:** Most
- **Gibraltar:** Most (currently not after the event insurance)

### Q3.1 Can a party agree with its own lawyer, a special costs arrangement?
- **Germany:** Yes, with limitations
- **Gibraltar:** Yes, subject to restrictions

### Q3.2 Which tribunal resolves costs disputes and how?
- **Germany:** A party can serve notice of appeal on either the first instance court or court of appeal. An officer of the first instance court can submit the application to the court of next instance.
- **Gibraltar:** The receiving party applies for a detailed assessment. If the parties dispute costs, the detailed assessment is carried out by the Registrar of the Supreme Court.

### Q3.3 Can a party be required to provide security for costs (or some other sum) in advance of costs being decided?
- **Germany:** Yes, in specific circumstances
- **Gibraltar:** Yes, if security for costs is granted

### Q4.1 Can interim awards of costs be obtained?
- **Germany:** No
- **Gibraltar:** Yes

### Q4.2 Can an award of costs be increased or decreased by reference to such matters as a party’s conduct of the case?
- **Germany:** No
- **Gibraltar:** Yes

### Q4.3 How are costs awards enforced?
- **Germany:** As for money judgments
- **Gibraltar:** As for money judgments

### Q4.4 Can a costs award be set off against a monetary judgment?
- **Germany:** Depends on the facts of the situation
- **Gibraltar:** Yes, on application to the court

### Q4.5 Is interest payable on unpaid costs?
- **Germany:** Yes, on application
- **Gibraltar:** Yes

### Q5.1 Are costs of an appeal treated differently?
- **Germany:** Same principles apply but statutory costs are higher than at first instance
- **Gibraltar:** Yes, in part

### Q6.1 Can costs be insured?
- **Germany:** Yes
- **Gibraltar:** Yes, but not common

### Q6.2 Is legal aid available?
- **Germany:** Yes
- **Gibraltar:** Yes

### Q6.3 Is third party funding of claims available?
- **Germany:** Yes
- **Gibraltar:** Yes

**Detailed response on page**
- **Germany:** 83
- **Gibraltar:** 86
<table>
<thead>
<tr>
<th>Greece</th>
<th>Hong Kong</th>
<th>Hungary</th>
<th>Iceland</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>No</td>
<td>Yes, in limited circumstances only</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Generally, the losing party pays the other party’s costs including lawyers’ fees. Awards are often low and the court can require the successful party to pay if it breached rules of conduct</td>
<td>The court has discretion to award costs on various bases and must consider certain factors, such as the underlying objective of the rules, any offer of contribution, conduct and admissible offers to settle</td>
<td>The court establishes the amount of costs based on information and detailed accounts provided by the parties. The amount awarded may be no higher than that requested</td>
<td>The court will assess costs incurred and decide on the amount awarded. The decision is by the same court and at the same time as the main hearing in the case</td>
</tr>
<tr>
<td>No</td>
<td>Yes, in limited circumstances only</td>
<td>Yes, in certain cases</td>
<td>No</td>
</tr>
<tr>
<td>Yes</td>
<td>Yes, as part of the court’s discretion</td>
<td>Yes</td>
<td>Sometimes, but rarely entirely by reference to the amount in dispute</td>
</tr>
<tr>
<td>Some (nominal lawyers’ fees only and neither court fees nor factual witness fees)</td>
<td>Most</td>
<td>All, subject to proof of expenses</td>
<td>All</td>
</tr>
<tr>
<td>Yes, subject to limitations</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>The court hearing the case will also resolve costs disputes</td>
<td>Substantial costs disputes are dealt with by a taxing master, generally after the conclusion of the action. This will either be done at a hearing or by an order “nisi”</td>
<td>There is no special tribunal in Hungary to deal with costs disputes. The court’s decision on costs may be appealed within 15 days of receipt</td>
<td>The court handling the case, as part of the overall judgment</td>
</tr>
<tr>
<td>Yes, if security for costs is granted</td>
<td>Yes, if security for costs is granted</td>
<td>Yes, costs in relation to evidencing a fact and if security for costs is granted</td>
<td>Yes, if security for costs is granted</td>
</tr>
<tr>
<td>Yes, but only exceptionally</td>
<td>Yes</td>
<td>Yes</td>
<td>Not generally</td>
</tr>
<tr>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>As for the judgment</td>
<td>As for money judgments</td>
<td>First, by a collection order sent to the account holding bank of the paying party and, second, by a bailiff</td>
<td>As part of the judgment</td>
</tr>
<tr>
<td>Yes</td>
<td>Not automatically, but the taxing master may set off amounts</td>
<td>Yes</td>
<td>Depends on the situation, but is possible in theory</td>
</tr>
<tr>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Yes, very similar</td>
<td>No</td>
<td>Yes, if not otherwise agreed, lawyers’ fees recoverable are 50% of those at first instance</td>
<td>No</td>
</tr>
<tr>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>No</td>
<td>Yes, in limited circumstances</td>
<td>Yes, though it is rare for third party investors to finance claims</td>
<td>Not regulated, but not prohibited</td>
</tr>
</tbody>
</table>

89 92 96 99
<table>
<thead>
<tr>
<th>Question</th>
<th>India</th>
<th>Ireland</th>
</tr>
</thead>
<tbody>
<tr>
<td>Q1.1 Can costs be recovered by a party to civil litigation?</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Q1.2 Does the losing party usually pay the successful party's costs?</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Q1.3 Can costs be ordered to be paid to, or by, a non-party?</td>
<td>In very limited circumstances</td>
<td>Costs are recovered at the court's discretion. The court determines a party's entitlement and the criteria for quantification and then a Taxing Master adjudicates and measures quantum</td>
</tr>
<tr>
<td>Q2.1 On what basis are costs recoverable?</td>
<td>The court deciding the dispute has full discretion to determine costs. There are no fixed tariffs</td>
<td></td>
</tr>
<tr>
<td>Q2.2 Is the amount of recoverable costs fixed?</td>
<td>Yes, in certain cases only</td>
<td>No, except in some proceedings in the lower courts</td>
</tr>
<tr>
<td>Q2.3 Is the amount of recoverable costs calculated by reference to the amount in dispute?</td>
<td>No, but the amount is considered as part of the court's discretion</td>
<td>Yes, among other factors</td>
</tr>
<tr>
<td>Q2.4 What can be recovered as &quot;costs&quot;?</td>
<td>Most</td>
<td>Most (generally recoverable costs are those between parties, not solicitor and client)</td>
</tr>
<tr>
<td>Q3.1 Can a party agree with its own lawyer, a special costs arrangement?</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Q3.2 Which tribunal resolves costs disputes and how?</td>
<td>There is no special tribunal for costs disputes. An award can be challenged before an appellate court if it is completely unjustifiable</td>
<td>Generally a Taxing Master, but the Master’s decision can be appealed to the High Court and then the Supreme Court</td>
</tr>
<tr>
<td>Q3.3 Can a party be required to provide security for costs (or some other sum) in advance of costs being decided?</td>
<td>Yes, if security for costs is granted</td>
<td>Yes, if security for costs is granted</td>
</tr>
<tr>
<td>Q4.1 Can interim awards of costs be obtained?</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Q4.2 Can an award of costs be increased or decreased by reference to such matters as a party’s conduct of the case?</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Q4.3 How are costs awards enforced?</td>
<td>By detention of the judgment-debtor in a civil prison and/or attachment and sale of property</td>
<td>The Certificate of Taxation is enforced in the same way as any debt or award</td>
</tr>
<tr>
<td>Q4.4 Can a costs award be set off against a monetary judgment?</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Q4.5 Is interest payable on unpaid costs?</td>
<td>Yes, but at the court's discretion</td>
<td>Yes</td>
</tr>
<tr>
<td>Q5.1 Are costs of an appeal treated differently?</td>
<td>At the court's discretion</td>
<td>No</td>
</tr>
<tr>
<td>Q6.1 Can costs be insured?</td>
<td>Yes, but no specific costs insurance market</td>
<td>Yes</td>
</tr>
<tr>
<td>Q6.2 Is legal aid available?</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Q6.3 Is third party funding of claims available?</td>
<td>No regulation, but no market</td>
<td>Yes, but not common</td>
</tr>
<tr>
<td>Detailed response on page</td>
<td>101</td>
<td>104</td>
</tr>
<tr>
<td>Isle of Man</td>
<td>Israel</td>
<td>Italy</td>
</tr>
<tr>
<td>------------</td>
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</tr>
<tr>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Costs are recovered at the court's discretion. The court must consider certain factors, such as the time each party disclosed his case, part success, conduct and payments into court/admissible offers to settle</td>
<td>The court has discretion but must follow recommended minimum tariffs for legal fees. Legal fees awarded are often much lower than actual fees incurred</td>
<td>The court hearing the case has discretion to decide costs. However, the court usually applies legal tariffs (which vary depending on the amount in dispute)</td>
</tr>
<tr>
<td>Yes, in certain cases only</td>
<td>No, except for motor vehicle accident claims</td>
<td>No, only court fees are fixed</td>
</tr>
<tr>
<td>Yes, as part of the court's discretion</td>
<td>Yes, as part of the court's discretion</td>
<td>Yes, however the court has discretion to decide the amount of costs awarded</td>
</tr>
<tr>
<td>All</td>
<td>Most (not agency fees)</td>
<td>Most (not additional lawyers’ fees. Agency fees do not apply)</td>
</tr>
<tr>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>By a costs officer at a hearing. The receiving party serves a bill of costs on the paying party who can dispute any item on the bill</td>
<td>The court that hears the dispute decides on costs and lawyers’ fees at the end of the litigation. Requests to assess costs are referred to the Court Registrar who provides a ruling</td>
<td>As the costs order is part of the judgment any dispute will be subject to the rules governing the appeal of the judgment</td>
</tr>
<tr>
<td>Yes, if security for costs is granted</td>
<td>Yes, if security for costs is granted</td>
<td>No</td>
</tr>
<tr>
<td>Yes</td>
<td>Yes</td>
<td>Yes, but only in certain circumstances</td>
</tr>
<tr>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>As for money judgments (execution, appointing a receiver, an arrestment order, a charging order and an attachment of earnings)</td>
<td>As for money judgments</td>
<td>As for judgments</td>
</tr>
<tr>
<td>Yes</td>
<td>No</td>
<td>Yes, in theory, but no known precedent</td>
</tr>
<tr>
<td>At the court's discretion</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>At the court's discretion</td>
<td>No</td>
<td>Yes, but only as far as the amount is concerned</td>
</tr>
<tr>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Yes, but not common outside insolvency proceedings</td>
<td>No</td>
<td>Not regulated, but not prohibited</td>
</tr>
<tr>
<td>107</td>
<td>110</td>
<td>112</td>
</tr>
<tr>
<td>Question</td>
<td>Liechtenstein</td>
<td>Luxembourg</td>
</tr>
<tr>
<td>------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------</td>
<td>---------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Q1.1 Can costs be recovered by a party to civil litigation?</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Q1.2 Does the losing party usually pay the successful party’s costs?</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Q1.3 Can costs be ordered to be paid to, or by, a non-party?</td>
<td>No</td>
<td>Non-parties, such as experts, can recover, but not pay, costs</td>
</tr>
<tr>
<td>Q2.1 On what basis are costs recoverable?</td>
<td>Lawyers’ fees and court charges are calculated in line with a fixed tariff. Expenses are reimbursed in the actual amount incurred. The court has discretion to determine the necessity of steps taken in the claim</td>
<td>Procedural costs are borne by the loser. Costs payable by one side to the other are at the discretion of the court, but the amount rarely exceeds €10,000</td>
</tr>
<tr>
<td>Q2.2 Is the amount of recoverable costs fixed?</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Q2.3 Is the amount of recoverable costs calculated by reference to the amount in dispute?</td>
<td>Yes</td>
<td>Yes, as part of the court’s discretion</td>
</tr>
<tr>
<td>Q2.4 What can be recovered as “costs”?</td>
<td>Most (additional lawyers’ fees and agency fees are not applicable)</td>
<td>Most (not counsel’s costs)</td>
</tr>
<tr>
<td>Q3.1 Can a party agree with its own lawyer, a special costs arrangement?</td>
<td>Yes, with limitations</td>
<td>Yes, with limitations</td>
</tr>
<tr>
<td>Q3.2 Which tribunal resolves costs disputes and how?</td>
<td>Costs decisions can be appealed with or separately from an appeal on the merits of the case. The appeal goes to a second instance court and can go to third instance</td>
<td>The counterparty can challenge costs. The judge hears arguments and decides what costs to award. The judge’s decision cannot then be appealed</td>
</tr>
<tr>
<td>Q3.3 Can a party be required to provide security for costs (or some other sum) in advance of costs being decided?</td>
<td>Yes, if security for costs is granted</td>
<td>Yes, a “cautio judicatim solvi” may be required where a party does not reside in the jurisdiction</td>
</tr>
<tr>
<td>Q4.1 Can interim awards of costs be obtained?</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Q4.2 Can an award of costs be increased or decreased by reference to such matters as a party’s conduct of the case?</td>
<td>Yes</td>
<td>Yes, to a limited extent</td>
</tr>
<tr>
<td>Q4.3 How are costs awards enforced?</td>
<td>As for the main judgment</td>
<td>As for judgments</td>
</tr>
<tr>
<td>Q4.4 Can a costs award be set off against a monetary judgment?</td>
<td>Not by the court, but the parties can set off under the general law</td>
<td>Yes</td>
</tr>
<tr>
<td>Q4.5 Is interest payable on unpaid costs?</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Q5.1 Are costs of an appeal treated differently?</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Q6.1 Can costs be insured?</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Q6.2 Is legal aid available?</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Q6.3 Is third party funding of claims available?</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Detailed response on page</td>
<td>118</td>
<td>121</td>
</tr>
<tr>
<td>Malta</td>
<td>The Netherlands</td>
<td>New Zealand</td>
</tr>
<tr>
<td>-------</td>
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<td>-------------</td>
</tr>
<tr>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>No</td>
<td>Yes, in relation to witnesses</td>
<td>Yes</td>
</tr>
<tr>
<td>Costs are established by law in a tariff, although the court may apportion costs at its discretion, especially in tort-based actions</td>
<td>In principle, the court has complete discretion in respect of the amount of costs awarded. There is an unofficial tariff for lawyers’ fees</td>
<td>The High Court Rules provide for the recovery of costs according to a fixed scale but the court has an overall discretion as to costs. A number of general principles apply to determining costs</td>
</tr>
<tr>
<td>Yes, in part</td>
<td>Yes, with respect to the costs for legal assistance</td>
<td>Yes, in most cases</td>
</tr>
<tr>
<td>Yes</td>
<td>Yes</td>
<td>Yes, as part of the court’s discretion</td>
</tr>
<tr>
<td>Some (neither additional lawyers’ fees nor agency fees)</td>
<td>All</td>
<td>Most</td>
</tr>
<tr>
<td>Yes, not contingency basis</td>
<td>Yes, but not “no win, no fee” agreements</td>
<td>Yes, with limitations</td>
</tr>
<tr>
<td>The same court that decides the dispute deals with cost disputes</td>
<td>There is no special tribunal for hearing costs disputes. Costs can be disputed by appealing the first instance decision before the Court of Appeal, but this is not common</td>
<td>Costs decisions are made by the trial judge and can be appealed to the appellate court (the Court of Appeal from the High Court)</td>
</tr>
<tr>
<td>Yes, security for costs can be sought before the First Hall Civil Court and Court of Appeal</td>
<td>Yes, if security for costs is granted</td>
<td>Yes, if security for costs is granted</td>
</tr>
<tr>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>As for judgments</td>
<td>As part of the judgment</td>
<td>As for money judgments</td>
</tr>
<tr>
<td>Only after a judicial intimation for payment of unpaid costs</td>
<td>Yes</td>
<td>Yes, the parties can consent to do so</td>
</tr>
<tr>
<td>No</td>
<td>Yes</td>
<td>Yes, but at the court’s discretion</td>
</tr>
<tr>
<td>Yes, costs are fixed under a different section of the tariff</td>
<td>At the court’s discretion</td>
<td>Yes</td>
</tr>
<tr>
<td>There is no specific costs insurance</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>No</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>124</td>
<td>126</td>
<td>129</td>
</tr>
<tr>
<td>Q1.1 Can costs be recovered by a party to civil litigation?</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Q1.2 Does the losing party usually pay the successful party’s costs?</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Q1.3 Can costs be ordered to be paid to, or by, a non-party?</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Q2.1 On what basis are costs recoverable?</td>
<td>Statutory minimum lawyers’ fees are set out in Ordinances. These fees can be increased by up to six times depending on various factors but cannot exceed the value of the claim</td>
<td>Recoveryability depends on the type of cost – different approaches are taken to legal tax (paid to start the dispute), charges and party costs (including lawyers’ fees)</td>
</tr>
<tr>
<td>Q2.2 Is the amount of recoverable costs fixed?</td>
<td>No</td>
<td>Yes, in certain cases only (some charges)</td>
</tr>
<tr>
<td>Q2.3 Is the amount of recoverable costs calculated by reference to the amount in dispute?</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Q2.4 What can be recovered as “costs”?</td>
<td>Some (court fees, limited lawyers’ fees and some disbursements)</td>
<td>Most</td>
</tr>
<tr>
<td>Q3.1 Can a party agree with its own lawyer, a special costs arrangement?</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Q3.2 Which tribunal resolves costs disputes and how?</td>
<td>The court decides on costs between the parties as part of the decision at every stage of proceedings</td>
<td>The same court that heard the main dispute. The losing party has 10 days to challenge the costs decision and the successful party’s statement of costs</td>
</tr>
<tr>
<td>Q3.3 Can a party be required to provide security for costs (or some other sum) in advance of costs being decided?</td>
<td>Yes, if security for costs is granted</td>
<td>No</td>
</tr>
<tr>
<td>Q4.1 Can interim awards of costs be obtained?</td>
<td>No</td>
<td>Yes, in certain cases</td>
</tr>
<tr>
<td>Q4.2 Can an award of costs be increased or decreased by reference to such matters as a party’s conduct of the case?</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Q4.3 How are costs awards enforced?</td>
<td>As part of the judgment</td>
<td>A Public Prosecutor brings an enforcement action and can take measures such as selling assets or an attachment</td>
</tr>
<tr>
<td>Q4.4 Can a costs award be set off against a monetary judgment?</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Q4.5 Is interest payable on unpaid costs?</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Q5.1 Are costs of an appeal treated differently?</td>
<td>Generally, no</td>
<td>No</td>
</tr>
<tr>
<td>Q6.1 Can costs be insured?</td>
<td>Yes, but only in very specific areas</td>
<td>Yes</td>
</tr>
<tr>
<td>Q6.2 Is legal aid available?</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Q6.3 Is third party funding of claims available?</td>
<td>Yes, but uncommon</td>
<td>No</td>
</tr>
<tr>
<td>Detailed response on page</td>
<td>137</td>
<td>140</td>
</tr>
</tbody>
</table>
### Table: Costs in Civil Litigation

<table>
<thead>
<tr>
<th>Vietnam</th>
<th>Poland</th>
<th>Portugal</th>
<th>Romania</th>
<th>Russia</th>
<th>Singapore</th>
<th>Slovak Republic</th>
</tr>
</thead>
<tbody>
<tr>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>Yes, but uncommon</td>
</tr>
<tr>
<td>The court is generally obliged to grant all costs incurred by the successful party that are properly evidenced. The court has discretion to vary lawyers’ fees and to fix costs where a claimant is partially successful</td>
<td>No, unless security for costs is granted</td>
<td>No, unless security for costs is granted</td>
<td>No, unless security for costs is granted</td>
<td>No, unless security for costs is granted</td>
<td>Yes, if security for costs is granted</td>
<td>No, unless security for costs is granted</td>
</tr>
<tr>
<td>Only some elements of the recoverable costs</td>
<td>Costs are assessed on the basis of legal expenses incurred by the successful party and the reasonableness of such expenses. The court has wide discretion, but must consider certain factors</td>
<td>The basis for recovery is entirely at the court’s discretion. The court is required to have regard to all the circumstances of the case</td>
<td>The amount of legal representation costs is calculated by a tariff on the basis of the value of the claim and the number of legal acts undertaken by a party’s advocate. The court decides on recoverability</td>
<td>The costs award is given by the court that hears the case. Appeals can be filed against the first instance judgment (including the costs section) within 15 days and will be heard by the appellate court</td>
<td>Yes, if security for costs is granted</td>
<td>No, except the costs of legal representation</td>
</tr>
<tr>
<td>All</td>
<td>Yes, in certain cases only</td>
<td>Yes, as part of the court’s discretion</td>
<td>Yes</td>
<td>Only some elements of the recoverable costs</td>
<td>Most (not agency fees)</td>
<td>Most (but subject to the court’s discretion)</td>
</tr>
<tr>
<td>Yes, with limitations</td>
<td>No</td>
<td>Yes</td>
<td>Yes, not prohibited</td>
<td>Yes, but not widely used</td>
<td>Most (costs for legal representation are limited to those for one lawyer)</td>
<td>Most (costs for legal representation are limited to those for one lawyer)</td>
</tr>
<tr>
<td>Costs are usually settled in the main judgment, but a successful party can file a separate claim for damages to recover costs. This claim will not necessarily be heard in the same court</td>
<td>The court hearing the claim decides on costs. The costs order can be appealed either by itself or together with an appeal of the main judgment</td>
<td>Initially before a taxing registrar who can hear arguments from both parties. The registrar’s decision can, on request, be reviewed by a High Court judge and the review be appealed to the Court of Appeal</td>
<td>The costs award is given by the court that hears the case. Appeals can be filed against the first instance judgment (including the costs section) within 15 days and will be heard by the appellate court</td>
<td>The costs award is given by the court that hears the case. Appeals can be filed against the first instance judgment (including the costs section) within 15 days and will be heard by the appellate court</td>
<td>Yes, if security for costs is granted</td>
<td>No, unless security for costs is granted</td>
</tr>
<tr>
<td>Yes, if security for costs is granted</td>
<td>No</td>
<td>Yes, if security for costs is granted</td>
<td>Yes, if security for costs is granted</td>
<td>Yes, if security for costs is granted</td>
<td>Yes, if security for costs is granted</td>
<td>Yes, if security for costs is granted</td>
</tr>
<tr>
<td>Yes, in certain circumstances</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes, as part of the court’s discretion</td>
<td>Yes, as part of the court’s discretion</td>
<td>Yes, as part of the court’s discretion</td>
</tr>
<tr>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes, as part of the court’s discretion</td>
<td>Yes, as part of the court’s discretion</td>
<td>Yes, as part of the court’s discretion</td>
</tr>
<tr>
<td>By a warrant of execution, a third party debt order and an attachment of earnings order</td>
<td>As for judgments</td>
<td>By a writ of seizure of sale, a garnishee order and the appointment of a receiver</td>
<td>As for judgments</td>
<td>As for judgments</td>
<td>As for judgments</td>
<td>As for judgments</td>
</tr>
<tr>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Yes</td>
<td>Yes, through a separate procedure</td>
<td>Yes</td>
<td>At the court’s discretion</td>
<td>No judicial precedent</td>
<td>No</td>
<td>Yes, not prohibited</td>
</tr>
<tr>
<td>No</td>
<td>No, but not widely used</td>
<td>No</td>
<td>At the court’s discretion</td>
<td>No judicial precedent</td>
<td>No</td>
<td>Yes, not prohibited</td>
</tr>
<tr>
<td>Yes</td>
<td>Yes, but not widely used</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes, not prohibited</td>
</tr>
<tr>
<td>Yes, not prohibited</td>
<td>Yes</td>
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<td>South Africa</td>
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<tr>
<td>Q1.1 Can costs be recovered by a party to civil litigation?</td>
<td>Yes</td>
<td>Yes</td>
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<td>Q1.2 Does the losing party usually pay the successful party’s costs?</td>
<td>Yes</td>
<td>Yes</td>
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<td>Q1.3 Can costs be ordered to be paid to, or by, a non-party?</td>
<td>No</td>
<td>No</td>
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<td>Q2.1 On what basis are costs recoverable?</td>
<td>Generally the loser will pay the successful party's costs. The court considers costs in line with the official attorney's tariff (only costs in the tariff are recoverable), which is due to be replaced soon</td>
<td>The court has discretion in awarding costs. Generally costs follow the event. The level of costs awarded is decided by a taxing master, who will refer to a prescribed tariff</td>
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<td>Q2.2 Is the amount of recoverable costs fixed?</td>
<td>Yes</td>
<td>No</td>
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<tr>
<td>Q2.3 Is the amount of recoverable costs calculated by reference to the amount in dispute?</td>
<td>Yes</td>
<td>Yes, to a limited extent</td>
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<tr>
<td>Q2.4 What can be recovered as “costs”?</td>
<td>Most (additional lawyers’ fees and agency fees are not applicable)</td>
<td>Most</td>
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<tr>
<td>Q3.1 Can a party agree with its own lawyer, a special costs arrangement?</td>
<td>Yes</td>
<td>Yes</td>
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<tr>
<td>Q3.2 Which tribunal resolves costs disputes and how?</td>
<td>The court hearing the case decides on costs in its judgment. The decision on costs can only be challenged by appeal against the whole judgment in the Court of Appeal</td>
<td>The taxing master determines costs. The master’s decision is subject to review by the appellate courts (the High Court, the Supreme Court of Appeal and the Constitutional Court)</td>
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<td>Q3.3 Can a party be required to provide security for costs (or some other sum) in advance of costs being decided?</td>
<td>Yes, security for costs can be granted against a foreign or non-resident claimant</td>
<td>Yes, if security for costs is granted</td>
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<tr>
<td>Q4.1 Can interim awards of costs be obtained?</td>
<td>Yes, in specific cases only</td>
<td>Yes</td>
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<td>Q4.2 Can an award of costs be increased or decreased by reference to such matters as a party’s conduct of the case?</td>
<td>Yes</td>
<td>Yes</td>
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<tr>
<td>Q4.3 How are costs awards enforced?</td>
<td>As for judgments</td>
<td>A writ of execution is obtained from the Registrar and used first against money, then movables and then immovable property</td>
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<td>Q4.4 Can a costs award be set off against a monetary judgment?</td>
<td>Yes</td>
<td>Yes, but only when the costs award has been taxed by the taxing master</td>
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<td>Q4.5 Is interest payable on unpaid costs?</td>
<td>Yes</td>
<td>Yes, if costs are taxed</td>
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<td>Q5.1 Are costs of an appeal treated differently?</td>
<td>No</td>
<td>No</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Q6.1 Can costs be insured?</td>
<td>Yes, but only in specific cases</td>
<td>Yes</td>
<td></td>
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<tr>
<td>Q6.2 Is legal aid available?</td>
<td>Yes</td>
<td>Yes</td>
<td></td>
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<tr>
<td>Q6.3 Is third party funding of claims available?</td>
<td>Yes, not prohibited</td>
<td>Yes</td>
<td></td>
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<tr>
<td>Detailed response on page</td>
<td>153</td>
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<td>Spain</td>
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<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
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<tr>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No, except for disbursements and court fees</td>
<td></td>
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</tr>
<tr>
<td>No</td>
<td>Yes</td>
<td>Not in principle</td>
<td>No</td>
<td></td>
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<tr>
<td>The party seeking costs must file an assessment to the court. Both lawyer and “procurador” costs are calculated using a tariff, although this is only for reference – higher costs can be sought than those listed on the tariff</td>
<td>The successful party can recover litigation costs if it wins in full. If a party wins in part, it can recover on the specific issues won. In apportioning costs, the court considers the amount sought and the complexity of issues</td>
<td>Costs are mostly awarded by reference to a cantonal tariff. The court has discretion to amend the amount payable under the tariff in line with factors such as the complexity of the case, number of hearings and amount of documents</td>
<td>Recoverable costs are based on a tariff in the Code of Civil Procedure</td>
<td></td>
<td></td>
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<tr>
<td>No</td>
<td>No</td>
<td>Normally, yes</td>
<td>Yes in certain cases in civil procedure</td>
<td></td>
<td></td>
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<tr>
<td>Yes</td>
<td>No, not in principle</td>
<td>Yes</td>
<td>Yes, in certain cases</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Most (not court fees)</td>
<td>Most</td>
<td>Some (neither additional lawyers’ fees nor agency fees)</td>
<td>Some (legal fees where the lawyer is court-appointed, court fees and disbursements)</td>
<td></td>
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<tr>
<td>Yes, but “no win, no fee” deals are prohibited</td>
<td>Strictly yes, but “no win, no fee” deals are prohibited</td>
<td>Yes, but “no win, no fee” deals are prohibited</td>
<td>Yes</td>
<td></td>
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<tr>
<td>The same tribunal decides costs that tried the dispute</td>
<td>The court will determine whether costs have been reasonably incurred if the losing party challenges the amount of the winner’s costs</td>
<td>Generally the court that hears the case decides costs and the indemnity for legal fees in its final judgment. In Basel, courts only decide on the indemnity if the requesting party submits an invoice in advance</td>
<td>The court decides who bears costs in its final judgment. The court of first instance can decide the amount of costs in the judgment or by a later ruling</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>Yes, if security for costs is granted</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
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<tr>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
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<tr>
<td>As for judgments</td>
<td>As for judgments</td>
<td>As for money judgments</td>
<td>As part of the judgment</td>
<td></td>
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<tr>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
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<tr>
<td>Yes</td>
<td>Yes</td>
<td>Normally not on court costs but yes on the lawyer’s indemnity</td>
<td>Yes</td>
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<td>Yes</td>
<td>No</td>
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<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes, but not common practice</td>
<td></td>
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<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td></td>
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<tr>
<td>Yes</td>
<td>Yes, in principle, though very rare</td>
<td>Yes, it is considered lawful but is not regulated</td>
<td>No</td>
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<tr>
<td>Q1.1</td>
<td>Can costs be recovered by a party to civil litigation?</td>
<td>Yes</td>
<td>Yes</td>
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<td>Q1.2</td>
<td>Does the losing party usually pay the successful party’s costs?</td>
<td>Yes</td>
<td>Yes</td>
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<tr>
<td>Q1.3</td>
<td>Can costs be ordered to be paid to, or by, a non-party?</td>
<td>No</td>
<td>No</td>
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<tr>
<td>Q2.1</td>
<td>On what basis are costs recoverable?</td>
<td>Costs are established by law in a tariff. Court fees are set yearly. Costs paid in relation to experts, witnesses, newspaper publications etc. are under the discretion of the court</td>
<td>Recoverable costs are established by law. The court has a discretion in reducing the amount of costs, but no discretion to decide the amount of fees awarded to the successful party</td>
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<td>Q2.2</td>
<td>Is the amount of recoverable costs fixed?</td>
<td>Some recoverable costs</td>
<td>Yes</td>
<td></td>
<td></td>
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<td>Q2.3</td>
<td>Is the amount of recoverable costs calculated by reference to the amount in dispute?</td>
<td>Some recoverable costs</td>
<td>No</td>
<td></td>
<td></td>
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<tr>
<td>Q2.4</td>
<td>What can be recovered as “costs”?</td>
<td>Some (neither additional lawyers’ fees nor agency fees)</td>
<td>Some (though additional legal fees and agency fees are not common)</td>
<td></td>
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<tr>
<td>Q3.1</td>
<td>Can a party agree with its own lawyer, a special costs arrangement?</td>
<td>Yes</td>
<td>Yes</td>
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<tr>
<td>Q3.2</td>
<td>Which tribunal resolves costs disputes and how?</td>
<td>The court which hears the main dispute decides on costs</td>
<td>The court that hears the case decides costs in its final judgment. The decision can be appealed to an appellate court</td>
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<tr>
<td>Q3.3</td>
<td>Can a party be required to provide security for costs (or some other sum) in advance of costs being decided?</td>
<td>Yes, if security for costs is granted</td>
<td>No</td>
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<td>Q4.1</td>
<td>Can interim awards of costs be obtained?</td>
<td>Yes, in limited circumstances</td>
<td>No</td>
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<td>Q4.2</td>
<td>Can an award of costs be increased or decreased by reference to such matters as a party’s conduct of the case?</td>
<td>No</td>
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<td>Q4.3</td>
<td>How are costs awards enforced?</td>
<td>The party with a right to recover must initiate enforcement proceedings against the paying party</td>
<td>As part of the judgment</td>
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<td>Q4.4</td>
<td>Can a costs award be set off against a monetary judgment?</td>
<td>In certain circumstances during enforcement proceedings</td>
<td>The costs award is part of a monetary judgment</td>
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<td>Q4.5</td>
<td>Is interest payable on unpaid costs?</td>
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<td>Q5.1</td>
<td>Are costs of an appeal treated differently?</td>
<td>No</td>
<td>Yes</td>
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<tr>
<td>Q6.1</td>
<td>Can costs be insured?</td>
<td>Yes</td>
<td>Yes</td>
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<td>Q6.2</td>
<td>Is legal aid available?</td>
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<td>Yes</td>
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<td>Q6.3</td>
<td>Is third party funding of claims available?</td>
<td>Yes</td>
<td>Yes, not prohibited</td>
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Detailed response on page 171 173
<table>
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<tr>
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<th>Delaware</th>
<th>New York</th>
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<td>Yes</td>
<td>Yes</td>
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<td>Q6.1</td>
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<td>Yes</td>
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**Notes:**
- Costs of an appeal are generally treated differently in the United States and New York.
- Costs are generally awarded under the court's broad discretion in the United States and New York.
- The Civil Practice Law and Rules contain provisions concerning costs, including the amount a party is entitled to recover.

**Table:**

<table>
<thead>
<tr>
<th>Ukraine</th>
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<th>New York</th>
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<tbody>
<tr>
<td>Commercial Courts</td>
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<td>Yes</td>
<td>Yes</td>
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<tr>
<td>No</td>
<td>No</td>
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<td>Mainly on a discretionary basis; the court decides the amount of fees to be reimbursed to the successful party. Only the legal fees of advocates licensed in the Ukraine can be reimbursed</td>
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</tr>
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<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>No</td>
<td>No</td>
<td>No</td>
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<tr>
<td>Some (though additional legal fees and agency fees are not common)</td>
<td>Limited (court fees and disbursements, but generally not lawyers’ fees)</td>
<td>Limited (court fees and disbursements, but generally not lawyers’ fees)</td>
<td>Limited (disbursements, but generally neither lawyers’ fees nor agency fees)</td>
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<td>No, if security for costs is granted</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
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<td>No</td>
<td>No</td>
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<tr>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
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<tr>
<td>The court that hears the case decides costs in its final judgment. The decision can be appealed to an appellate court</td>
<td>The court that rendered the judgment will decide, on motion, challenges to a successful party’s application for costs</td>
<td>Within 20 days of rendering judgment the clerk will enter a full bill of costs. The paying party can challenge the entry of costs by application to the court and the court can then correct the bill</td>
<td>The winning party presents a bill of costs to the court clerk when presenting a judgment for entry. The costs will then be included in the judgment. The losing side can challenge and both sides can apply for a court to review any item</td>
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<td>Yes, if security for costs is granted</td>
<td>Yes, if security for costs is granted</td>
<td>Yes, if security for costs is granted</td>
<td>Yes, if security for costs is granted</td>
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<tr>
<td>No</td>
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</tr>
<tr>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>As part of the judgment</td>
<td>As part of the judgment</td>
<td>As part of the judgment</td>
<td>As part of the judgment</td>
</tr>
<tr>
<td>Not applicable; the costs award is part of a money judgment</td>
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<td>No</td>
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<td>No</td>
<td>No</td>
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<tr>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
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<tr>
<td>No (generally, the prevailing party is entitled to costs on appeal)</td>
<td>Not in principle, but a different fee schedule applies</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Possibly, not prohibited but limited market</td>
<td>Possibly, not prohibited but limited market</td>
<td>Possibly, not prohibited but limited market</td>
<td>Possibly, not prohibited but limited market</td>
</tr>
<tr>
<td>Yes, under certain circumstances</td>
<td>Yes, under certain circumstances</td>
<td>Yes, under certain circumstances</td>
<td>Yes, under certain circumstances</td>
</tr>
<tr>
<td>Q1.1</td>
<td>Can costs be recovered by a party to civil litigation?</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Q1.2</td>
<td>Does the losing party usually pay the successful party’s costs?</td>
<td>No (limited disbursements, but not lawyers’ fees are, however, recoverable)</td>
<td>No, except for limited disbursements</td>
</tr>
<tr>
<td>Q1.3</td>
<td>Can costs be ordered to be paid to, or by, a non-party?</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Q2.1</td>
<td>On what basis are costs recoverable?</td>
<td>Costs are allowed as a matter of statutory law and are subject to the court’s discretion (there is no fixed tariff) – the court has discretion to award or deny costs to the successful party</td>
<td>The court fee is determined by a prescribed tariff. The court decides how much of the prescribed amount each party can recover. Other costs are often based on actual expenses/amounts charged by service providers</td>
</tr>
<tr>
<td>Q2.2</td>
<td>Is the amount of recoverable costs fixed?</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Q2.3</td>
<td>Is the amount of recoverable costs calculated by reference to the amount in dispute?</td>
<td>Yes</td>
<td>Limited (court fee, some disbursements and lawyers’ fees in IP cases)</td>
</tr>
<tr>
<td>Q2.4</td>
<td>What can be recovered as “costs”?</td>
<td>Limited (court and agency fees, disbursements; generally not lawyers’ fees)</td>
<td>Limited (court fees, some disbursements and lawyers’ fees)</td>
</tr>
<tr>
<td>Q3.1</td>
<td>Can a party agree with its own lawyer, a special costs arrangement?</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Q3.2</td>
<td>Which tribunal resolves costs disputes and how?</td>
<td>The clerk of the district or county court or the justice of the peace taxes costs after the final judgment is rendered. The paying party can file a motion to relitigate in the court where the costs accrued</td>
<td>Recoverable costs are paid before judgment. Objections (except on court fees) can be submitted within 15 days before the Chief Justice of the same court. The Chief Justice’s resolution can then be appealed</td>
</tr>
<tr>
<td>Q3.3</td>
<td>Can a party be required to provide security for costs (or some other sum) in advance of costs being decided?</td>
<td>Yes, if security for costs is granted</td>
<td>Not security for costs</td>
</tr>
<tr>
<td>Q4.1</td>
<td>Can interim awards of costs be obtained?</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Q4.2</td>
<td>Can an award of costs be increased or decreased by reference to such matters as a party’s conduct of the case?</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Q4.3</td>
<td>How are costs awards enforced?</td>
<td>The clerk or justice of the court may issue execution against persons, property or sureties</td>
<td>By the civil enforcement agency pursuant to a petition of the judgment creditor</td>
</tr>
<tr>
<td>Q4.4</td>
<td>Can a costs award be set off against a monetary judgment?</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Q4.5</td>
<td>Is interest payable on unpaid costs?</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Q5.1</td>
<td>Are costs of an appeal treated differently?</td>
<td>Generally, no</td>
<td>Yes, as to court fees No, as to other expenses</td>
</tr>
<tr>
<td>Q6.1</td>
<td>Can costs be insured?</td>
<td>Possibly, not prohibited but limited market</td>
<td>Yes</td>
</tr>
<tr>
<td>Q6.2</td>
<td>Is legal aid available?</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Q6.3</td>
<td>Is third party funding of claims available?</td>
<td>Yes, under certain circumstances</td>
<td>No, but not prohibited</td>
</tr>
</tbody>
</table>

Detailed response on page 187 190
Country-by-country detailed responses

The following pages list our country-by-country findings in alphabetical order. Countries covered are:

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- The Bahamas 37
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- China 52
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- Dubai-UAE 67
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- Germany 83
- Gibraltar 86
- Greece 89
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NOTES
In the following sections, the term “costs” (unless otherwise specified within a country section) is used to describe the costs incurred by a party during the course of litigation in connection to that litigation, and which include, but are not limited to, costs that the party has paid to its lawyers (including solicitors, counsel and advocates) to agents, to courts, to process servers and in respect of disbursements (for example, photocopying, expert witness, travel, translation, notarial services and witness attendance etc.).

The term “lawyer” (unless otherwise specified within a country section) is used to describe the legal adviser, solicitor, counsel, barrister, advocate, attorney or legal practitioner.

The term “claimant” (unless otherwise specified within a country section) is used to describe the party bringing the claim, including the plaintiff.
1. **Recoverability of costs**

1.1 **Can costs be recovered by a party to civil litigation?**
Yes.

1.2 **Does the losing party usually pay the successful party’s costs?**
Yes.

Australia adheres to the English rule of losing party pays although the awarding of costs is a matter within the discretion of the court. Where the claimant succeeds against the defendant, it is usual for the claimant to be awarded its costs.

As a result of this system, costs ordinarily follow the event. For example, in NSW, “costs are to follow the event unless it appears to the court that some other order should be made as to the whole or any part of the costs.” In this context, the term “costs” includes out-of-pocket expenses, such as experts’ fees, disbursements and legal fees.

The rules relating to the court’s power to award costs are in Order 62 of the Federal Court Rules (“FCR”), and Part 42 of the Uniform Civil Procedure Rules (“UCPR”).

In NSW, the court’s general discretion to award costs arises under section 98 of the Civil Procedure Act (NSW) 2005, subject to the rules set out in Part 42 of the UCPR. A similar discretion arises in Victoria under section 24 of the Supreme Court Act 1986 (VIC), subject to the Supreme Court Rules (“SCR”).

It is important to note that the normal rules in relation to costs can be affected by the making of offers of settlement in the proper form.

An offer of settlement may entitle the party making the offer to obtain indemnity costs rather than ordinary (standard) costs. There are two types of offers of settlement in Australia, informal offers made in court according to the rules set out in the English case of *Calderbank v Calderbank* [1975] WLR 586 (“Calderbank offers”) and formal offers made in accordance with court rules known as “offers of compromise.”

In accordance with the general discretion available to the court under section 98 of the Civil Procedure Act (NSW) 2005 and section 24 of the Supreme Court Act 1986 (VIC), the court has the power to award costs as it sees fit. This allows an award of costs to either party where justifiable in the circumstances.

1.3 **Can costs be ordered to be paid to, or by, a non-party?**
Yes.

In NSW, cost orders may be made both against and in favour of non-parties to the proceedings. However, such orders will only occur in exceptional circumstances.

For example, in NSW, section 98 of the Civil Procedure Act (NSW) 2005 gives the court full power to determine by whom, to whom and in what circumstances costs will be paid. This provides the court with discretion to award costs for or against a non-party to the proceedings or some other third party.

Costs orders favouring non-parties are very rare in NSW unless the non-party has had some involvement in the trial or appears in the proceedings in some way. For example, as an amicus curiae.

Rule 42.3 of the UCPR limits the circumstances where a court can make an order for costs against a non-party. In Victoria, section 24(1) of the Supreme Court Act 1986 (VIC) provides that the court has full discretion relating to the award of costs and may determine “... by whom and to what extent the costs are to be paid.” As such, costs are not restricted to the parties in the proceedings.

2. **Details of recoverability of costs**

2.1 **On what basis are costs recoverable?**
A party is entitled to the costs of any issue on which it succeeds. However, among other things, the courts at both the State and Federal level have the unfettered discretion to apportion costs.

There are two bases for the assessment of costs: the ordinary (standard) basis and the indemnity basis. Ordinary costs are usually considered “reasonable” costs, whereas indemnity costs are all costs except those costs which have been unreasonably incurred or are an unreasonable expense.

Australia has a number of different processes for calculating legal fees and these differ across the various jurisdictions. In the courts of the Commonwealth jurisdiction, including the Federal Court, fees are fixed by scales contained in the schedule to the rules of the respective court. These scales are used to determine the amount of costs payable to a successful party where a costs order is made at the conclusion of litigation and the amount a client is required to pay to a solicitor if they have not made or complied with procedures for a costs agreement. The scales are item based, with fees set for particular services.

**NSW**

Fees at the state level differ from state to state, with NSW being the only deregulated system. In the NSW Supreme, district and local courts, fees are determined by a process of assessment in accordance with the Legal Profession Act 2004 (NSW).
In NSW, where a successful party is entitled to be paid its costs on an ordinary (or standard) basis, that party will be entitled to be paid its reasonable costs.

Where costs are payable on an indemnity basis, all costs incurred by a party are recoverable, save to the extent that they were incurred unreasonably, or are unreasonable in their amount. The recovery of costs in NSW is not constrained by scales.

Costs on an ordinary basis are provided for under UCPR Rule 42.2. These are effectively party/party costs. Under sections 364 and 365 of the Legal Profession Act 2004 (NSW), costs ordered between parties are those which are considered fair and reasonable having regard to the relevant circumstances in the case.

Under UCPR Rule 42.4 the court may make an order as to the maximum costs that may be recovered by one party from another. In addition, under UCPR Rule 42.5 the court may award costs on an indemnity basis. This provides for all reasonably incurred costs of a reasonable amount to be recoverable.

### Victoria

In Victoria all courts have scales of costs which reflect the level and importance of the matter before the court.

Cases proceeding to the Supreme Court of Victoria are remunerated at a higher level than those in the Magistrates’ Court. The scales of costs set out the amount which is recoverable between the parties in respect of any given item, and are based on events, not times. For example, a particular amount will be recoverable for the drafting of a letter, regardless of how long the letter took to draft.

Appendix A of the Victorian SCR sets out the fixed costs that can be awarded and are itemised for each type of work that a solicitor does. The new Victorian Cost Court has the discretion to increase the amount or value of any allowance or expense in Appendix A as it sees fit.

Party/party costs are provided for under Rule 63.29 of the SCR allowing for the recovery of all necessary and proper costs incurred for the attainment of justice. This is usually only 60-70% of the actual fees incurred.

Lawyer/client costs are provided for under Rule 63.30 of the SCR which allows for the recovery of all costs reasonably incurred and of a reasonable amount. These are often called indemnity costs and can sometimes represent 100% of the costs.

Finally, lawyer/own client costs relate to costs under Rule 63.61(1) of the SCR. That is, those costs the client has to pay his or her own solicitor where there is a shortfall from the costs awarded by the court. These costs must still be paid, regardless of a costs award, where they have been reasonably incurred and are of a reasonable amount. Alternatively, under Rule 63.61(2) of the SCR where costs are not reasonably incurred they may still be recovered if the solicitor can show that the costs were incurred with the client’s authority and that before such costs were incurred the solicitor warned the client that the costs might not be allowed on a taxation of costs on a party/party basis.

### Costs assessment

Where an order for costs is made, the solicitors for each party might try to agree on a figure for costs. If the solicitors cannot agree on a figure, costs will normally have to be assessed by an independent costs assessor appointed by the court.

The assessment of what proportion of party/party costs is properly payable is known as taxation in the Federal Court, and assessment in the jurisdiction of NSW. The criteria for the process of taxation/assessment are transparent in that they are publicly available, and provided by legislation.4

#### 2.2 Is the amount of recoverable costs fixed?

Yes, in certain cases only.

Although costs are generally awarded at the court’s discretion in certain areas, statutory maximums have been imposed on legal fees.

In Victoria (and at the Commonwealth level) fees are fixed by a scale of costs. This means that the legislation sets out the fixed costs that can be recovered for each type of work a lawyer does. In Victoria, this is set out in Appendix A of the SCR. Further, fees may be fixed for particular types of claims, such as workers compensation matters.

#### 2.3 Is the amount of recoverable costs calculated by reference to the amount in dispute?

Not strictly, but within the court’s discretion.

Australian law seeks to ensure that the costs awarded are proportionate to the duration and complexity of the legal dispute. For example, section 60 of the Civil Procedure Act 2005 (NSW) specifies that:

“In any proceedings, the practice and procedure of the court should be implemented with the object of resolving the issues between the parties in such a way that the cost to the parties is proportionate to the importance and complexity of the subject-matter in dispute.”

#### 2.4 What can be recovered as “costs”?

<table>
<thead>
<tr>
<th>Description</th>
<th>Recoverable?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lawyer – client fees</td>
<td>Yes</td>
</tr>
<tr>
<td>Additional lawyer fees (for example, counsel fees or trial advocate fees)</td>
<td>Yes</td>
</tr>
<tr>
<td>Agency fees (for example, London agents, local agents, appellate lawyer, bailiff/process-server)</td>
<td>Yes</td>
</tr>
</tbody>
</table>
Court fees are prescribed by statute and vary according to each jurisdiction.

Court fees for originating process are not recoverable in Victoria. See SCR Appendix A, Rule 11.

Disbursements (including, but not limited to, photocopying, expert witness, travel, translation, notarial, witness attendance etc.)

Yes.

Other expenses

Yes, subject to confirmation of specific expenses.

3. Particular costs issues

3.1 Can a party agree with its own lawyer, a special costs arrangement?

Yes.

In Australia, US-style contingency agreements, being agreements between a lawyer and a client, which provide for the lawyer to receive an agreed proportion or share of any judgment, are illegal. However, legislation in some States has made provision for conditional costs agreements, where the payment of some or all of the legal costs is conditional on the successful outcome of the matter to which the costs relate.

In NSW provisions relating to costs agreements are found in Part 3.2, Division 5 of the Legal Profession Act 2004 NSW (“LPA (NSW)”). In Victoria the governing provisions are found in Part 3.4, Division 5 of the Legal Profession Act 2004 VIC (“LPA (VIC)”).

A conditional agreement may relate to any matter except criminal proceedings or proceedings under the Family Law Act 1975 (Cth) in NSW and Victoria.

In NSW, there is a general prohibition from entering into a conditional costs agreement for a claim for damages that provides for payment of an uplift fee. However, in NSW and Victoria, a conditional costs agreement may provide for an uplift fee to be paid provided that such an agreement does not contravene the requirements specified in the legislation.

The method by which this fee will be calculated must be separately identified in the costs agreement. This must contain an estimate of the uplift fee or, if this is not reasonably practicable, a range of estimates of the uplift fee and an explanation of the major variables that will affect calculation.

If a conditional costs agreement relates to a litigious matter, the uplift fee cannot exceed 25% of the legal costs payable (excluding disbursements). A Victorian law firm or practitioner cannot enter into a conditional costs agreement involving uplift fees for a litigious matter unless the partner or practitioner has a reasonable belief that the matter will be successful.

No equivalent provision exists in NSW.

A law firm that enters into a cost agreement in contravention of these provisions is not entitled to recover the whole or any part of the uplift fee, and must repay any amount of any uplift fee received. If the law firm refuses to repay this amount then that amount may be recovered as a debt in a court with competent jurisdiction.

Uplift fees are not recoverable from the opposing party under an order for costs. The uplift is a matter between the lawyer and its client. It is the client's reward to the lawyer for acting on a "no win, no fee" basis.

Although lawyers are prohibited from entering into contingency agreements, litigation-funding companies are not. As a result, Australian litigation-funding companies have emerged to promote and fund class action litigation. These organisations receive a share of the award if the case succeeds. See question 6.3 below.

3.2 Which tribunal resolves costs disputes and how?

The tribunal or court and method for resolving costs disputes varies according to jurisdiction.

In NSW costs are assessed by costs assessors, who are generally practising solicitors or counsel appointed to sit as costs assessors.

In Victoria, taxations were generally carried out by associate judges and assistant registrars (who are experienced but not legally qualified). However, the Victorian Parliament recently passed the Courts Legislation Amendment (Costs Court and Other Matters) Act 2008 (VIC) which commenced on 31 December 2009. This Act established a Costs Court which has the jurisdiction to hear and determine the assessment, settling, taxation and review of costs for proceedings in the Supreme, County and Magistrates’ Courts as well as the Victorian Civil and Administrative Tribunal. A Costs Judge has been appointed to hear these matters along with other associate judges who will be allocated to hear cases as needed. At the time of writing, the operation of the Costs Court is in its infancy.

3.3 Can a party be required to provide security for costs (or some other sum) in advance of costs being decided?

Yes, in some circumstances security for costs orders may be sought.

Parties to litigation may seek security for costs if they suspect that an opposing party does not have the assets to cover relevant legal costs. The rules vary according to jurisdiction.

In NSW, an order for security for costs may be awarded in accordance with Rule 42.21 of the UCPR. This provides a wide discretion to the court to order security for costs. The court will usually consider:
whether the claimant’s case is reasonably arguable; and
the defendant’s status or lack of funds.

The amount of the security does not need to provide a complete indemnity for the defendant but must be “sufficient security.”

In Victoria, Rules 62.01 and 62.02 of the SCR specify the circumstances when a security for costs order may be made by the court. This allows, on the application of a defendant, an order that the claimant give security for the costs of the defendant in the proceedings where particular circumstances are met.

4. Costs awards

4.1 Can interim awards of costs be obtained?
Yes.

At the end of almost every interim application an order will be made or agreed declaring which party should pay the costs of the application.

Costs of interim applications are at the discretion of the court, and that discretion is usually (but not always) exercised in favour of the party who was successful in the application.

In NSW, interim awards for costs are allowed under section 98(3) of the Civil Procedure Act 2005, which provides for the payment of costs at an interlocutory stage of the proceedings.

In Victoria, the court is able to make an interlocutory order for costs in accordance with Rule 63.03 of the SCR. This applies to the Supreme Court only.

4.2 Can an award of costs be increased or decreased by reference to such matters as a party’s conduct of the case?
Yes.

In NSW, Rule 42.01 of the UCPR allows for departure from the general rule that costs follow the event in circumstances where a party has not exercised themselves properly in the proceedings. Such awards may be made, for example, where a claimant failed to make a demand before the litigation commenced or where the successful party’s conduct has mislead the court. In these circumstances, costs may be awarded to the losing party, effectively punishing the successful party for their conduct.

In addition, indemnity costs may be awarded under Rule 42.2 of the UCPR in circumstances where a party has acted unreasonably.

In Victoria, Rule 63.02 of the SCR provides discretion as to whether costs should follow the event. This allows the court to award costs to the losing party in relevant circumstances. In addition, as in NSW, indemnity costs may be awarded as a penalty for misconduct or in such other circumstances as the court considers fit.

Calderbank offers and offers of compromise (see question 1.2) may also have an effect on an order for costs. For example, an order for costs might be increased where a claimant has recovered more at trial than an offer that was rejected, or similarly, an order for costs may be reduced where the claimant receives less at trial than an earlier offer.

4.3 How are costs awards enforced?

Section 103 of the Civil Procedure Act (NSW) and section 101 of the Supreme Court Act (VIC) both provide that costs may be enforced as judgments.

The methods that may be used to enforce judgments for a sum of money made under Part 39 of the UCPR in NSW and Order 66 of the SCR in Victoria equally apply to enforcing costs awards.

There are a number of enforcement procedures open to the judgment creditor under these provisions. For example, a costs award may be enforced by a writ of execution allowing the court bailiff to seize and sell property owned by the judgment debtor, and issue writs against land and writs against goods. The legislation and rules also allow for garnishee orders, where a particular amount will be deducted from amounts regularly received by the debtor, such as the judgment debtor’s wages.

Bankruptcy and winding up proceedings may also be taken under the Bankruptcy Act 1966 (Cth) and the Corporations Act 2001 (Cth) respectively, where the debt meets the minimum amount required under those Acts. However, it should be noted that in most circumstances where enforcement proceedings are commenced, the judgment debtor will apply to pay the debt (including any costs award) in instalments. This will stay enforcement proceedings.

4.4 Can a costs award be set off against a monetary judgment?

In Australia, the court has a discretion to set off a costs award against a monetary judgment.

In NSW, UCPR Rule 42.1 allows the court discretion to provide for a set off of cost orders in the same proceedings against a judgment in the same or different proceedings.

Similarly, in Victoria, set off is provided for under SCR Rule 63.55. On a taxation, the taxing master has the power to set off costs a party is required to pay to another party, against costs to which the former party is entitled from the latter.

4.5 Is interest payable on unpaid costs?

Yes.

In NSW, the Civil Procedure Act (NSW 2005) states in sections 101(4) and (5) that interest on costs may be included in the judgment order, and accrue from the date the costs were paid, or any later date as specified by the court in the costs order.

In Victoria, under section 101(1) of the Supreme Court Act 1986 (VIC), costs are considered a judgment debt on which interest
is payable. Interest is set under section 2 of the Penalty Interest Rates Act 1983 (VIC) and are considered as at the date the costs were assessed.

5. Costs of an appeal

5.1 Are costs of an appeal treated differently?

Sometimes.

Costs of an appeal may be treated differently as the appeal will be heard by a different court.

Where an appeal is heard by the Federal Court of Australia, different rules apply. For example, in the courts of the Commonwealth jurisdiction (including the Federal Court), fees are fixed by scales in the Schedule to the Rules of the respective court.

In NSW, the UCPR rules apply equally to the Court of Appeal. However, where a new trial must be heard, the general rule is that costs of the first trial will follow the event of the second trial: Brittain v Commonwealth (No 2) [2004] NSWCA 427 at [30]. In some cases, costs will not be determined until the appeal has been considered or where the appeal is required due to the fault of one party, costs may be awarded against that party in the discretion of the court.

In Victoria, the costs of an appeal to the Court of Appeal are in that court’s discretion under SCR Rule 64.24(1).

6. Funding of civil and commercial claims

6.1 Can costs be insured?

In limited circumstances.

Stand alone insurance, as well as supplementary legal expenses coverage as part of some other insurance policy (such as Directors and Officers insurance), has existed in Australia for many years. Policies generally provide cover for legal fees and expenses as well as costs incurred when an insured is ordered to pay those costs. The insurer will control the choice of lawyer. Such policies are not subject to Australia’s consumer protection disclosure requirements,15 and so the terms are not publicly available.

After the event insurance is rarely available and is not routinely taken out for particular types of cases.

6.2 Is legal aid available?

Yes.

Legal Aid is provided on a State-by-State basis across Australia. The legal aid system in Australia does not include the pro bono activities of private lawyers.

In NSW legal aid is provided by the Legal Aid Commission of NSW ("the Commission"), an independent statutory body established under the Legal Aid Commission Act 1979 (NSW) ("the Legal Aid Act").

As a matter of practice, the Commission will provide funding, at a fixed rate determined by the Commission, to a lawyer of the consumers’ choice. Where the consumer does not have a lawyer, then the Commission will either provide representation in-house, or assist the individual in acquiring legal representation.

While legal aid is available for a wide range of matters, including litigation, legal aid is not always available for specific matters such as divorce, property settlements, apprehended personal violence orders or drink driving matters.

Each legal aid service has guidelines identifying the types of claims that will be funded. At present, the majority of legal aid resources have been directed towards the areas of criminal law and family law. In practice, there is extremely limited availability of legal aid funding in civil matters. This may be partially explained by the prevalence of conditional costs agreements, as discussed above in question 3.1.

The granting of legal aid is means tested and in certain cases also merits tested. There are two forms of merits test, depending on whether the matter is a state matter (Merits Test A) or a Commonwealth matter (Merits Test B).

6.3 Is third party funding of claims available?

Yes.

Litigation funding is permissible in Australia.

Australian litigation funders experienced some early setbacks. However, recent decisions at both the State appellant and Federal level have approved these arrangements.

In Campbells Cash and Carry Pty Ltd v Fostif Pty Ltd (No S514/2005) (2006) 229 CLR 386 the majority of the High Court held that litigation funding was permissible. Whilst acknowledging the public policy concerns relating to non-interested parties benefiting from litigation, the majority of the court held that this does not warrant the “... formulation of an overarching rule... [to] bar the prosecution of an action where any agreement has been made to provide money to a party to institute or prosecute the litigation in return for a share of the proceeds... To meet these fears... would take too broad an axe to the problems that may be seen to lie behind the fears” at [31].

While lawyers are restrained from entering contingency agreements, non-lawyers are not. Therefore, litigation funders have emerged to promote and fund class action litigation.

The mechanism is relatively straightforward. A non-lawyer or corporation, the litigation funder, identifies a potential claim and then enters into agreements with potential claimants. These agreements provide for the litigation funder to receive an agreed percentage of any moneys that come to the claimant by way of settlement or judgment. In addition, the claimants will
often assign the benefit of any costs order they may receive to the promoter who is also given a broad discretion to conduct the litigation as they see fit. The litigation funder then retains a lawyer who agrees to conduct the litigation on behalf of the litigation funder on the basis of the normal rules governing the legal profession.

Due to the "loser pays" principle in place in Australia, the litigation funder has the prospect of not only receiving 30% to 40% of the proceeds of the action, but also the prospect of recovering a substantial proportion of the costs incurred in running the proceedings.

It is significant to note the recent decision of the Full Federal Court in *Brookfield Multiplex Limited v International Litigation Funding Partners Pte Ltd* [2009] FCAFC 147 as this case has caused some short term difficulties for litigation funders and solicitors for class members using them.

In *Brookfield Multiplex*, the court held that the subject litigation funding arrangement was a managed investment scheme which either required registration with, or an exemption from, the Australian Securities and Investment Commission ("ASIC"). Operating an unregistered managed investment scheme carries a number of penalties under the Corporations Act 2001 (Cth).

The position for litigation funders will ultimately be resolved by a successful appeal to the High Court, or by restructuring their arrangements or by seeking registration or an exemption from ASIC.

**Contributed by:**
Amanda Turnill, Partner
Zoe Kimberley, Senior Associate
(with thanks to Leah O’Brien, Lawyer)
Clayton Utz, Sydney

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5. Section 323(2) of the LPA (NSW) and section 3.4.27(2) LPA (VIC).
6. Section 324(1) of the LPA (NSW).
7. Sections 324(2) and (6) of the LPA (NSW) and sections 3.4.28(1) and (5) LPA (VIC).
8. Section 324(3) of the LPA (NSW) and section 3.4.28(2) LPA (VIC).
9. Section 324(4) LPA (NSW) and section 3.4.28(3) LPA (VIC).
10. Section 324(5) LPA (NSW) and section 3.4.28(4) LPA (VIC).
11. Section 3.4.28(4)(a) LPA (VIC).
12. Sections 327(3A) and (4) LPA (NSW) and section 3.4.31(4) LPA (VIC).
13. Section 327(5) LPA (NSW) and section 3.4.31(6) LPA (VIC).
14. Supreme Court of Victoria, Practice Note No.5 of 2009
1. Recoverability of costs

1.1 Can costs be recovered by a party to civil litigation? Yes.

1.2 Does the losing party usually pay the successful party’s costs? Yes.

The principle of success (“Erfolgsprinzip”) governs recovery of costs.

The losing party, in general, is ordered to pay the costs of the successful party. The order is not given in a separate document, but forms part of the court’s main judgment.

Where the party is only successful in some of its arguments, costs are reimbursed according to the ratio of success.

For example, if the claimant wins only one-third of its arguments the defendant will be ordered to pay one-third of the claimant’s costs, but the claimant has to pay two-thirds of the defendant’s costs. The law assumes that the lawyers’ fees of both parties are equal, so the claimant has to be paid one-third (two-thirds minus one-third) of the lawyers’ fees by the defendant.

Fees that are prepaid by one party (court fees, costs for expert witnesses, etc.) are split between the parties according to the ratio of success.

Persons who have a legal interest (as decided by the court) in the success of one of the parties can support that party in the case (an “intervening party”). They can recover their costs from the counterparty and are considered to be successful in the same ratio as the party that they supported.

If the intervening party supports the claimant he can recover his full costs from the defendant if the claimant is successful.

1.3 Can costs be ordered to be paid to, or by, a non-party? Not generally.

Generally costs cannot be ordered to be paid to, or by, a non-party. The only exception is regulated in Article 326 ZPO. A witness who refuses to testify without justification as regulated by law is accountable for the costs of the delay in the process. The court can order the witness to pay the costs of the delay; further damages caused by the delay (such as interest) are subject to a separate lawsuit against the witness.

2. Details of recoverability of costs

2.1 On what basis are costs recoverable? Reimbursement of costs is calculated according to the Austrian Attorney Tariffs Act (“Tariffs Act”). Indicators for the amount recoverable include the amount in dispute, the number of legal papers and number and duration of the court sessions.

The court always bases an award of costs on the Tariffs Act, irrespective of whether the party and his lawyer agreed higher or lower costs among themselves. If the actual costs of the successful party exceed the calculation, that party will be responsible for the shortfall.

2.2 Is the amount of recoverable costs fixed? Yes, for legal fees.

Legal fees are awarded by reference to a tariff. Although this is the amount the court will order to be paid, many lawyers do not charge their clients on this basis, as the tariff is not seen as appropriate for calculating actual fees.

2.3 Is the amount of recoverable costs calculated by reference to the amount in dispute? Yes.

The recoverable amount is calculated according to the Tariffs Act. One of the factors taken into account is the amount in dispute.

Court fees are divided into tranches according to the amount in dispute (for example, if the amount in dispute is between €72,670 and €145,350 the court fee is €2,518 for the first instance).

Court fees in trials where the amount in dispute exceeds €363,360 are calculated as a percentage of the value of the dispute and amount to:

- 1.2% plus €1,754 for first-instance proceedings
- 1.8% plus €2,580 for appeals proceedings
- 2.4% plus €3,441 for appeals to the Supreme Court.

Court fees are payable by the claimant when instituting proceedings, or by the applicant when filing an appeal.

The tranches and court fees are prescribed in legislation and are not inflation-linked. The amounts are updated periodically by legislative amendment, but the process is not automatic.

Austria
### 2.4 What can be recovered as “costs”?

**Lawyer – client fees**
Yes. The recoverable fee is based on the amount in dispute, the number of legal papers and number and duration of court sessions.

Additionally a percentage of the fee for the individual court session or legal papers (50% for trials at the court where the lawyer resides, otherwise 100%, or in higher instance cases up to 400%) is added to cover the preparation time and conferences with the client and some other expenses for the legal papers and trial (“Einheitssatz”).

**Additional lawyer fees (for example, counsel fees or trial advocate fees)**
Yes, as included in lawyers’ fee (“Einheitssatz”).

**Agency fees (for example, London agents, local agents, appellate lawyer, bailiff/process-server)**
Yes, as included in lawyers’ fee (“Einheitssatz”).

**Court fees**
Yes.

**Disbursements (including, but not limited to, photocopying, expert witness, travel, translation, notarial, witness attendance etc.)**
Some are partially included in the lawyers’ fee (“Einheitssatz”), for example, photocopying, travel expenses of the lawyer, costs for commercial register reports and land register records. Others are partially recoverable, for example, costs for (expert) witnesses or translations (if deemed necessary by the court).

**Other expenses**
At the discretion of the court.

### 3. Particular costs issues

#### 3.1 Can a party agree with its own lawyer, a special costs arrangement?
Yes.

A party and their lawyer may agree on other methods of calculating the fees, including by way of hourly rates. This has become increasingly common in litigation and arbitration matters. In principle, contingency fees are permitted as long as the legal fees are not calculated as a percentage of the amount awarded to the successful party by the court/arbitral tribunal.

If the successful party has agreed to pay the lawyer more than the tariff states is necessary, they will be responsible for the surplus, even if the losing side is ordered to pay costs.

In the same way, if the lawyer is being paid less than the tariff states is appropriate, the successful party will be awarded a higher amount of legal costs than their actual expenditure.

Task-based, conditional or lump sum arrangements are possible but are rare in practice.

#### 3.2 Which tribunal resolves costs disputes and how?
(Note, section 55 JN – Jurisdiction Code.)

Since 2009, before the end of the trial the parties must exchange a detailed record of the costs, as set out in the Tariffs Act. A party can challenge (parts of) the record within two weeks, failing which the court’s decision is based on the record and no possibility to appeal is granted. Challenges must include the grounds on which the party argues that the record of its counterparty is not correct.

Where the record is challenged, the first instance court will decide on the disputed parts of the costs in its final decision. Only this part is subject to appeal.

The second instance court makes the final decision on the costs without hearing from the parties. The decision of the second instance court is final and not subject to appeal, unless the subject matter is, referred to the Supreme Court.

#### 3.3 Can a party be required to provide security for costs (or some other sum) in advance of costs being decided?
Yes.

Court costs are payable in advance of the litigation by the claimant. This will comprise one payment to cover the entire proceedings.

Courts can order that parties post security for the costs of expected legal expert opinions and witnesses. Security for the costs of the parties themselves need not be provided within the EU. However, for claims brought by parties domiciled outside the EU, the Austrian defendant can demand that the claimant pays a retainer to cover the defendant’s costs if the claim is dismissed (section 56ff ZPO). There must be shown to be sufficient grounds to assume that the defendant will otherwise not be able to recover its costs from the claimant.

### 4. Costs awards

#### 4.1 Can interim awards of costs be obtained?
No, generally costs will be awarded as part of the final judgment.

An interim award for lawyers’ fees incurred in the particular court session will only be granted where a party misses a court session
because of a force majeure and a default judgment is granted and successfully appealed against.

An interim award is also granted for a dispute relating to a purely procedural matter, such as a dispute about the competence of the court. This is considered to be a “trial within the trial” ("Zwischenstreit") and the costs decision follows the success for this part of the trial only, not the subject matter.

4.2 Can an award of costs be increased or decreased by reference to such matters as a party’s conduct of the case?

Yes.

If the court is of the opinion that a party could have served evidence more expediently and the late serving caused a delay in the trial, the responsible party has to bear the costs incurred in the delayed parts of the trial, irrespective of his success in the main judgment (section 44 of the ZPO).

If the defendant has not given the claimant grounds to make the formal claim and acknowledges and fulfils the claim at the earliest opportunity, the defendant is considered to be the successful party in term of costs (section 45 of the ZPO).

4.3 How are costs awards enforced?
The law does not differ in terms of enforcement of the main judgment and costs awards. Enforcement is regulated by the Enforcement Act (“Exekutionsordnung”).

4.4 Can a costs award be set off against a monetary judgment?

In principle yes.

However, the Lawyer Act (“Rechtsanwaltsordnung” section 19a of the RAO) grants the lawyer of a successful party a lien over the costs award, which takes priority over any set-off by the other party.

4.5 Is interest payable on unpaid costs?

Yes.

Interest on costs is not awarded in the judgment itself but is recovered as a matter of law. If costs are not paid within the time limit set by the court, interest is due from the day of the decision (section 54a of the ZPO).

5. Costs of an appeal

5.1 Are costs of an appeal treated differently?

No. On appeal, the party bringing the appeal must pay an additional court fee in advance.

The costs at all instances follow the principle of success ("Erfolgsprinzip"). For instance if the claimant is successful in the first and second instance, but the Supreme Court of Justice dismisses the claim, the Supreme Court will order him to pay costs for the opponent for all three instances, as the whole trial was, in the end, unsuccessful.

6. Funding of civil and commercial claims

6.1 Can costs be insured?

Yes.

“Rechtsschutzversicherungen”: insurance covering the risk of paying costs in a trial is very common amongst private individuals, however it is rarely used by companies.

6.2 Is legal aid available?

Yes.

Any natural person may seek legal advice free of charge (from a district court or the local lawyers’ chamber) on points of law and in order to examine the chances of success of entering into litigation.

A party with insufficient financial means may apply for legal aid when entering into litigation or at any time thereafter as long as the civil proceedings are still pending. The court can give legal aid by (wholly or partially) freeing the impecunious party from court fees and by providing legal representation free of charge. Legal aid does not affect the ability of the successful counterparty to recover costs – costs must be recovered from the party in receipt of legal aid rather than from a state legal aid fund.

Where legal representation is provided, legal aid also covers the pre-trial advice given by the lawyer.

Legal aid is granted in all civil and commercial court proceedings regardless of the applicant’s nationality or place of residence.

Legal aid is not available for civil claims in proceedings before criminal courts (because no fees or legal representation are required, and the taking of evidence with regard to civil claims is not allowed) but these claims can be brought in parallel – with legal aid – before a civil court.

If legal aid is granted in the main proceeding, the same also applies to enforcement proceedings. A party which was granted legal aid for a particular legal dispute in another EU Member State is also entitled to legal aid in Austria for a proceeding concerning the recognition and enforcement of the decision given in that dispute.

6.3 Is third party funding of claims available?

Yes.

Litigation financing companies are permitted to enter into contingency agreements. The success fee is usually between 20% and 50% of the claim.

Contributed by:
Puttinger Vogl & Partner Rechtsanwälte GmbH.

1 Sections 40-55 of the Civil Code Procedure (“ZPO”).
At what cost? A Lovells multi-jurisdictional guide to litigation costs

1. Recoverability of costs

1.1 Can costs be recovered by a party to civil litigation?
Yes.

1.2 Does the losing party usually pay the successful party’s costs?
Yes.

A successful party (claimant or defendant) will usually (subject to the discretion of the court) obtain an order for payment of costs by an unsuccessful party.

1.3 Can costs be ordered to be paid to, or by, a non-party?
Yes, exceptionally.

Exceptionally a non-party can be ordered to pay costs. Costs can be ordered to be paid to a non-party providing disclosure or giving evidence.

2. Details of recoverability of costs

2.1 On what basis are costs recoverable?
Costs are awarded at the discretion of the judge who may assess costs but will usually refer them to the Registrar as taxing master. Costs are not ordered pursuant to a tariff.

2.2 Is the amount of recoverable costs fixed?
No.

2.3 Is the amount of recoverable costs calculated by reference to the amount in dispute?
Yes, in part.

The value of the subject matter and importance to the client are only two factors to be taken into account.

Other factors that the court will also have regard to include the result of the action (usually the losing party pays the successful party’s costs), conduct of the parties and the complexity of the matter.

2.4 What can be recovered as “costs”?

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<td>Yes</td>
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</tbody>
</table>

Disbursements (including, but not limited to, photocopying, expert witness, travel, translation, notarial, witness attendance etc.)

Other expenses

Yes.

3. Particular costs issues

3.1 Can a party agree with its own lawyer, a special costs arrangement?
Yes.

Contingency fees and “no win, no fee” deals are not the practice; although they can happen, they occur very rarely.

3.2 Which tribunal resolves costs disputes and how?
Costs are usually determined by a registrar of the Supreme Court on a taxation with powers much like the costs judges in England.

3.3 Can a party be required to provide security for costs (or some other sum) in advance of costs being decided?
Yes, sometimes.

At the discretion of the court, and will usually be associated with an application by a defendant where the claimant has no assets within the jurisdiction or a finding by the court of some inappropriate behaviour.

4. Costs awards

4.1 Can interim awards of costs be obtained?
Yes.

The court can deal with costs at any stage and order them to be paid forthwith, notwithstanding that the proceedings have not yet been concluded.

In practice, where taxation is likely to be protracted and the Registrar determines that certain items are not in question, a certificate will then be issued for any part of the costs which have already been taxed. Alternatively, upon an application for review of taxation the Registrar may issue an interim certificate in respect of items not objected to.

4.2 Can an award of costs be increased or decreased by reference to such matters as a party’s conduct of the case?
Yes.

Where something is done, or omitted to be done, improperly or unnecessarily, the court may order that the costs of that party in respect of that act or omission shall not be awarded to him, and that costs occasioned by it to other parties be paid to them.

4.3 How are costs awards enforced?
Costs are enforced with judgments.

The Bahamas
4.4  Can a costs award be set off against a monetary judgment?
Yes.

4.5  Is interest payable on unpaid costs?
Yes.

Interest is payable on the judgment order from the date of the order/certificate of the judgment rate. Interest may also be included in costs from the date of payment at a commercial rate.

5.  Costs of an appeal

5.1  Are costs of an appeal treated differently?
Costs on appeal are similarly treated but are taxed by a Registrar of the Court of Appeal.

The Rules are set out in the Court of Appeal Rules 2005.

6.  Funding of civil and commercial claims

6.1  Can costs be insured?
No.

6.2  Is legal aid available?
In respect of civil claims, legal aid is not available.

6.3  Is third party funding of claims available?
No, not generally available.

Contributed by:
Alexiou, Knowles & Co.
Belgium

1. Recoverability of costs

1.1 Can costs be recovered by a party to civil litigation?
Yes.

1.2 Does the losing party usually pay the successful party’s costs?
Yes, subject to the limitations detailed below.

A successful party can recover costs pursuant to Article 1022 of the Belgian Civil Procedure Code and the "loi du 21 avril 2007 relative à la répétibilité des honoraires et frais d’avocats" (the "New Law") (in force since 1 January 2008). The judge in a civil matter, which includes social, commercial and tax disputes, must allow the successful party to recover a lump sum indemnity in respect of its legal costs, from the losing party.

Two conditions must be satisfied:

● the judgment must be definitive
● one of the parties must have lost.

Interveners can recover costs in the same manner, depending on the success of their arguments, that is, if the party they support has won the case or if their intervention was not rejected for other reasons.

1.3 Can costs be ordered to be paid to, or by, a non-party?
Yes, but only if such non-party either voluntarily intervenes in the litigation or is forced to intervene upon request by either party. The judge may then order costs to be paid to the intervener (as indicated above) or can order the intervener to pay (all or part of) the costs of the winning party.

2. Details of recoverability of costs

2.1 On what basis are costs recoverable?
Until recently, the courts have had the power to award costs but only on the basis of an antiquated scale relating to the level of the court fee and which was not intended to cover the actual costs paid by parties to their lawyers. Under the New Law, at the request of any party, the court will have the power to award costs on the basis of a new scale which allows for the award of much more realistic amounts.

In addition to the limitations placed on the amounts recoverable being relative to the value of the claim, the judge has the power to vary the award depending on a variety of factors such as the financial standing of the losing party, the complexity of the matter and any compensation already paid out under contract.

2.2 Is the amount of recoverable costs fixed?
Yes, in accordance with a scale provided by the New Law.

The New Law provides a “basic amount” calculated by reference to the amount of the dispute. The court may increase or decrease this basic amount in certain circumstances, within the limits of the scale provided by the New Law.

Where the losing party has received legal aid the amount the other party may recover is fixed by law at a minimum amount on the scale, unless this appears manifestly unreasonable in the circumstances.

2.3 Is the amount of recoverable costs calculated by reference to the amount in dispute?
Yes.

The scale is based on the amount claimed and includes a number of “tranches”, within which an award of legal costs will be made within minimum and maximum thresholds.

2.4 What can be recovered as “costs”?
Set out in Article 1018 of the Belgian Civil Procedure Code and the New Law.

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<td>Disbursements (including, but not limited to, photocopying, expert witness, travel, translation, notarial, witness attendance etc.)</td>
<td>Yes: expert witness costs and travel costs if travel is required by the court.</td>
</tr>
<tr>
<td>Other expenses</td>
<td>Yes: mediator’s costs, if applicable.</td>
</tr>
</tbody>
</table>

3. Particular costs issues

3.1 Can a party agree with its own lawyer, a special costs arrangement?
Yes, sometimes.

“No win, no fee” arrangements with lawyers are strictly prohibited under Belgian law. “Success fees” do exist but these are discretionary on the part of clients at the conclusion of proceedings and may not form part of the terms of initial engagement with the client’s lawyers.

3.2 Which tribunal resolves costs disputes and how?
Costs disputes between the parties are dealt with by the judge in charge of the main dispute between them, as indicated in question 2.1 above.

3.3 Can a party be required to provide security for costs (or some other sum) in advance of costs being decided?
Yes, if an order for security of costs is ordered.
Defendants may apply for security for costs against a foreign claimant. This application must be filed before any other plea of defence.

4. Costs awards

4.1 Can interim awards of costs be obtained?
Yes.

The indemnity due under the New Law is payable in respect of each stage of an application and also in respect of summary judgments and judgments in default.

4.2 Can an award of costs be increased or decreased by reference to such matters as a party’s conduct of the case?
Yes.

The judge retains a wide discretion in awarding costs within the scale limits and can take the following elements into consideration:

- financial situation of the losing party
- complexity of the case
- the indemnity provided in the parties’ agreement (if any)
- the degree of reasonableness of the conduct of the parties.

The court has no power however, to award costs outside the limits provided for by the scale referred to above.

4.3 How are costs awards enforced?
Costs are enforced in the same way as other orders for payment of money (execution of judgment, bailiff etc.).

4.4 Can a costs award be set off against a monetary judgment?
Yes.

The judge has the option to declare that a set off shall apply between opposite costs awards (that is, if the judge has split the costs between the claimant and the defendant) or between a costs award and a monetary judgment (though this is fairly rare as often the costs are awarded against the losing party). If the judge has not expressly provided for the application of a set off, an automatic set off (that is, by effect of the law) will apply as long as the claims between the claimant and the defendant are “due and payable”. Costs awards and monetary judgments are deemed “due and payable”, hence capable of being set off, only if they are enforceable (either by being declared so by the judge or after expiration of an appeal period).

4.5 Is interest payable on unpaid costs?
Yes.

Interest levels in respect of civil matters are set pursuant to Loi du 05/05/1865 relative au prêt à l’intérêt (M.B. 07/05/1865), as amended by Articles 87 et 88 of la Loi-programme du 27 décembre 2006 (M.B. 28/12/2006).

The level of interest for 2009 was set at 5.5% and for 2010 is set at 3.25%.

5. Costs of an appeal

5.1 Are costs of an appeal treated differently?
No, in respect of a regular appeal.

Yes, with respect to an appeal to the Cour de Cassation.

The Cour de Cassation (Belgian supreme court) is not subject to the principles set out in the New Law and costs of an appeal to that court are therefore treated differently.

6. Funding of civil and commercial claims

6.1 Can costs be insured?
Yes.

Insurance cover, in the form of a contractual indemnity, is available in respect of legal costs, but the amount will not necessarily be equal to the lawyer’s costs.

6.2 Is legal aid available?
Yes.

Legal aid consists of full or partial exemption from stamp duties and registration charges and other costs of proceedings and is available to litigants who do not have adequate income to cover the cost of judicial or extra-judicial proceedings, including minors, persons suffering from mental illness, prisoners, refugees and displaced persons.

Legal assistance, in the form of practical information, legal information, an initial legal opinion or referral to a specialised body or organisation, is also available to all individuals and to bodies corporate. Those litigants who can afford it have to pay a small fee to access this assistance.

Legal aid is available to the following, provided they have an “apparently well-founded” claim and can prove that their income is “inadequate” (sections 667 and 668 of the Judicial Code):

- persons of Belgian nationality
- foreign nationals in accordance with international treaties
- all nationals of Member States of the Council of Europe
- foreign nationals lawfully residing in Belgium
- foreign nationals in proceedings provided for by the Law of 15 December 1980 on access to the territory, residence, establishment and removal of foreigners.
Legal aid can be obtained for:

- all procedural steps relating to applications referred to or pending before an ordinary or administrative court or panel of arbitrators
- procedural steps relating to the enforcement of judgments and decisions
- proceedings on applications
- appeal proceedings
- procedural steps which rest with a member of the judiciary or entail action by a professional or official.

6.3 Is third party funding of claims available?
Yes, but only in exceptional circumstances.

Generally lawyers in Belgium may not reclaim their costs from any party other than their client. Only in exceptional circumstances and with the greatest caution will this be possible. Where a lawyer is engaged by a third party the agreement must be in writing and confirmed via an explanatory letter.

Contributed by:
CMS DeBacker.
Bermuda

1. Recoverability of costs

1.1 Can costs be recovered by a party to civil litigation?
Yes.

1.2 Does the losing party usually pay the successful party’s costs?
Yes.

Where a party succeeds against another party in the action, it is usual for the successful party to be awarded an order for costs against the losing party which is called “costs following the event.”

Where the claimant succeeds against multiple defendants, costs will be ordered against each defendant, and the claimant can then recover costs against any one (or more) of the defendants. Any defendant paying such costs can then seek a contribution from the others.

1.3 Can costs be ordered to be paid to, or by, a non-party?
Yes.

Costs orders in favour of or against non-parties are referred to in Order 62, Rule 3 of the Rules of Supreme Court 1985.

2. Details of recoverability of costs

2.1 On what basis are costs recoverable?
Discretionary.

The costs of and incidental to proceedings in the Supreme Court are in the discretion of the court pursuant to Order 62, Rule 2 (4) of the Rules of Supreme Court 1985.

In exercising its discretion the court shall take into account the following matters (Order 62, Rule 9):

- any offer of contribution brought to its attention in accordance with Order 16, Rule 9
- any payment of money into court and the amount of such payment (Order 22)
- any written offer made under Order 33, Rule 4A(2)
- any written offer made under Order 22, Rule 14, provided that the court shall not take such an offer into account if, at the time it is made, the party making it could have protected his position as to costs by means of a payment into court under Order 2.

The court may also take into account any misconduct or neglect in the conduct of any proceedings (Order 62, Rule 10).

There are two bases of assessment of costs: the standard basis and the indemnity basis.

2.2 Is the amount of recoverable costs fixed?
Yes, in certain cases only.

Costs are fixed where there has been:

- recovery of a liquidated sum without trial; or
- judgment in default of appearances for a debt or liquidated demand only or for possession of land.

(Part III of the Schedule to Order 62, Rule 32 of the Rules of the Supreme Court 1985.)

2.3 Is the amount of recoverable costs calculated by reference to the amount in dispute?
Not strictly.

However, Part II, Division I of the Schedule to Order 62, Rule 32 of the Rules of Supreme Court 1985 requires the Registrar to consider the amount or value of any money or property in exercising discretion when determining the amount of costs.

2.4 What can be recovered as “costs”?
See Rules of Supreme Court 1985 (Part II of the Schedule to Order 62).

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3. Particular costs issues

3.1 Can a party agree with its own lawyer, a special costs arrangement?
No.

Except in undefended debt collections or to an extent expressly permitted by the Bar Council, a lawyer is not permitted to enter into contingent fee arrangements under which his fees depend upon the results of a case or consist of a pre-arranged share of money recovered on behalf of a client (Barristers’ Code of Professional Conduct 1981, section 96). A lawyer is, however, permitted to agree a flat fee for his services.

3.2 Which tribunal resolves costs disputes and how?
The Registrar of the Supreme Court is tasked with resolving costs disputes. Taxation proceedings must be commenced within six months of the judgment, order, award or other determination giving rise to the right to costs (Rules of Supreme Court, Order 62, Rule 29).
This is done by lodging at the registry a bill of costs in which the professional charges and the disbursements are set out in separate columns. The registrar shall then give to the party seeking to have his costs taxed and any other party entitled to be heard on the taxation not less than 14 days’ notice of the day, time and place appointed for the taxation.

The aforementioned notice requires any responding party to the taxation to indicate by return whether he intends to appear to dispute the amount claimed and, if so, to provide a schedule of the particular items disputed no later than one week prior to the date appointed for the taxation hearing.

Hearings are relatively informal, with the points of dispute being taken in turn and both sides making submissions and the costs officer making rulings on each point in turn.

3.3 Can a party be required to provide security for costs (or some other sum) in advance of costs being decided?

Yes.

If the court determines that there are grounds present for ordering that security be posted (the most common being that the claimant is ordinarily resident out of the jurisdiction or is a nominal claimant) and that it is just in all of the circumstances, the court may order the claimant to post security for the defendant’s costs of the action (Order 23, Rule 1 of the Rules of Supreme Court 1985).

The manner, time and terms for posting security are at the discretion of the court. The usual order sees the claimant pay money into court as security for the payment of any costs order that may eventually be made in favour of the defendant, and staying the claim until the security is provided.

4. Costs awards

4.1 Can interim awards of costs be obtained?

Yes.

At the end of almost every interim application and when almost any interim application is disposed of by consent, an order will be made or agreed declaring which party should pay the costs of the application.

Costs of interim applications are in the discretion of the court, but the discretion is usually (but not always) exercised in favour of the party who was successful in the application.

The presumptive rule is that costs are not taxed until the conclusion of the cause or matter in which the proceedings arise. The court may, however, order that costs be taxed at an earlier stage if appropriate (Order 62, Rule 8 of the Rules of Supreme Court 1985).

4.2 Can an award of costs be increased or decreased by reference to such matters as a party’s conduct of the case?

Yes.

The court may take into account any misconduct or neglect in the conduct of any proceedings (Order 62, Rule 10).

4.3 How are costs awards enforced?

Methods of enforcing money judgments are contained in Orders 45 to 52 of the Rules of Supreme Court 1985. A judgment creditor may enforce a judgment or order for the payment of money by any of the following methods:

- a writ of fieri facias; or
- garnishee proceedings; or
- the appointment of a receiver; or
- an order for committal.

4.4 Can a costs award be set off against a monetary judgment?

Two costs orders can be set off against each other (Rules of Supreme Court 1985, Order 62, Rule 23).

4.5 Is interest payable on unpaid costs?

Yes, at the court’s discretion.

Interest typically runs from the date of the order for costs.

The court has the power to award interest on costs at the prescribed rate of seven per cent pursuant to the Interest and Credit Charges (Regulation) Act 1975.

5. Costs of an appeal

5.1 Are costs of an appeal treated differently?

At the court’s discretion.

A court dealing with a case on appeal can make orders relating to the costs of the proceedings giving rise to the appeal as well as the appeal itself (Rules of the Court of Appeal for Bermuda, Order 2, Rule 25).

If an appeal is successful, the appeal court may order the losing party to pay the costs ‘here and below’, or may make different orders relating to the proceedings at the two levels, or may leave the costs order of the court below undisturbed.

It may be appropriate to deprive a party of its costs if the decision on the appeal turned on points not raised below, or on points not raised in the notice of appeal, or where the appeal is only partly successful or where the court’s time has been wasted.

6. Funding of civil and commercial claims

6.1 Can costs be insured?

Yes, in principle.

There is no prohibition in respect of insurance for costs. However such insurance products are not generally available in Bermuda.

6.2 Is legal aid available?

Yes.
Government funding of litigation is governed by the Legal Aid Act 1980 as amended and the Legal Aid (General) Regulations 1980.

Entitlement is determined by the Legal Aid Committee by way of a test of means. Hourly rates allowable to counsel are generally much less than typical rates in the Bermuda lawyer market.

Legal aid is available for civil proceedings as well as criminal proceedings.

6.3 Is third party funding of claims available?
No.

Maintenance and champerty are prohibited.

Contributed by:
Marshall Diel & Myers.
Canada consists of 10 provinces and three territories, each of which has its own civil procedure rules. The answers to this questionnaire focus on the rules in Ontario but where the rules of other provinces and territories significantly differ from those in Ontario this has been noted.

1. **Recoverability of costs**

1.1 **Can costs be recovered by a party to civil litigation?**

Yes.

Note that in some provinces, costs in class proceedings are very rare, but they are recoverable in Ontario.

1.2 **Does the losing party usually pay the successful party’s costs?**

Yes.

The courts will generally apply the cost shifting rule. Where the plaintiff or defendant is successful it is likely to be able to recover its costs from the other side. However, the courts have an absolute and unfettered discretion to award or withhold costs. The discretion to depart from the basic rule must be based upon good reasons. If it is in the interests of justice to do so, the courts will not apply the cost shifting rule.

In addition, different costs rules will apply when formal offers to settle are made.

The court also has discretion to award third party costs. Fairness may require a losing plaintiff to pay a successful third party’s costs. Four categories have been distinguished where that order may be appropriate:

- where the main issue litigated was between the plaintiff and the third party
- where the third party was brought in or kept in by reason of the act or negligence of the plaintiff
- where the case involved a series of contracts in substantially the same terms for the sale of goods
- where the third party proceedings followed inevitably upon the institution of plaintiff’s action in the sense that the defendant had no alternative but to join the third party.

A defendant may have to pay third party costs if he or she has joined the third party unnecessarily or without justification.

1.3 **Can costs be ordered to be paid to, or by, a non-party?**

Yes.

The courts have discretion in any case to award third party costs. Fairness may require a losing plaintiff to pay a successful third party’s costs. Four categories have been distinguished where that order may be appropriate:

- the experience of the lawyer of the party being awarded its costs, as well as the rates charged and the hours spent by that lawyer (Rule 57.01(0.a))
- the amount of costs that a losing party could reasonably expect to pay in relation to the step in the proceedings for which costs are being fixed. (Rule 57.01(1)(0.b) of the RCP).

Legal costs are usually granted as a partial indemnity. This will generally amount to approximately 60% of actual costs. While there is a tariff which provides a range of rates based on counsel’s year of call, it is ultimately at the courts’ discretion. The successful party may therefore still be required to pay a significant amount of its own legal fees.

Costs may sometimes be granted on a substantial indemnity basis, in which case costs are recovered at 1.5 times the rate utilised for the determination of the partial indemnity rate for the particular item of work or step in the proceedings.

Full indemnity (that covers a party for all reasonably incurred costs) may sometimes be granted, though this is rare.

Other principles the court considers in awarding costs include:

- the specific facts and circumstances of the case in relation to the factors in Rule 57.01(1) of the RCP
- the reasonable expectation of the losing party should be considered in determining an amount that is fair and reasonable
- avoiding inconsistency with comparable awards in other cases
- seeking to balance the indemnity principle with the fundamental principle of access to justice
- deference to the discretionary decisions of case-management judges.

2. **Details of recoverability of costs**

2.1 **On what basis are costs recoverable?**

The court has broad discretion as to how it awards costs. Rule 57.01(1) of the Rules of Civil Procedure RR0 1990 (“RCP”) lists the factors the court is entitled to take into account. These include:

- the experience of the lawyer of the party being awarded its costs, as well as the rates charged and the hours spent by that lawyer (Rule 57.01(0.a))
- the amount of costs that a losing party could reasonably expect to pay in relation to the step in the proceedings for which costs are being fixed. (Rule 57.01(1)(0.b) of the RCP).

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- the reasonable expectation of the losing party should be considered in determining an amount that is fair and reasonable
- avoiding inconsistency with comparable awards in other cases
- seeking to balance the indemnity principle with the fundamental principle of access to justice
- deference to the discretionary decisions of case-management judges.

2.2 **Is the amount of recoverable costs fixed?**

Yes, in most cases.

According to Rule 57.01(3) of the RCP, the court is obligated to fix costs in most cases, and will do so in accordance with the general tariffs which include a costs grid setting out the maximum rates to be charged for counsel and clerks in any case (on both a ‘partial’ and ‘substantial’ indemnity scale). In exceptional cases, the court may refer costs for assessment under Rule 58; however, it is not clear what will make an exceptional case. Generally, if a court is capable of fixing
costs in a manner that effects procedural and substantive justice, it will do so.

2.3 Is the amount of recoverable costs calculated by reference to the amount in dispute?
Not strictly.

However, attempts have been made in recent years to keep costs proportionate to the value and complexity of the claim.

From 1 January 2010 the courts will be obliged to make costs orders that are proportionate to the importance and complexity of the amounts involved in the proceeding.

The courts are entitled to take into account the amount of costs that an losing party could be reasonably expected to pay in relation to the relevant step in the proceeding (Rule 57.01(1)(a.b.) of the RCP).

2.4 What can be recovered as “costs”?

<table>
<thead>
<tr>
<th>Description</th>
<th>Recoverable?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lawyer – client fees</td>
<td>Yes.</td>
</tr>
<tr>
<td>Additional lawyer fees (for example, counsel fees or trial advocate fees)</td>
<td>Yes, so long as the court determines that the amounts are reasonable, and the extra effort is justified.</td>
</tr>
<tr>
<td>Agency fees (for example, London agents, local agents, appellate lawyer, bailiff/process-server)</td>
<td>Yes.</td>
</tr>
<tr>
<td>Court fees</td>
<td>Yes.</td>
</tr>
<tr>
<td>Disbursements (including, but not limited to, photocopying, expert witness, travel, translation, notarial, witness attendance etc.)</td>
<td>Yes, so long as the expenses are deemed to be reasonable.</td>
</tr>
</tbody>
</table>

3. Particular costs issues

3.1 Can a party agree with its own lawyer, a special costs arrangement?
Yes.

A lawyer may agree with its client to perform certain work for a stipulated amount. However, the courts have never been precluded from exercising their equitable jurisdiction in determining the validity of the contract. If the court finds that the charges are unfair and unreasonable, it will rectify them. Written agreements may be made respecting the amount and manner of payment; compensation may be either by a gross sum, a commission, or by salary.

Contingency fee agreements are allowed in Ontario (and other parts of Canada). In Ontario, a valid contingency fee agreement must be in writing and the contingency fee payable in the event of success must be reasonable. There are statutory provisions that regulate the amount of money recoverable by a party, or payable by a party to its lawyer, where the party’s lawyer is operating under a contingency fee agreement.

The quantum of contingency fees must be fair and reasonable; however, most Canadian jurisdictions do not legislate a percentage cap. The exceptions are in British Columbia and Quebec.

Where a contingency fee arrangement is in place, the costs order is made on conventional grounds without taking the arrangement into account. The contingency fee cannot be recovered from the losing party in so far as it is more than the lawyer’s ordinary fee.

(In some jurisdictions other than Ontario contingency fee agreements are subject to court approval.)

3.2 Which tribunal resolves costs disputes and how?
Usually the court which hears the matter makes the cost order (Rule 57.01(3) of the RCP). In exceptional cases the court may refer the assessment of costs to an “assessment officer” (Rule 57.01(3.1) of the RCP).

3.3 Can a party be required to provide security for costs (or some other sum) in advance of costs being decided?
Yes, if an order for security for costs is granted.

Security for costs can generally be granted in the following cases:

- the plaintiff is domiciled outside Ontario
- the plaintiff has another proceedings for same relief pending in Ontario or elsewhere
- the defendant has an order against the plaintiff for costs in the same or another proceeding that remain wholly or partly unpaid
- the plaintiff is a corporation and there is good reason to believe that it has insufficient assets in Ontario to pay the costs of the defendant
- there is good reason to believe that the action is frivolous and vexatious and that the plaintiff has insufficient assets in Ontario to pay the costs of the defendant.

The plaintiff has the option of attempting to prove that an order for security of costs would be unjust because it is impecunious and the claim has merit.

Generally, the courts grant the full amount of the defendant’s estimated partial indemnity costs under a system of “pay-as-you-go” security. This means that the plaintiff has to pay security to the court to cover each step of the proceedings.

Similar rules apply in other Canadian provinces.

4. Costs awards

4.1 Can interim awards of costs be obtained?
Yes.
The courts have jurisdiction to award interim costs; however, the jurisdiction to do so is limited to exceptional cases and is narrowly applied. The Ontario Divisional Court has held that if interim costs are awarded, they are to be paid only after the proceeding has completed.

According to the Ontario Divisional Court, the characteristics of interim costs are similar to those of party-and-party costs, which are:

- the costs are awarded to the successful or deserving litigant, payable by the losing party
- the award of costs must wait until the conclusion of the proceeding
- costs are payable as indemnity for relevant allowable expenses and services
- costs are not payable in order to ensure participation in the proceeding.

4.2 Can an award of costs be increased or decreased by reference to such matters as a party's conduct of the case?
Yes.

Canadian courts sanction a party's conduct through costs awards, including awarding full indemnity.

Offers to settle can affect an award of costs where the successful party obtains a less favourable result than was contained in the offer.

In some provinces, incentives, in the form of double costs, exist where offers have been made and refused by a party that was later unsuccessful at trial.

4.3 How are costs awards enforced?
Rule 60.02(1) of the RCP governs the enforcement of an order for payment or recovery of money. It states that in addition to any other method of enforcement provided by law, an order for the payment or recovery of money may be enforced by:

- a writ of seizure and sale under Rule 60.07; or
- garnishment; or
- a writ of sequestration; or
- the appointment of a receiver.

4.4 Can a costs award be set off against a monetary judgment?
Yes.

The setting off of interlocutory costs against a judgment obtained in the action is a matter of right. It is directed by the court in its exercise of equitable jurisdiction. Where interlocutory costs are incurred after judgment, these should also be set off against the judgment.

4.5 Is interest payable on unpaid costs?
Yes.

Post-judgment interest is levied on a costs order beginning on the date the order is made. In Ontario the pre-judgment and post-judgment rates are fixed by government and published quarterly.

5. Costs of an appeal

5.1 Are costs of an appeal treated differently?
At the court's discretion.

In general, when an appeal is allowed, the costs of the appeal are awarded to the successful applicant. However, the Court of Appeal has complete discretion in the matter of costs, and can deviate from the rule in the interests of justice.

6. Funding of civil and commercial claims

6.1 Can costs be insured?
Yes.

Legal expenses insurance and after the event insurance are permitted. However, they are not widely used.

6.2 Is legal aid available?
Yes.

Legal aid is available for limited types of civil cases (for example, workers' compensation cases).

A person has to be means tested to check whether he is entitled to legal aid.

In Canada every person has the right to be represented in legal proceedings, but there is no general right to access legal representation at the expense of the State even to persons who cannot afford to be legally represented.

6.3 Is third party funding of claims available?
Yes (but see below).

Funding by a third party which has no genuine interest in the proceedings is prohibited.

Contributed by:
Stikeman Elliott LLP.
1. **Recoverability of costs**

1.1 **Can costs be recovered by a party to civil litigation?**

Yes.

The general principle is that a successful litigant ought to recover from the losing side its reasonable costs incurred in conducting the proceedings in an economical, expeditious and proper manner. The general principle will apply by default unless the court orders otherwise, and the court generally has power to determine whether, by whom, and to what extent costs are to be paid. The process of taxing a costs award (see questions 2.1 and 2.4 below) results in a successful party recovering a percentage (usually between 60-80%) of its actual costs incurred.

In general, payments into court by the defendant and without prejudice “Calderbank” offers will put the other side on risk of costs from the date of the payment/offer. Where the amount ultimately awarded is less than the payment in or the court considers that the without prejudice offer should have been accepted then the court can make an order relieving the paying in/offering party from liability for costs incurred after the date of the payment in or offer.

1.2 **Does the losing party usually pay the successful party’s costs?**

Yes.

Costs are generally recovered from the losing party to the proceedings, but costs orders against third parties are also possible (for example, wasted costs orders against lawyers).

1.3 **Can costs be ordered to be paid to, or by, a non-party?**

Yes.

There is a need to distinguish between third parties who are affected by but not party to proceedings (for example, the recipient of a third party discovery order), and third parties who become party to a set of proceedings (for example, in contribution claims). In respect of the former, the person or body subject to the order will normally be entitled to recover reasonable costs of complying with it. These will be taxed if not agreed. In respect of the latter, a third party can recover costs – contribution claims). In respect of the former, the person or body subject to the order will normally be entitled to recover reasonable costs of complying with it. These will be taxed if not agreed. In respect of the latter, a third party can recover costs – contribution claims. In respect of the former, the person or body subject to the order will normally be entitled to recover reasonable costs of complying with it. These will be taxed if not agreed. In respect of the latter, a third party can recover costs – contribution claims. In respect of the former, the person or body subject to the order will normally be entitled to recover reasonable costs of complying with it. These will be taxed if not agreed. In respect of the latter, a third party can recover costs – contribution claims. In respect of the former, the person or body subject to the order will normally be entitled to recover reasonable costs of complying with it. These will be taxed if not agreed. In respect of the latter, a third party can recover costs – contribution claims. In respect of the former, the person or body subject to the order will normally be entitled to recover reasonable costs of complying with it. These will be taxed if not agreed. In respect of the latter, a third party can recover costs – contribution claims. In respect of the former, the person or body subject to the order will normally be entitled to recover reasonable costs of complying with it. These will be taxed if not agreed. In respect of the latter, a third party can recover costs – contribution claims.

- If the plaintiff succeeds against the defendant who succeeds in turn against the third party, the third party will usually be liable for the defendant’s costs, including those that the defendant will have had to pay to the plaintiff.
- If the plaintiff is unsuccessful against the defendant, and in turn the defendant loses against the third party, the plaintiff will not necessarily be liable for the costs of the third party – for example, where the defendant should never have joined the third party to the proceedings.
- The plaintiff will generally be liable for the costs of the third party if he loses and the defendant would have had in any event to join the third party to meet the plaintiff’s claim.
- Where both the plaintiff and the third party lose to the defendant, in general each will be responsible only for the costs of the claim to which they were a party.

The court has “full power to determine by whom and to what extent the costs are to be paid”, which includes a discretion to award costs against non-parties to proceedings. Where a non-party not merely funds the proceedings but substantially also controls or is to benefit from them, and those proceedings fail, the non-party will normally be ordered pay the successful party’s costs on the basis that he or she is “the real party” to the litigation. In deciding whether a director who is also a controlling or sole shareholder should be held liable for costs, the court will consider whether the director held a bona fide belief that (i) the company has an arguable defence; and (ii) whether it is in the interests of the company (rather than the director’s own individual interests) to advance that defence; thus directors who control litigation to seek a personal benefit rather than in the interests of the company may be subject to non-party costs orders.

2. **Details of recoverability of costs**

2.1 **On what basis are costs recoverable?**

See answer to question 1.1 above. The court will generally make an order as to costs, and the actual amount recoverable will be ascertained either:

- By agreement between the parties. (The parties can generally agree the amount of costs to be paid, except in the situation where the proceedings were brought on behalf of a person under a disability – in the latter case the costs agreed must be sanctioned by a direction of the court); or
- By virtue of the fact that in a few situations fixed costs can be claimed (see the answer to question 2.2 below); or
- By assessment by the court (the party entitled to costs is entitled at his option either to an order that such costs shall be taxed if not agreed, or to have the amount of such costs assessed by the judge – where the latter is chosen the judge will make his own assessment of the amount of legal fees and disbursements which a reasonable litigant is likely to have incurred and award that amount. This is subject to considerations of proportionality and reasonableness, bearing in mind the amount at stake in the proceedings, their complexity and general importance. There are upper limits set by the rules as to the amount of costs that can be awarded on assessment, namely, US$1,000 on an interlocutory application and US$10,000 for the entire proceedings plus the court fees which have been paid by the successful party); or
- By taxation. (In a piece of litigation of any size the costs awarded will be taxed if not agreed by the parties. The judge will normally make a broad declaration of entitlement to costs in favour of one party, and leave the detailed assessment to the Clerk of the court for taxation. The judge can, however, give directions or guidelines as to how some or all of the costs of the proceedings are to be paid, leaving the balance to be taxed in the usual way. Generally speaking there are two distinct bases of taxation provided for in the Rules:...
the standard basis and the indemnity basis. The key difference in the two bases emerges where the Clerk is in doubt as to the propriety of awarding an item – on the standard basis the doubt is resolved in favour of the loser, and vice versa on the indemnity basis. Also, on the indemnity basis the prescribed maximum hourly rates for recoverable legal fees (see question 2.4) do not apply. Costs will be taxed on the standard basis unless the court orders the indemnity basis, which it will only do in exceptional circumstances where the losing party has engaged in dishonest conduct amounting to an abuse of the process of the court. There are detailed guidelines contained in a Practice Direction governing how the Clerk must approach to task of taxation. Considerations of reasonableness and proportionality given the amount in issue, and the importance and complexity of the case, must be brought to bear by the Clerk when taxing costs, and the guidelines prescribe maximum hourly rates that can be awarded on the standard basis. The process is inquisitorial as opposed to adversarial).

2.2 **Is the amount of recoverable costs fixed?**
Yes, for certain proceedings the plaintiff has the right to claim fixed costs.

Fixed costs can be claimed where the court has given judgment in default (for example, where the defendant has failed to give notice of his intention to defend, or failed to file a defence), or for certain claims for liquidated sums (debt) actions. The prescribed amounts recoverable by way of fixed costs are so small, however, that the right to claim fixed costs is invariably waived in favour of assessment or taxation.

2.3 **Is the amount of recoverable costs calculated by reference to the amount in dispute?**
No.

However, the assessment or taxation of costs will generally be made subject to broad considerations of proportionality, and these will include (amongst other things) the amount in dispute and the importance and complexity of the case.

2.4 **What can be recovered as “costs”?**

Attorneys’ fees, court fees, reasonable travelling and hotel expenses for witnesses travelling to the Cayman Islands, and generally any expense is claimable as a disbursement on taxation if:

- it was reasonably and properly incurred by the successful party’s lawyer in the course of conducting the proceedings
- it is not an expense of a kind which is customarily included in the overheads reflected in a lawyer’s hourly rates and is therefore deemed to be reflected in the hourly rates charged by the successful party’s lawyer.

Answers to the specific questions below are subject to these general considerations and other detailed provision in the Rules.

<table>
<thead>
<tr>
<th><strong>Lawyer – client fees</strong></th>
<th>Yes. However, taxation guidelines allow recovery of fees at prescribed rates (by reference to a lawyer’s post qualification experience) which are somewhat lower than prevailing market rates.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Additional lawyer fees</strong>&lt;br&gt;for example, counsel fees or trial advocate fees</td>
<td>Yes, subject to the following important restrictions and qualifications in relation to foreign lawyers instructed by the parties:</td>
</tr>
<tr>
<td></td>
<td>● their fees are not recoverable as disbursements &lt;br&gt;● a foreign lawyer must be temporarily admitted as a Cayman attorney (which may be refused in some cases) and the fees are incurred after that admission &lt;br&gt;● claims for foreign lawyers fees will be disallowed to the extent that there is any duplication of work done by the local attorneys &lt;br&gt;● fees for work done by local lawyers instructing foreign lawyers are not recoverable, and fees for time spent/disbursements incurred in respect of written and oral communications between local and foreign lawyers are also not recoverable.</td>
</tr>
<tr>
<td><strong>Agency fees</strong>&lt;br&gt;for example, London agents, local agents, appellate lawyer, bailiff/process-server</td>
<td>Yes.</td>
</tr>
<tr>
<td><strong>Court fees</strong></td>
<td>Yes.</td>
</tr>
</tbody>
</table>
Disbursements (including, but not limited to, photocopying, expert witness, travel, translation, notarial, witness attendance etc.)

Other expenses? Yes.

3. Particular costs issues

3.1 Can a party agree with its own lawyer, a special costs arrangement? Yes to a certain extent only.

Litigation lawyers tend to charge according to hourly rates and through interim billing, rather than lump sums payable at the conclusion of litigation. Conditional fee agreements, where payment is dependent on a party’s success in an action, require prior approval by the Grand Court, which is rarely sought or granted (except as part of liquidation funding arrangements); contingency fees or agreements whereby a lawyer shares in the proceeds of any monetary award granted by the court are absolutely prohibited. In any case, fees charged on any basis other than hourly rates will be disallowed on taxation.

3.2 Which tribunal resolves costs disputes and how? There is provision in the Rules for a party dissatisfied with a decision of a taxing officer to ask for a judge of the Grand Court to review the decision. The review will be inquisitorial in nature. Apart from this review procedure, the Rules provide for an appeal to the Court of Appeal on costs issues only in limited circumstances. Permission must be obtained for the appeal, and the appellant must show that there is a point of construction of the rules of general importance to obtain such leave.

3.3 Can a party be required to provide security for costs (or some other sum) in advance of costs being decided? Yes.

There is provision in the Rules for the court to make an order for security for costs against plaintiffs (claimants), which may result in a sum being deposited in a court account to be applied towards future costs orders.

4. Costs awards

4.1 Can interim awards of costs be obtained? Yes.

See response to question 3.3 above.

4.2 Can an award of costs be increased or decreased by reference to such matters as a party’s conduct of the case? Yes.

In exercising its discretion as to costs the court will consider the conduct of the parties – for example, whether it was reasonable for a party to raise or contest particular issues; the manner in which a party has pursued or defended his case or issue, and whether a claimant who has succeeded in his claim in whole or in part exaggerated his claim.

4.3 How are costs awards enforced? Costs are made the subject of an award which is enforceable as a money judgment against the unsuccessful party. A judgment for payment of money may be enforced by:

- a writ of fieri facias; and/or
- garnishee proceedings; and/or
- a charging order; and/or
- the appointment of a receiver; and/or
- an order for committal; and/or
- a writ of sequestration; and/or
- an attachment of earnings order.

4.4 Can a costs award be set off against a monetary judgment? At common law costs can be set off against a monetary judgment once the conditions for set off are satisfied. There is also express provision in the rules for set off of costs awards as between parties to the litigation.

4.5 Is interest payable on unpaid costs? Yes.

Interest is payable from the date of service of a costs award, according to prescribed rates which are amended from time to time. The rate may differ depending on the currency in which judgment is given. The present rate of interest (effective from 1 December 2008) for Cayman Islands, US and Canadian dollars is 5%, and 7.75% for British Pound Sterling.

5. Costs of an appeal

5.1 Are costs of an appeal treated differently? In general, no.

The costs rules for civil proceedings before the Grand Court also apply to the Court of Appeal.

6. Funding of civil and commercial claims

6.1 Can costs be insured? After the event insurance may be available, but there is no established market for such coverage among local insurance providers.

6.2 Is legal aid available? Yes.

Legal aid is available in civil litigation proceedings before the Grand Court. The Grand Court may grant a legal aid certificate entitling the litigant to either free or subsidised legal aid where it appears to the court that the person does not have the means to instruct a legal representative. Where the court is in doubt
regarding the financial means of a legal aid applicant, it must
direct a legal aid officer to inquire into the applicant’s means and
make a report to the court. The fees and expenses of the legal
representative are subject to prescribed limits and conditions laid
down in regulations, and are payable by the Treasury.

6.3 Is third party funding of claims available?
Yes, subject to restrictions: see question 3.1 above.

It is possible for third parties to fund litigation, subject to the
common law rules prohibiting maintenance and champerty.
As stated above, conditional fee agreements are subject to prior
approval by the court.

Contributed by:
Jeremy Walton

Appleby.
China

1. Recoverability of costs

1.1 Can costs be recovered by a party to civil litigation?
Yes.

1.2 Does the losing party usually pay the successful party’s costs?
Yes.

When the claimant succeeds against the defendant, the claimant will be able to recover court fees from the defendant as a matter of course, and disbursements at the court’s discretion.

A successful claimant may also seek its lawyers’ fees from the defendant at the court’s discretion.

A successful defendant may seek to recover from the claimant the costs of its disbursements at the court’s discretion.

A defendant who succeeds in a counterclaim may seek to recover its disbursements and lawyers’ fees at the court’s discretion.

A third party who succeeds in an independent claim may recover its litigation fees from the party (whether claimant, defendant or both) found liable.

The recovery of a third party’s lawyers’ fees varies depending on the practices of different courts.

1.3 Can costs be ordered to be paid to, or by, a non-party?
No.

Non-parties are not generally involved in litigation (third party funding in particular is rare) and so it is unlikely that costs will be awarded to, or against, such parties.

2. Details of recoverability of costs

2.1 On what basis are costs recoverable?
Court fees and disbursements are recoverable based on Article 29 of “Measures for the Payment of Litigation Costs.” Lawyers’ fees can be recovered if provided for in an agreement between the parties. There are also specific statutory provisions for recovery of lawyers’ fees (that is, in intellectual property cases – see question 2.4 below).

Recovery of other costs is granted at the discretion of the court. The court will also make an assessment of the reasonableness of costs.

2.2 Is the amount of recoverable costs fixed?
Generally no.

Court fees are fixed amounts.

Lawyers’ fees, disbursements, and other costs are typically variable.

2.3 Is the amount of recoverable costs calculated by reference to the amount in dispute?
Generally, no.

Court fees are fixed based upon fee schedules that take into account the amount in dispute.

However, other costs are generally not determined by reference to the amount in dispute, although the court may consider whether the costs sought are reasonable for the scale of a particular case.

2.4 What can be recovered as “costs”?

Lawyer – client fees

Lawyers’ fees can be requested by a successful party, to be granted at the court’s discretion. Successful claimants can generally expect to recover at least some part of their fees. Defendants are typically expected to bear their own lawyers’ fees.

Some statutes, particularly in the intellectual property area, also provide for recovery of lawyers’ fees. These include the Trademark Law (at Article 56), the Copyright Law (at Article 48) and the Patent Law (at Article 65) which all provide for recovery of “reasonable costs for stopping the infringement.” According to judicial interpretations issued by the Supreme People’s Court, such reasonable costs recoverable include attorneys’ fees.

Additional lawyer fees (for example, counsel fees or trial advocate fees)

See response to ‘Lawyer – client fees’ above.

Agency fees (for example, London agents, local agents, appellate lawyer, bailiff/process-server)

Not applicable under Chinese procedure.

Court fees

Yes.
Disbursements (including, but not limited to, photocopying, expert witness, travel, translation, notarial, witness attendance etc.)

Other expenses Yes, within reason.

3. Particular costs issues

3.1 Can a party agree with its own lawyer, a special costs arrangement?
Yes.

In China, generally there are three types of fee arrangements:

- negotiated fixed fees
- fees assessed and paid at different stages of legal service
- contingency arrangements, with fees paid upon successful resolution of the case.

Hourly fee arrangements are rare, compared to Western jurisdictions.

In accordance with “Charging Measures of Attorneys’ Fees”, a contingency arrangement cannot exceed 30% of the total compensation award.

3.2 Which tribunal resolves costs disputes and how?
The court hearing the case will decide the costs award.

The court will consider the following elements:

- the agreement between the parties
- the distribution of liability between the parties (that is, contributory liability)
- the evidence of actual costs
- whether there is other compensation that has already covered the loss.

3.3 Can a party be required to provide security for costs (or some other sum) in advance of costs being decided?
Yes.

4. Costs awards

4.1 Can interim awards of costs be obtained?
Yes, but not customary.

Chinese law does not prohibit interim cost awards, but they are not customary practice.

4.2 Can an award of costs be increased or decreased by reference to such matters as a party’s conduct of the case?
Yes.

4.3 How are costs awards enforced?
Costs are awarded at the court’s discretion. There is no prohibition against courts taking party conduct into account, but it is not customary practice.

4.4 Can a costs award be set off against a monetary judgment?
Yes.

5. Costs of an appeal

5.1 Are costs of an appeal treated differently?
Yes.

In accordance with the general provisions in the “Litigation Fee Charging Guidance” of every province, where an appellate court overturns a lower court judgment, it will also reverse the award of costs.

There are no specific provisions for recovery of other costs of appeals. Typically, though, at the court’s discretion, the successful party to an appeal may seek to recover any additional costs incurred as a result of the appeal.

6. Funding of civil and commercial claims

6.1 Can costs be insured?
Yes, but rare.

However, whereas Chinese law does not prohibit insurance of legal fees and expenses, such insurance is rare.

6.2 Is legal aid available?
Yes.

Public funding in the form of free legal representation is available in narrow circumstances.

Judicial aid is available to claimants who cannot afford court fees to claim damages for personal injuries. Public funding is also...
available when seeking compensation from the state or when seeking compensation from a tortfeasor in relation to a death resulting from product liability.

6.3 Is third party funding of claims available?
Third party funding is not a concept practiced commonly in China, although it is not expressly prohibited by law.

Contributed by:
Lovells LLP (Shanghai).
1. Recoverability of costs

1.1 Can costs be recovered by a party to civil litigation?
Yes.

(Note: litigation costs also include fees for lawyers or other persons whose right to fees is recognised by law).

1.2 Does the losing party usually pay the successful party’s costs?
Yes.

A party that is entirely unsuccessful in the action is obliged to pay the costs of the counterparty and its “intervener” (a third party joined by one of the parties to the proceedings).

Where a party is partially successful, the court may, taking into consideration the success achieved, order that each party bears their own costs or that one party pays the other and the intervenor in a proportionate amount.

The court may decide that one party should pay all the costs incurred by the counterparty and its intervenor if the counterparty is only unsuccessful in part of its claim and no special costs arose in relation to that part.

1.3 Can costs be ordered to be paid to, or by, a non-party?
No.

2. Details of recoverability of costs

2.1 On what basis are costs recoverable?
Costs of representation, that is, lawyers’ fees are determined pursuant to the Tariff of the Croatian Bar Association (the “Tariff”).

The court determines and recognises the costs at the request of the party pursuant to the Tariff.

The costs relating to court charges are determined by the court pursuant to the Court Charges Act (Official Gazette 74/95, 57/96, 137/02 and 26/03) and the successful party will recover the costs incurred by it in a particular matter.

The costs in a case are determined by the same tribunal which decides on the merits of that case. However, the awarding of costs is not in the courts’ unfettered discretion as the court must act in line with the Tariff or Court Charges Act at all times.

2.2 Is the amount of recoverable costs fixed?
No.

Recoverable costs also include court and other charges and these cannot be predicted. However, the Tariff establishes a cost limit for certain of the lawyers’ actions.

2.3 Is the amount of recoverable costs calculated by reference to the amount in dispute?
Yes.

The court decides about the costs of the proceedings having regard to the amount in dispute (Court Charges Act/Tariff). Court charges are usually determined with reference to the amount in dispute, however, disbursements will not usually be included in that amount.

2.4 What can be recovered as “costs”?
In deciding what costs can be recovered the court shall consider only the costs that were necessary for the conduct of litigation. The lawyers’ fees are also recovered as “costs.”

<table>
<thead>
<tr>
<th>Category</th>
<th>Recoverable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lawyer – client fees</td>
<td>Yes</td>
</tr>
<tr>
<td>Additional lawyer fees (for example, counsel fees or trial advocate fees)</td>
<td>Yes</td>
</tr>
<tr>
<td>Agency fees (for example, London agents, local agents, appellate lawyer, bailiff/process-server)</td>
<td>Yes</td>
</tr>
<tr>
<td>Court fees</td>
<td>Yes</td>
</tr>
<tr>
<td>Disbursements (including, but not limited to, photocopying, expert witness, travel, translation, notarial, witness attendance etc.)</td>
<td>Yes</td>
</tr>
<tr>
<td>Other expenses</td>
<td>Yes (if necessary for the conduct of the litigation)</td>
</tr>
</tbody>
</table>

3. Particular costs issues

3.1 Can a party agree with its own lawyer, a special costs arrangement?
Yes.

A lawyer may agree a flat amount for rendering legal assistance to legal or self-employed entities except for representation before the court and government authorities.

The agreement on rendering legal assistance for a flat amount is concluded in writing and must contain a description of the work or tasks to be performed for a party by the lawyer.

The agreement also has to be notified to the Croatian Bar Association by the lawyer.

The lawyer and the client may agree upon the amount of the fee for the lawyer’s work. The agreement is only valid if it is made in writing.
Such agreement is not binding on the court when it is deciding on the awarding of costs to the successful party.

3.2 Which tribunal resolves costs disputes and how?
A costs order can be disputed by an appeal against the decision. If the judgment on the merits of the case is also disputed then the costs appeal will form part of that appeal.

The appeal court will decide such cases.

The appeal court deciding the costs appeal can:

- reject the appeal as undue, incomplete or inadmissible; or
- refuse the appeal as unfounded and confirm the first instance decision; or
- adopt the appeal and change or overrule the decision and, if necessary, instruct the first instance court to repeat the judicial proceedings.

3.3 Can a party be required to provide security for costs (or some other sum) in advance of costs being decided?

Yes.

Where a party requests the hearing of evidence it will be obliged by order of the court to deposit in advance an amount sufficient for the settlement of any costs likely to arise on the hearing of that evidence.

If the hearing of evidence is requested by both parties, or if the court orders the hearing of evidence ex officio, the court may determine that either party or both parties in equal measures deposit in advance an amount sufficient for the settlement of any costs likely to arise on the hearing of that evidence.

If the court hears evidence despite non-payment of the required advance amount it will order the party who requested the hearing of that evidence to pay the necessary amount direct to the witness or expert witness. Any appeal against such an order will not postpone enforcement.

The court will abstain from the hearing of evidence if the amount necessary for the settlement of costs is not deposited in the period determined by the court. In such a case the court will, at its discretion, having regard to all the circumstances, assess the implications of the failure of the party to deposit in due time the amount necessary for the settlement of costs.

Exceptionally, if the court orders the taking of evidence ex officio for the establishment of facts relating to the application of Article 3 paragraph 8 of the Litigation Act, and the parties fail to deposit the amount required, the costs for the hearing of evidence will be paid by the court.

Where a foreign citizen (which will include parties from the EEA) or a person without citizenship commences an action in the Republic of Croatia, he/she is obliged to give security for litigation costs at the defendant’s request (“cautio judicatum solvi”).

The defendant is obliged to request the security no later than at the preparation hearing and if there is no such hearing then at the first hearing on the merits of the case before the defendant’s cases is heard on its merits, that is, as soon as he becomes aware that the pre-requisites are fulfilled for the requesting of the security.

The security is usually given in cash but the court may approve other forms of security as well.

There are exceptions where the defendant is not entitled to security for litigation costs and these are set out in Article 170 of the Litigation Act (Official Journal 4/77, 36/77, 36/80, 69/82, 58/84, 74/87, 57/89, 20/90, 27/90, 35/91 and Official Gazette 53/91, 91/92, 58/93, 112/99, 126/00, 92/01, 117/03, 92/05, 02/07, 84/08, 96/08, 123/08).

4. Costs awards

4.1 Can interim awards of costs be obtained?

Yes.

In interim awards or partial verdicts the court may order that a decision on costs be left for the final judgment. However, when proceedings against a co-litigant are terminated the court will decide on any request for reimbursement of costs in its partial verdict, that is, prior to the final judgment.

Any party shall, regardless of the outcome of the litigation, compensate the opposing party with any costs incurred through the fault of the first party. The court will rule on these compensation costs during the litigation only when the right to reimbursement does not depend on a decision regarding the merits of the case.

4.2 Can an award of costs be increased or decreased by reference to such matters as a party’s conduct of the case?

Yes.

A party is obliged, irrespective of the outcome of the litigation, to pay the costs of the counterparty incurred through the fault of the former or by events brought about by the conduct of the former.

The court may decide that the legal representative or a person authorised by a party should pay the costs caused by his fault to the counterparty.

4.3 How are costs awards enforced?

Methods of costs collection are regulated by the Enforcement Act (Official Gazette 57/96, 29/99, 42/00, 173/03, 194/03, 151/04, 88/05, 121/05, 67/08).

The court fees that the court is obliged to charge to a party, if not paid voluntarily, are charged directly. Costs awards are enforced by the tax administration which seizes the account of
any party which fails to pay after having been requested to do so by the tax administration.

4.4 **Can a costs award be set off against a monetary judgment?**

Any monetary claim can be set off against another monetary claim if they are both due and of the same kind.

4.5 **Is interest payable on unpaid costs?**

Yes.

The court determines interest on legal costs from the date of final judgment.

Interest accrues from the due date and is regulated by Article 29 of the Law on Obligations (Official Gazette 35/05, 41/08).

5. **Costs of an appeal**

5.1 **Are costs of an appeal treated differently?**

Yes.

The costs of appeal are regulated by the Tariff.

For composing ordinary remedies against a judgment, lawyers are entitled to a fee that is 25% higher than the fee for proceedings at the lower court. For composing an appeal against a decision lawyers are entitled to a fee that is 25% higher than the fee for proceedings at the lower court.

6. **Funding of civil and commercial claims**

6.1 **Can costs be insured?**

Yes.

Legal expense insurance is regulated by Croatian insurance law, however, Croatian insurers do not tend to cover litigation costs unless the cover forms part of a separate insurance policy (for example, vehicle insurance).

Consequently, legal expense insurance is not very common and the only effective way of “securing” costs in Croatia is “cautio judicatum solvi” as outlined in question 3.3 above.

6.2 **Is legal aid available?**

Yes.

 Parties that cannot afford to pay the costs of representation before the court (provided that their inability to pay is proved) are entitled to free legal aid if that party so requests and it is necessary to protect his/her rights.

The actual costs of the appointed authorised representative are paid from the court’s funds and a lawyer representing a client funded by legal aid will also be able to claim repayment of his/her costs from his client’s opponent.

The court will carefully examine all relevant circumstances before deciding to release a party from their obligation to pay costs. It will particularly consider the value in dispute, the number of persons maintained by the party and members of his/her family.

Pro bono lawyers are appointed by the Croatian Bar Association upon a justified request from the party needing legal aid.

6.3 **Is third party funding of claims available?**

Third party funding is not regulated by Croatian law.

**Contributed by:**

Bogdanovic Dolicki & Partners (Lovells’ associated Zagreb office).

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1 Croatian law recognises two types of legal remedies: ordinary legal remedies and extraordinary legal remedies. Ordinary legal remedies include appeals from judgments and appeals from rulings, and are lodged against lower court decisions which are not final. Extraordinary legal remedies include appeals from judgments on questions of law, appeals from rulings on questions of law and the repeating of proceedings and are lodged from final decisions of higher courts.
1. Recoverability of costs

1.1 Can costs be recovered by a party to civil litigation?
The costs that may be recovered are set out in the Civil Litigation in Court Regulation of 2008, Appendix B, Part II, and include a wide range of costs for legal services, which are recoverable.

1.2 Does the losing party usually pay the successful party’s costs?
Yes.

Usually, the successful party to a dispute is entitled to recover his/her costs from the losing party. Nevertheless, this is not a strict rule, as the judge or court has a wide discretion as to which party is entitled to costs, and it may be the case that the judge decides that each party must pay its own costs. The conduct of the party is an important factor as well as any special circumstances of the case, in deciding whether to award costs and to whom. A claimant for example may not be able to recover for a successful claim that is vexatious and unnecessary. In one reported case the court awarded costs against the claimant due to the fact that she was only awarded nominal damages.

1.3 Can costs be ordered to be paid to, or by, a non-party?
No.

A non-party is not liable to pay costs to, nor is entitled to be paid costs by, any of the parties to the proceedings.

2. Details of recoverability of costs

2.1 On what basis are costs recoverable?
Subject to the provisions of any relevant law or rule, the costs of, and incidental to, any proceeding are at the discretion of the court or judge, who may award costs to either party to the proceedings as he/she may think fit. The recoverable costs are set out in a table in the Court Regulations in the form of a tariff, with the table detailing costs for each service in and out of court. However, it is at the discretion of the court or judge whether or not to award the full amount.

In addition, the following factors are taken into consideration when awarding costs:

- the other fees and allowances of the advocate (if any)
- the nature and importance of the cause or matter
- the amount involved
- the interests of the parties
- the fund (out of which the court may order the costs to be paid in the case of a party who will bear the costs being an executor, an administrator, or a trustee, and who has not unreasonably instituted or resisted legal proceedings) or persons to bear the costs
- the general conduct and costs of the proceedings
- all other circumstances.

2.2 Is the amount of recoverable costs fixed?
Yes.

There is a table in the Court Regulations fixing the amount that a lawyer may charge for each service in and out of court, and how much is recoverable. The table sets out in detail each service by description and the amount recoverable depending on the amount in dispute.

2.3 Is the amount of recoverable costs calculated by reference to the amount in dispute?
Yes.

As mentioned above, the table fixes the amount recoverable depending on the amount in dispute. The higher the scale, the higher the amount recoverable. The Court Regulations use a fixed scale in order to set the amount recoverable. The scale is as follows:

- lower than €500
- between €500 and €2,000
- between €2,000 and €10,000
- between €10,000 and €50,000
- between €50,000 and €100,000
- between €100,000 and €500,000
- between €500,000 and €2,000,000
- higher than €2,000,000.

2.4 What can be recovered as “costs”?
The term “costs” covers a wide range of legal services, such as initial advice for the commencement of proceedings, filing of defence, preparation and filing of writ of summons, drafting of the statement of claim, defence etc., appearance in court, preparation for a hearing and drafting of any documents to be filed with the Registrar, letters, applications, appearance in arbitration, examination of the case for an appeal etc. Note: costs may (where necessary) be taxed on award.

<table>
<thead>
<tr>
<th>Description</th>
<th>Recoverable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lawyer – client fees</td>
<td>Yes.</td>
</tr>
<tr>
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<td>Yes.</td>
</tr>
<tr>
<td>Court fees</td>
<td>Yes.</td>
</tr>
<tr>
<td>Disbursements (including, but not limited to, photocopying, expert witness, travel, translation, notarial, witness attendance etc.)</td>
<td>Yes (note: in every bill of costs the professional charges must be entered separately from the disbursements, and the two sets of items must be totalled separately in the bill).</td>
</tr>
</tbody>
</table>
Other expenses | The party enforcing a judgment or order shall be entitled to recover his costs of execution unless the court otherwise directs.

3. Particular costs issues

3.1 Can a party agree with its own lawyer, a special costs arrangement?

Yes.

The client may agree with its own lawyer any special cost arrangement. Note however that, if a lawyer makes an agreement with his client as to the fees to be paid to him by the client, such agreement does not affect the amount of or any rights or remedies for the recovery of any costs recoverable from the client by any other person, or payable to the client by any other person, and any such other person may require any costs, payable or recoverable by him to or from the client, to be taxed unless such person has otherwise agreed: provided always that the client who has entered into any agreement with his lawyer shall not be entitled to recover from any other person, under any order for the payment of any costs which are the subject of such agreement, more than the amount payable by the client to his own advocate under the same.

Contingency deals are not allowed.

3.2 Which tribunal resolves costs disputes and how?

The court is the competent tribunal for resolution of disputes as to costs. It examines the claim for review after the filing of an application.

3.3 Can a party be required to provide security for costs (or some other sum) in advance of costs being decided?

Yes.

A plaintiff (claimant) (and, in respect of a counter-claim which is not merely in the nature of a set off, a defendant) ordinarily resident out of Cyprus or out of an EU Member State, may, at any stage of the action, be ordered to give security for costs, though he may be temporarily resident in Cyprus or an EU Member State. Foreign workers with low income are exempt from any order for security for costs. In actions brought by persons resident out of Cyprus or out of an EU Member State, when the plaintiff’s claim is founded on a judgment or order or on a negotiable instrument, the power to require the plaintiff to give security for costs shall be in the discretion of the court. Where the court orders security for costs to be given it may stay the proceedings in the action until such security is given, and in the event of the security not being given within the time appointed, it may dismiss the action.

4. Costs awards

4.1 Can interim awards of costs be obtained?

No.

4.2 Can an award of costs be increased or decreased by reference to such matters as a party’s conduct of the case?

Yes.

The court or judge may, at the hearing of any cause or matter, or upon any application or proceeding in any cause or matter in court or at chambers, irrespective of whether they are being defended or not, direct the costs of any endorsement on a writ of summons, pleading, summons, affidavit, evidence, notice requiring a statement of claim, notice to produce, admit, or cross-examine witnesses, account, statement, procuring discovery, applications for time, bills of costs, service of notice of summons, or other proceeding, or any part thereof, which is improper, vexatious, unnecessary or contains vexatious or unnecessary matter, or is of unnecessary length, or caused by misconduct or negligence, to be disallowed, or may direct the taxing officer to look into the same and to disallow the costs thereof, or of such part thereof as he shall find to be improper, unnecessary, vexatious, or to contain unnecessary matter, or to be of unnecessary length, or caused by misconduct or negligence. In such case the party whose costs are so disallowed shall pay the costs occasioned thereby to the other parties.

Furthermore, where upon the trial of any cause or matter it appears that one cannot conveniently proceed by reason of the advocate or any party having neglected to attend personally, or by some other person on his behalf, or having omitted to give notice or deliver any papers or do any other act that was necessary, the advocate shall personally pay to all or any of the parties such costs as the court or judge shall think fit to award.

If in any case it shall appear to the court or judge that costs have been incurred either improperly or without any reasonable cause, or by reason of any undue delay in proceedings, or by any misconduct or default of the advocate, or any costs properly incurred have nevertheless proved fruitless to the person incurring them, the court or judge may call on the advocate of the person by whom such costs have been so incurred to explain why such costs should not be disallowed as between the advocate and his client, and also (if the circumstances of the case shall require) why the advocate should not repay to his client any costs which the client may have been ordered to pay to any other person. The court or judge may thereupon make such order as the justice of the case may require. Such notice (if any) of the proceedings or order is given to the client in such manner as the court or judge may direct.

4.3 How are costs awards enforced?

A party seeking to recover costs may (but shall not be bound to) serve upon the party from whom payment is sought a copy of the bill of costs with a demand for payment of the amount thereof. If payment is not made within seven days of the day on
which the copy of the bill of costs is served, the costs of service shall be considered as part of the costs.

4.4 Can a costs award be set off against a monetary judgment?
Yes, a set off for damages or costs between parties may be allowed.

4.5 Is interest payable on unpaid costs?
Yes.
Legal costs when awarded to a party by the court bear “legal” interest. Legal interest is currently prescribed by law at a rate of 5.5% per year from the day of filing the claim until final payment.

5. Costs of an appeal

5.1 Are costs of an appeal treated differently?
No.
The table in the Court Regulations sets the fixed amount for service in the case of an appeal as well. Note: where a party is ordered to pay the costs of any appeal, such costs do not, unless the court which heard the appeal or a judge thereof shall otherwise order, include any costs occasioned by the neglect of the appellant to specify in his notice of appeal the particular part of the judgment or order against which the appeal is made, and the Registrar in taxing any bill of costs may, when he has ascertained the particulars thereof, apply to the court for directions as to whether any of the costs claimed are to be considered as costs so occasioned.

6. Funding of civil and commercial claims

6.1 Can costs be insured?
No.
Insurance for litigation costs is not available in Cyprus.

6.2 Is legal aid available?
Yes.
The beneficiary of legal aid selects a lawyer from among those who are willing to offer their services. If the person does not designate a lawyer of his choice, the court which issued the legal aid certificate invites the beneficiary to choose the lawyer of his preference from a list of lawyers who are willing to provide legal aid services prepared by the Cyprus Bar Association. If the court issues a legal aid certificate, all of the costs are covered. Legal aid is available both at first instance and at appeal.

Any natural person (a Cyprus national or a foreign national) who can provide proof of his inability to pay his legal costs on the ground that paying the costs would restrict his ability to meet his basic needs and family obligations is entitled to legal aid. The court may withdraw the legal aid certificate, ex officio or at the request of the Attorney-General, if there is a substantial change in the personal and financial circumstances of the person. Withdrawal of the certificate does not affect the right of any lawyer to payment for services provided up to the date of the withdrawal.

6.3 Is third party funding of claims available?
No.
Funding of claims is provided by the parties to the legal proceedings and any court orders as to costs will be made for or against a party to the action (except for executors, administrators or trustees who have not unreasonably instituted or resisted legal proceedings, where the court has a discretion to order their costs to be paid out of a particular estate or fund).

Contributed by:
Dr. K. Chrysostomides & Co LLC.
1. **Recovery of costs**

1.1 **Can costs be recovered by a party to civil litigation?**

Yes.

The Czech Code of Civil Procedure refers to “náklady řízení” (costs), which covers (among others):

- the direct expenses of the parties and their representatives incurred in connection with the court proceedings
- court fees
- costs of obtaining evidence including witnesses’ travel costs, expert’s fees and costs of translation and interpretation
- legal fees.

1.2 **Does the losing party usually pay the successful party’s costs?**

Yes.

The general rule is that each party will initially bear its own direct expenses as well as the direct expenses of its representatives. The court will then rule on the reimbursement of the amounts borne by the parties depending on who wins the claim. In practice, a party which is successful in the litigation is generally awarded all costs reasonably incurred by it in order successfully to bring or defend (as the case may be) the relevant action. If a party is only partially successful, the court generally awards costs on a pro rata basis although it has considerable discretion in that regard and may still award full costs to one party only.

By way of exception to the general rule, the court may award full costs to the losing defendant if his conduct prior to the litigation did not give the plaintiff any reason to institute the action.

1.3 **Can costs be ordered to be paid to, or by, a non-party?**

No.

The general rule is that the losing party pays and the judge will not require a third party who is not directly connected to the dispute to pick up the costs, even if those costs were attributable to him. The only exception is with regard to “unnecessary costs” accrued in taking evidence. These unnecessary costs can be attributed to non-parties.

2. **Details of recoverability of costs**

2.1 **On what basis are costs recoverable?**

The Czech Code of Civil Procedure includes a cost-allocation rule according to which the losing party generally required to reimburse the costs of the proceedings to the successful party (see question 1.2 above). Evidence of travelling costs, lost pay and disbursements must be provided.

Legal representation costs are generally reimbursed according to a fixed tariff by reference to the amount of the claim (set out in Decree No. 484/2000 Coll.). If costs were manifestly unnecessarily incurred or the amount of recoverable costs available under Decree No. 484/2000 Coll. would be disproportionate to the nature of the proceedings, their length or the complexity of the legal advice required, the Decree No. 177/1996 Coll. may be applied in the court’s discretion. Decree No. 177/1996 Coll. applies by reference to the number of acts of the lawyer. What comprises an “act” is stated in the Decree. Examples include client meetings lasting more than one hour, pre-trial preparation, each written submission to the court and each presentation to the court lasting more than two hours.

The court has a discretion in this respect to determine a party’s proportion of success or failure in the case which may be influenced by the following overriding factors:

- for a partial victory, the court tends to divide the recoverable costs proportionally or does not permit either party to receive reimbursement
- in specific cases where the defendant is not responsible for his loss, he may have his costs reimbursed by the successful claimant (for example, where a property owner requires court approval to terminate a tenancy, the tenant is not responsible for the loss of the landlord pending approval, or such other cases prescribed by law)
- only exceptionally, recovery of costs is provided for in proceedings related to marriage, partnership or divorce;
- only reasonable costs are reimbursed
- if there are overriding reasons to do so, the court may partially or wholly refuse to award costs.

The court will then affect the amount of recoverable costs (including but not limited to the amount calculated under whichever Decree applies) by the proportion of success of the winning party, or any other relevant considerations in the court’s discretion (as above).

2.2 **Is the amount of recoverable costs fixed?**

Yes.

As above, costs are reimbursed primarily according to Decree No. 484/2000 Coll. (by reference to the value of the claim). The tariff itself is set out in response to question 2.3.

2.3 **Is the amount of recoverable costs calculated by reference to the amount in dispute?**

Yes.

With regard to lawyers’ fees recovered under Decree No. 484/2000 Coll., the following calculations apply:

<table>
<thead>
<tr>
<th>Value of claim</th>
<th>Recoverable costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to CZK 1,000</td>
<td>CZK 4,500</td>
</tr>
<tr>
<td>CZK 1,000 – CZK 5,000</td>
<td>CZK 6,000</td>
</tr>
<tr>
<td>CZK 5,000 – CZK 10,000</td>
<td>CZK 9,000</td>
</tr>
</tbody>
</table>
At what cost? A Lovells multi jurisdictional guide to litigation costs

Czech Republic

The Decree No. 484/2000 Coll. also prescribes specific tariffs for certain types of claim (in substitution for the values set out in the table above), which include among others:

- actions seeking a declaration whether a certain right or obligation exists
- alleged privacy or personal data violations
- where the value of the claim is unascertainable.

When assessing the value of the claim, factors such as interest and other related revenues are not taken into consideration.

The final amount of costs recoverable under the Decree No. 484/2000 Coll. is then subject to a consideration of the number of acts of the lawyer, the complexity of the case and other factors. This may result in the tariff amount being decreased or increased in the court’s calculation of the final amount of costs recoverable under the Decree. It is this amount which is then added to all other recoverable costs and expenses and is subject to the further discretion to reduce the total proportionally, as described in question 2.1 above.

If the recoverable costs of legal representation are calculated on the basis of Decree No. 177/1996 Coll. (on the basis of the number of acts of the lawyer), the following calculations apply:

<table>
<thead>
<tr>
<th>Tariff value of claim</th>
<th>Recoverable costs for each act</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to CZK 500</td>
<td>CZK 300.</td>
</tr>
<tr>
<td>CZK 500 – CZK 1,000</td>
<td>CZK 500.</td>
</tr>
<tr>
<td>CZK 1,000 – CZK 5,000</td>
<td>CZK 1,000.</td>
</tr>
<tr>
<td>CZK 5,000 – CZK 10,000</td>
<td>CZK 1,500.</td>
</tr>
<tr>
<td>CZK 10,000 – CZK 200,000</td>
<td>CZK 1,500 plus CZK 40 for every CZK 1,000 (or part thereof) exceeding CZK 10,000.</td>
</tr>
</tbody>
</table>

As a general rule, the tariff value of a claim is the amount of a pecuniary claim or the value of the property or right (including accessories – interest on late payments etc) specified in the claim. However, specific tariff values apply to certain types of claim.

Disbursements such as correspondence, photocopying, fax, telephones and other administrative costs are recovered by way of a CZK 300 “flat fee.”

2.4 What can be recovered as “costs”?

<table>
<thead>
<tr>
<th>Lawyer – client fees</th>
<th>Yes, but see the limitation above.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Additional lawyer fees (for example, counsel fees or trial advocate fees)</td>
<td>No. These will be considered as lawyer’s fees irrespective of the size of the client team, all lawyers’ fees are subject to the limitation.</td>
</tr>
<tr>
<td>Agency fees (for example, London agents, local agents, appellate lawyer, bailiff/process-server)</td>
<td>These will be considered as lawyer’s fees (see above).</td>
</tr>
<tr>
<td>Court fees</td>
<td>Yes.</td>
</tr>
<tr>
<td>Disbursements (including, but not limited to, photocopying, expert witness, travel, translation, notarial, witness attendance etc.)</td>
<td>Yes.</td>
</tr>
<tr>
<td>Other expenses</td>
<td>Yes.</td>
</tr>
</tbody>
</table>

3. Particular costs issues

3.1 Can a party agree with its own lawyer, a special costs arrangement?

Yes.

The remuneration of lawyers is usually agreed upon either an hourly rate basis or as a success fee. Both types are commonly used in practice. However, the Ethical Code of the Czech Bar Association sets a limit of 25% of the value of the subject matter of the dispute for the agreed success fee.
3.2 Which tribunal resolves costs disputes and how?
Costs are assessed in the main proceedings; however, the decision can be issued separately. The amount of the costs can be challenged in appellate proceedings.

3.3 Can a party be required to provide security for costs (or some other sum) in advance of costs being decided?
Yes, if an order for security of costs is sought by a party or issued by the court.

In exceptional circumstances, a party may seek an order for security of costs by preliminary injunction. Subject only to the rare exceptions of abuse of law or other manifest impropriety, the court is then required to impose a duty on a party to make a deposit in respect of the costs of obtaining any evidence proposed by such party or ordered by the court regarding the facts alleged by such party or in his interest.

4. Costs awards

4.1 Can interim awards of costs be obtained?
Yes, but only for costs unnecessarily caused.

Anyone who incurs costs in relation to an interim ruling (for example, a preliminary injunction) sought by a claimant may claim damages (that is, which is not the same as legal costs) if the interim measure (for example, preliminary injunction) ceases or is cancelled and the proceedings either do not start or the claimant is not successful in the later proceedings. In these situations, the claimant seeking the interim measure is required (with some minor exceptions) to provide advanced security for such damages, currently in a fixed amount of CZK 10,000 and CZK 50,000 in commercial matters. At any stage of proceedings, the court may order a party to reimburse costs incurred by the other party due to the fault of the former on the basis that they were unnecessary.

However, otherwise, the court can only award costs in its final decision. The costs of an interim application are only awarded separately if the application is dismissed, the proceedings relating to the interim application are discontinued or the application is rejected by the court.

4.2 Can an award of costs be increased or decreased by reference to such matters as a party’s conduct of the case?
Yes, but only with regard to the payment of unnecessary costs.

The court may order a party to reimburse costs incurred by the other party which may have been incurred unnecessarily due to the fault of the former.

4.3 How are costs awards enforced?
Costs awards are enforced in the same way as any other pecuniary awards – by attachment of wages, attachment of bank accounts, garnishment, attachment of personal property, attachment of real property, judicial lien or forced sale of an enterprise.

4.4 Can a costs award be set off against a monetary judgment?
Yes, pursuant to Article 580 of the Civil Code.

4.5 Is interest payable on unpaid costs?
No.

5. Costs of an appeal

5.1 Are costs of an appeal treated differently?
No.

The only exceptions from the general scheme apply to specific cases, for example, where the appeal is dismissed on the grounds that it was filed by a person who was not authorised to do so or that it attempts to appeal against a decision which cannot be appealed, or where the only issue of the appeal is the amount of recoverable costs.

6. Funding of civil and commercial claims

6.1 Can costs be insured?
Yes.

Before the event ("BTE") insurance known as legal expenses insurance is permitted for individuals or companies, but is not very widespread. The most common coverage is for civil liability for road traffic accidents.

After the event ("ATE") insurance is also permitted for individuals or companies but is not widely used.

6.2 Is legal aid available?
Yes.

The Czech Bar Association may, in reasonable cases, arrange free or discounted legal representation.

Moreover, a person who is awarded exemption from the obligation to pay the costs of the proceedings may ask the court to provide him with a lawyer whose costs are borne by the State.

6.3 Is third party funding of claims available?
Yes.

Loans or grants from banks or trade associations are permitted since there is no legal regulation forbidding this type of funding.

Funding from a lawyer or other third party investor is also permitted unless it breaches a mandatory provision binding on the relevant investor (such as duties relating to conflicts of interest or professional care).

Notwithstanding the above, most proceedings are funded by the parties themselves.

Contributed by:
Lovells (Prague) LLP.
1. Recoverability of costs

1.1 Can costs be recovered by a party to civil litigation?
Yes.

1.2 Does the losing party usually pay the successful party’s costs?
Yes.

Normally the successful party is awarded costs from the other party. Similarly, a third party may be awarded costs, but only if that third party has been party to and has been involved actively in the litigation proceedings, that is actively involved by third party notice (in Danish: adcitation) or by head-intervention. Any third party who is not party to the litigation proceedings and thus has not been actively involved in the proceedings cannot recover costs.

1.3 Can costs be ordered to be paid to, or by, a non-party?
No.

2. Details of recoverability of costs

2.1 On what basis are costs recoverable?

Normally the successful party is awarded costs from the other party.

The court stipulates a fixed amount in the judgment covering the positive (that is, actual cost or disbursement, as opposed to lawyers’ fees or court fees) costs of the successful party (for example, translation costs or witness expenses). These costs are in general recovered in full, but the successful party must inform the court of these positive costs in order for the court to award them; however, the court deals with the matter of recovering court fees on its own initiative.

The losing party will also have to reimburse the other party’s lawyers’ fees. This is, however, at the court’s discretion, subject to the rule that the reimbursement is for a suitable fee and generally based on the High Court’s guidelines for standardised rates according to the amount in dispute. The awarded suitable fee is somewhat low and most often does not at all correspond to the actual lawyers’ fees paid. Thus, the prevailing party must expect to recover its lawyers’ fees only in part.

It should be noted that in special circumstances the court may rule that each party should bear their own costs, or that the successful party will only recover part of his/her costs. A typical example of this would be if the prevailing party is only awarded, say, 50% of the amount in dispute.

Payment of an order for costs is due 14 days after the date of the judgment or order.

2.2 Is the amount of recoverable costs fixed?
Yes, partly.

Positive costs are recovered in full and therefore the amount recoverable is dependent on the individual case. Lawyers’ fees are awarded based on standardised rates according to the amount in dispute.

2.3 Is the amount of recoverable costs calculated by reference to the amount in dispute?
Yes.

Lawyers’ fees are awarded based on standardised rates according to the amount in dispute.

2.4 What can be recovered as “costs”?
The awarded costs cover any court fees (and fees to a court appointed expert) as well as any other positive costs paid by the successful party in order to ensure proper conduct of the case and in addition a standardised amount covering the successful party’s lawyers’ fees.

<table>
<thead>
<tr>
<th>Item</th>
<th>Option</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lawyer – client fees</td>
<td>Yes</td>
</tr>
<tr>
<td>Additional lawyer fees (for example, counsel fees or trial advocate fees)</td>
<td>No</td>
</tr>
<tr>
<td>Court fees</td>
<td>Yes</td>
</tr>
</tbody>
</table>

The awarded costs include any court fees.
Disbursements (including, but not limited to, photocopying, expert witness, travel, translation, notarial, witness attendance etc.)

As a general rule, the extent that a cost other than court fees and lawyers’ fees has been necessary to conduct the case properly, such cost can be expected to be recovered in full. Such costs would normally be translation costs incurred in connection with proceedings, fees to a court appointed expert, and witness expenses. However, the general rule has to be understood in a restricted sense as some types of positive expenses are not recoverable. For example, photocopying and travel expenses are not recoverable as they are considered to be included in the standardised lawyers’ fees. Therefore, in practice, the prevailing party is not guaranteed recovery of all positive costs.

3. Particular costs issues

3.1 Can a party agree with its own lawyer, a special costs arrangement?

Yes.

Lawyers are allowed to agree to represent clients on a “no win, no fee” basis, flat fee basis and cost plus success fee basis. Lawyers are not allowed to agree on a fee structure where the fee is based on a percentage of the amounts recovered (prohibition of “pactum de quota litis”). Code of Conduct for the Danish Bar and Law Society section 3.3.1.

3.2 Which tribunal resolves costs disputes and how?

Any cost decision rendered by a district court (first instance) above DKK 10,000 can be appealed to the High Court. Cost decisions at or below DKK 10,000 cannot be appealed unless special exemption is made by the Danish Board of Appeal Permission.

Cost decisions rendered by a High Court or the Maritime and Commercial Court of Copenhagen cannot be appealed to the Supreme Court unless special exemption is made by the Danish Board of Appeal Permission.

3.3 Can a party be required to provide security for costs (or some other sum) in advance of costs being decided?

Each party must bear their own costs during the proceedings, unless otherwise agreed between the parties. Costs payable by the losing party will not be due until 14 days after the court has rendered its judgment. However, an exception to this will apply in the somewhat rare cases of interim awards of costs in connection with the appeal of a court order regarding formal disputes during the proceedings.

Non-EU claimants may be required to put up security for legal costs upon request from the defendant. However, this requirement may not be applicable due to certain provisions of bilateral trade treaties. For instance, such a bilateral trade treaty has been agreed between Denmark and the US, and consequently US citizens and US companies will not be required to put up security.

4. Costs awards

4.1 Can interim awards of costs be obtained?

In general, no, but there are exceptions.

Each party must bear their own costs during the proceedings until the court has rendered the judgment and awarded costs to the prevailing party.

However, on rare occasions costs can be awarded in connection with the appeal of a court order relating to formal procedural disputes during the proceedings.

4.2 Can an award of costs be increased or decreased by reference to such matters as a party’s conduct of the case?

No. But the court will only award costs that have been necessary to secure proper conduct of the case.

4.3 How are costs awards enforced?

Costs are enforced the same way as the judgment.

Enforcements are subject to a charge in accordance with Chapter II of the Court Fees Act.

4.4 Can a costs award be set off against a monetary judgment?

Off-setting of the costs award will be subject to general Danish law on off-set.

If the costs award and the monetary judgment relate to the same matter, the costs award and the monetary judgment will be considered to be connected and off-setting will most likely be possible.

4.5 Is interest payable on unpaid costs?

Yes.

Pursuant to the Danish Interest Rates Act interest is payable on costs that have not been paid within the deadline fixed by the court (typically 14 days after the judgment). The rate is the official lending rate as fixed by the Bank of Denmark every 1 January and 1 July plus seven per cent.
5. Costs of an appeal

5.1 Are costs of an appeal treated differently?
No.

6. Funding of civil and commercial claims

6.1 Can costs be insured?
Yes.

Before the event legal expense insurance (“LEI”) is incorporated in many types of insurance for individuals and most households will have LEI. These do not cover disputes in the area of family law, marriages, adoption and estates. LEI is available for businesses, but is less frequent.

Where the costs are funded by insurance, the party must be represented by a lawyer. The lawyers’ fees will generally be fixed in accordance with the standardised High Courts’ guidelines for a reasonable fee.

After the event insurance is not widely used in Denmark.

6.2 Is legal aid available?
Yes.

Legal aid from the state is available to individuals who do not have legal expense insurance and have an annual income (that is, gross income) below a certain limit.

Legal aid in court proceedings covers court costs, an appointed lawyer, costs of expert opinions and witnesses, and exemption from paying the legal fees of the opponent if the case is lost. Free legal aid can be limited to one or more of the elements mentioned above. Legal advice outside court proceedings covers free legal advisory committees, where a person can receive verbal advice concerning ordinary legal matters and public legal aid through lawyers where a person can obtain help from a lawyer, on payment of a nominal amount. In most towns, the local lawyers have established a free legal advisory committee, where a person can receive verbal advice concerning ordinary legal matters. The advice is free of charge and is given without regard to income level.

Legal aid is conditional upon the case being of the types listed in the Administration of Justice Act section 327, or if the individual in the opinion of the granting authority has good grounds to litigate (section 328).

Furthermore, free legal aid will normally not be granted for libel actions, in cases deriving from the applicant’s commercial activities, in cases concerning claims deriving from a criminal case, and in cases concerning enforcement of undisputed claims.

6.3 Is third party funding of claims available?
Yes, but in limited circumstances.
Dubai – United Arab Emirates
Dubai Courts

1. Recoverability of costs

1.1 Can costs be recovered by a party to civil litigation?
Yes (but, only to a limited extent, see question 1.2 below).

1.2 Does the losing party usually pay the successful party’s costs?
Yes (but, only to a limited extent, see below).

The general rule is that the losing party will be ordered to pay legal costs and expenses. (See Article 133(2) of the Civil Procedure Law (Federal Law No 11 of 1992 as amended)).

However, in practice legal costs are limited between AED 1,000 to AED 2,000. Court fees, on the other hand, are recoverable from the losing party but not from the court itself.

1.3 Can costs be ordered to be paid to, or by, a non-party?
No.

2. Details of recoverability of costs

2.1 On what basis are costs recoverable?
Discretionary.

Article 133(1), Civil Procedure Law – “When judgment is issued at the end of the case, the court must, at its own discretion, make an order as to costs of the action.”

2.2 Is the amount of recoverable costs fixed?
No.

Recoverable legal fees are generally between AED 1,000 to AED 2,000. This is a matter of practice rather than one of law.

2.3 Is the amount of recoverable costs calculated by reference to the amount in dispute?
Yes.

Court fees are calculated as a percentage of the value of the claim. In the Dubai Courts, fees range from between five per cent and seven and a half per cent of the value of the claim up to a maximum of AED 30,000.

2.4 What can be recovered as “costs”?

Lawyer – client fees  Yes, but only a nominal amount is recovered in practice, rarely exceeding AED 2,000 regardless of the fees incurred. Article 133(2) of the Civil Procedure Law.

Additional lawyer fees (for example, counsel fees or trial advocate fees)

Legal consultants’ fees are not recoverable. Legal consultants are individuals who deal largely with transactional work which does not require court appearance. Only Advocates, generally UAE nationals, are licenced to appear in court and advocacy fees are recoverable (token amount as discussed above).

Agency fees (for example, London agents, local agents, appellate lawyer, bailiff/process-server)
No.

Court fees
Yes – See below.

Disbursements (including, but not limited to, photocopying, expert witness, travel, translation, notarial, witness attendance etc.)

Translation charges are not recoverable, even if the substantive claim succeeds. Experts’ fees are recoverable.

Only written submissions are accepted by the court; witnesses do not attend although there can be exceptions to this. As such, disbursements for travel and witness attendance are generally not recoverable.

Other expenses

Court expert fees (if the court expert is appointed) are recoverable. These fees are usually split between the parties, but can be charged to one party or the other depending on who requested the appointment of an expert.

All documents must be translated into Arabic before submission to the court: translation charges are typically AED 100 per page. These charges are not recoverable.

3. Particular costs issues

3.1 Can a party agree with its own lawyer, a special costs arrangement?
Yes, but this is limited.
Article 24 of the UAE Federal Law No. (9) of 1980 in relation to regulating the legal profession states that a lawyer is not entitled to ask for contingency fees.

Contingency fees on a “no win, no fee” basis are strictly speaking illegal in the UAE.

Legal fees are normally negotiated between clients and lawyers on a case by case basis, but parties must be prepared to bear their own costs as only a nominal amount is recoverable (see above).

3.2 Which tribunal resolves costs disputes and how?
There are no costs disputes or separate costs awards in the Dubai Courts as the total costs are determined by the court at the end of litigation in the final judgment. Generally, if the claimant is successful he or she will get their filing fee and a nominal amount (see above) in costs.

3.3 Can a party be required to provide security for costs (or some other sum) in advance of costs being decided?
No.

There are no costs to be paid by a party as security before the end of the litigation. However, it is possible to attach assets to secure a claim.

4. Costs awards
4.1 Can interim awards of costs be obtained?
No.

Interim awards of costs are not made because the costs are determined at the end of litigation in the final judgment.

4.2 Can an award of costs be increased or decreased by reference to such matters as a party’s conduct of the case?
Yes.

Article 134 of the Civil Procedure Law: “The court may order all or part of the costs against the party in favour of whom judgment has been passed if he has caused unnecessary expense or kept his adversary in ignorance of important documents or their content.”

4.3 How are costs awards enforced?
The Dubai Courts do not issue separate costs awards, because they are part of the overall judgment amount enforced through the Execution Court.

4.4 Can a costs award be set off against a monetary judgment?
Not applicable, because the Dubai courts do not issue separate costs awards.

4.5 Is interest payable on unpaid costs?
Generally no, however interest is usually awarded on the principal amount of a judgment. The amount of interest is usually no more than nine per cent per annum for civil cases and 12% for commercial cases.

5. Costs of an appeal
5.1 Are costs of an appeal treated differently?
No – they are dealt with similarly.

The costs for appeals are dealt with similarly to the Court of First Instance cases. If the appellant is successful, he or she will be able to recover the courts fees for filing the appeal.

Further court fees are payable on an appeal to the Court of Appeal. The court fees for the Dubai Court of Appeal (paid by an appellant) are one and a half per cent of the claim amount, with a maximum of AED 6,000. A further fixed fee of AED 1,750 is payable on appeal to the ultimate appeal courts, being the Dubai Court of Cassation (also paid by the appellant).

6. Funding of civil and commercial claims
6.1 Can costs be insured?
Possibly as a private arrangement through an insurance company.

6.2 Is legal aid available?
There are no legal services provided to those in need of representation in civil matters but some legal aid is available in criminal cases (very limited application).

6.3 Is third party funding of claims available?
Currently, there is no law that prohibits third party funding of claims.

Contributed by:
Hadef & Partners.
Dubai – United Arab Emirates
Dubai International Financial Courts (DIFC)

1. Recoverability of costs

1.1 Can costs be recovered by a party to civil litigation? Yes.

1.2 Does the losing party usually pay the successful party’s costs? Yes.

The general rule is that the losing party will be ordered to pay the costs of the successful party; but the court may make a different order as well. (Rules of the DIFC Courts (“RDC”) Rules 38.6 and 38.7.)

1.3 Can costs be ordered to be paid to, or by, a non-party? Yes.

RDC 38.68: “Where the court is considering whether to exercise its power to make a costs order in favour of or against a person who is not a party to proceedings:

● that person must be added as a party to the proceedings for the purposes of costs only
● he must be given a reasonable opportunity to attend a hearing at which the court will consider the matter further.”

“However, RDC 38.68 does not apply:

● where the court is considering whether to make a wasted costs order
● in proceedings to which Rule 38.66 applies.” (RDC 38.69).

RDC 38.66: “The general rule is that the court will award the person against whom the order is sought his costs:

● of the application
● of complying with any order made on the application.”

2. Details of recoverability of costs

2.1 On what basis are costs recoverable? Discretionary.

RDC 38.6: “The Court has discretion to:

● whether costs are payable by one party to another
● the amount of those costs
● when they are to be paid.”

RDC 38.8: “In deciding what order (if any) to make about costs, the Court must have regard to all the circumstances, including:

● the conduct of all the parties
● whether a party has succeeded on part of his case, even if he has not been wholly successful
● any payment into court or admissible offer to settle made by a party which is drawn to the Court’s attention and which is not a Part 32 offer.”

RDC 38.18: “Where the Court is to assess the amount of costs (whether by immediate or detailed assessment) it will assess those costs:

● on the standard basis; or
● on the indemnity basis, but the court will not in either case allow costs which have been unreasonably incurred or are unreasonable in amount.”

2.2 Is the amount of recoverable costs fixed? Yes.

In certain cases only. See RDC Part 39 – Fixed Costs.

2.3 Is the amount of recoverable costs calculated by reference to the amount in dispute? Yes – as part of the court’s discretion.

RDC 38.24(2): “The Court must have regard to... (2) the amount or value of any money or property involved.”

2.4 What can be recovered as “costs”? See RDC 38 – General rules about costs.

Lawyer – client fees Yes.

Additional lawyer fees (for example, counsel fees or trial advocate fees) Yes.

Agency fees (for example, London agents, local agents, appellate lawyer, bailiff/process-server) Yes.

Court fees Yes.

Disbursements (including, but not limited to, photocopying, expert witness, travel, translation, notarial, witness attendance etc.)

Other expenses All documents must be translated into English before submission to the DIFC courts; translation charges are typically AED 100 per page. These charges are recoverable.

3. Particular costs issues

3.1 Can a party agree with its own lawyer, a special costs arrangement? Yes.

Currently there is nothing in the Rules of the DIFC courts that prevents conditional or contingency fees. However, this may be
amended in the future with a practice direction from the Chief Justice of the DIFC courts.

3.2 Which tribunal resolves costs disputes and how?
RDC 40.3: “The Registrar or a judicial officer of the court appointed for the purpose by the Chief Justice under Article 14 of the Court Law has all the powers of the Court when making a detailed assessment.”

The procedure for commencing a detailed assessment under the DIFC court rules is similar to the English legal system and is found in RDC 40.5 through RDC 40.10 (inclusive).

3.3 Can a party be required to provide security for costs (or some other sum) in advance of costs being decided?
Yes.

If order for security of costs is sought by the claimant.


4. Costs awards

4.1 Can interim awards of costs be obtained?
Yes.

RDC 38.31: “The general rule is that the court should make an immediate assessment of the costs:

- at the conclusion of any hearing, which has lasted no more than one day, in which case the order will deal with the costs of the application or matter to which the hearing related. If this hearing disposes of the claim, the order may deal with the costs of the whole claim
- in hearings in the Court of Appeal to which Rule 44.166 applies which are:
  - Contested Directions Hearings
  - Other applications at which the respondent is present
  - Appeals from case management decisions
  - Appeals for one day or less.”

4.2 Can an award of costs be increased or decreased by reference to such matters as a party’s conduct of the case?
Yes.

RDC 38.24(1): “The court must also have regard to the conduct of all the parties, including in particular:

- conduct before, as well as during, the proceedings
- the efforts made, if any, before and during the proceedings in order to try to resolve the dispute.”

4.3 How are costs awards enforced?
RDC 45.3: “A judgment creditor may enforce a judgment or order for the payment of money by any of the following methods:

- attachment of assets (whether present or future)
- execution against assets
- the appointment of a receiver.”

4.4 Can a costs award be set off against a monetary judgment?
RDC 38.14(1): “Where a party entitled to costs is also liable to pay costs the court may assess the costs which that party is liable to pay and either:

- set off the amount assessed against the amount the party is entitled to be paid and direct him to pay any balance; or
- delay the issue of a certificate for the costs to which the party is entitled until he has paid the amount which he is liable to pay.”

4.5 Is interest payable on unpaid costs?
Currently there is nothing in the Rules of the DIFC courts that suggests interest is payable on unpaid costs. However, this may be amended in the future with a practice direction from the Chief Justice of the DIFC courts.

5. Costs of an appeal

5.1 Are costs of an appeal treated differently?
At the court’s discretion.

6. Funding of civil and commercial claims

6.1 Can costs be insured?
Yes.

Currently there is nothing in the Rules of the DIFC courts that prevents costs to be insured. However, this may be amended in the future with a practice direction from the Chief Justice of the DIFC courts.

6.2 Is legal aid available?
No.

However, the DIFC courts’ Pro Bono Programme was launched in September 2009. The Pro Bono Programme offers a range of services including basic advice to full case management and representation in proceedings. Legal representatives are selected from a register of volunteer lawyers.

Currently, the Federal or Dubai Governments does not provide funding for this programme and it is entirely based on volunteer lawyers.

6.3 Is third party funding of claims available?
Yes.

Currently, there is nothing in the Rules of the DIFC courts that prevents third party funding. However, this may be amended in the future with a practice direction from the Chief Justice of the DIFC courts.

Contributed by:
Hadef & Partners.
Eastern Caribbean States (including British Virgin Islands)

1. Recoverability of costs

1.1 Can costs be recovered by a party to civil litigation?

Yes, costs are generally recoverable on the basis that prima facie they are paid by the losing party. The system is in part modelled on the English Civil Procedure Rules.

As in England, the court may make issue based orders, or order a person to pay the costs for specific stages in the proceedings. In determining such matters, the court will have regard to the parties’ conduct, the manner in which an allegation or issue was pursued, whether a party succeeded on particular issues, even if not wholly successful, the extent to which it was reasonable for a party to raise a particular issue or allegation, and whether the claimant gave notice of intention to issue proceedings.

The regime enables costs offers to be made, with consequences attached, pursuant to specific rules modelled loosely on the English principles in Calderbank v Calderbank.

In relation to interlocutory applications, the same principles apply although the Rules (CPR 65.11) specifically provide that where the application is:

- an application to amend a statement of case; or
- an application to extend time; or
- an application for relief from sanctions; or
- an application which could reasonably have been made at a Case Management Conference,

then the court “must” order the applicant to pay the costs unless there are special circumstances.

1.2 Does the losing party usually pay the successful party’s costs?

Yes.

Generally the successful party recovers costs from the losing party in the action (or in some instances the losing party in relation to an issue or specific applications where special rules may apply). There is scope for adverse costs orders against third parties.

In general, a defendant can also expect to recover its costs if:

- it persuades the court to make an issue based order; or
- it beats an offer or payment made under Parts 35 and 36 of the Civil Procedure Rules 2000.

1.3 Can costs be ordered to be paid to, or by, a non-party?

Yes, but only in limited circumstances.

These include where a third party is affected by an order for sale or for disclosure of certain information.

2. Details of recoverability of costs

2.1 On what basis are costs recoverable?

Depending on the circumstances costs may be quantified in one of four ways: “fixed costs”, “prescribed costs”, “budgeted costs”, or “assessed costs.” In most commercial cases costs will be quantified under the prescribed costs regime which is based on the value of the claim.

The court has power to vary the tariff if the case has no monetary value or if the circumstances justify calculation on the basis of a higher or lower value. Where a case concludes prior to trial, then a percentage of the prescribed costs will be recoverable.

Where the claim is not for a monetary sum, it is presumed that the value of the claim is EC$50,000 (or, by convention, US$50,000 in the BVI) unless the court otherwise orders. That would produce a maximum costs recovery of EC$14,000 which is a relatively low sum.

For procedural applications, costs are assessed in an amount considered by the court to be fair and reasonable (but must not exceed one-tenth of the amount of the prescribed costs appropriate to the claim unless there are special circumstances) unless the court otherwise orders.

The prescribed costs regime was obviously intended to promote proportionality and predictability. However, there is a growing recognition that it is completely unsuited to large commercial litigation. It is often characterised by gross under-recovery; as a result, there is a wealth of authority, some of it apparently irreconcilable, arising from attempts to ameliorate the effects of the regime, or to avoid it altogether.

For instance, on procedural applications, the court has held that it is not limited to awarding 10% of the prescribed costs but may, if appropriate, award say 200% or more of the prescribed costs applicable to the claim. In addition, the court has been persuaded to take the actual amount of costs incurred, and to work backwards in fixing a value to the claim. Arguments also abound in relation to what constitutes a “procedural application.”

More positively, in April 2009 the BVI became home to the Commercial Division of the ECSC. A draft Practice Direction has been circulated by the Resident Commercial Court Judge (a former English QC, Edward Bannister QC) which proposes the abolition of the fixed, budgeted and prescribed costs regimes in the Commercial Division, in favour of an English style assessment.

It is likely that these proposals will be accepted relatively soon, although it is not yet clear when. In addition to envisaging a summary assessment for matters taking less than a day, the proposal would make payments on account of costs more common place.

There is also a relatively wide jurisdiction for the court to make an order for budgeted costs which would limit the amount which may be recovered by the party entitled to prescribed costs, but this is...
not encountered often in EC states (at least in the BVI). The court may make such an order by consent but only if the relevant parties are bodies corporate. The budget may be varied by the court at any time prior to trial if there has been a change of circumstances.

2.2 Is the amount of recoverable costs fixed?
Yes, where the prescribed costs and budgeted costs procedures apply, as they serve to fix what may be recovered.

However, the court has power to award only a proportion of prescribed costs, or to award costs from or to a certain date or relating only to a distinct part of the proceedings, provided this is justified by reference to all the circumstances and having regard to matters such as the conduct of the parties and whether a party has succeeded on particular issues even if unsuccessful in the whole of the proceedings.

2.3 Is the amount of recoverable costs calculated by reference to the amount in dispute?
Yes in most commercial cases by reference to the prescribed costs system.

2.4 What can be recovered as “costs”?
Prescribed costs are expected to include all work required to prepare for trial including in particular: disclosure; witness evidence (including expert witnesses); and attendance and advocacy at trial including at any case management conference or pre trial review.

<table>
<thead>
<tr>
<th>Lawyer – client fees</th>
<th>Yes, pursuant to the prescribed costs system.</th>
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</thead>
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<tr>
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It has been held that where litigation does not have the BVI as its centre, it is reasonable, and indeed often more cost effective, to engage London lawyers to co-ordinate the litigation. There will be no issue with disbursements such as process servers.

| Court fees | Yes, pursuant to the prescribed costs system. |
| Disbursements (including, but not limited to, photocopying, expert witness, travel, translation, notarial, witness attendance etc.) | Yes, pursuant to the prescribed costs system. These can be recovered separately from fees as part of assessed costs awarded on procedural applications. |
| Other expenses | Yes, pursuant to the prescribed costs system. These can be recovered separately from fees as part of assessed costs awarded on procedural applications. |

3. Particular costs issues

3.1 Can a party agree with its own lawyer, a special costs arrangement?
Yes.

A lawyer can agree with the client to cap fees or to work without receiving payments on account. But, subject to argument over the import of the prescribed costs regime, there is no abrogation of the indemnity principle or of common law restraints through the law of champerty and maintenance.

3.2 Which tribunal resolves costs disputes and how?
The High Court (indeed, often, the very judge to have determined the main dispute (CPR65.12(1))). In some jurisdictions, these assessments may be dealt with by Masters.

In the BVI, where there is no resident Master, costs disputes are generally determined by the judge who dealt with the matter.

3.3 Can a party be required to provide security for costs (or some other sum) in advance of costs being decided?
Yes.

Generally only in two situations: payment of assessed costs on procedural or interim applications, or where security for costs
is ordered. Additionally, the Court of Appeal has jurisdiction to make orders for payments on account of costs.

Payments on account of costs are likely to become a more regular feature of litigation in the Commercial Division.

4. Costs awards

4.1 Can interim awards of costs be obtained?
Yes, but only in the limited circumstances outlined in question 3.3 above.

4.2 Can an award of costs be increased or decreased by reference to such matters as a party’s conduct of the case?
Yes.

The court has power to direct that prescribed costs should be calculated on the basis of a higher or lower value than would otherwise apply.

To make such a direction the court must be satisfied that costs which would otherwise be calculated would be either excessive or substantially inadequate taking into account all the circumstances. Alternatively, the court may award a proportion only of prescribed costs in the circumstances mentioned in question 2.2 above.

Where a court has a general discretion as to the amount of costs, for example, on an assessment following a procedural application, then in determining what sum would be reasonable the court must take into account all the circumstances including the conduct of the parties before as well as during the proceedings.

4.3 How are costs awards enforced?
Enforcement is through a wide range of mechanisms broadly reflecting the system in England.

It thus includes orders for sale or possession of land or goods, charging orders, attachment of debts and the appointment of receivers.

It may also be possible to apply to the BVI court to stay litigation brought by the judgment debtor until any costs awards have been paid, or to take committal or sequestration proceedings, or else to exercise a set-off.

Sometimes these options will not realistically be available. Companies incorporated within offshore finance centres in the EC seldom operate there, or even have their assets in those jurisdictions. In such circumstances, it may be necessary to take winding-up proceedings, or to identify the company’s assets, and to seek recognition and enforcement of an ECSC court order overseas.

4.4 Can a costs award be set off against a monetary judgment?
Yes, but only by agreement between the parties or a court order.

4.5 Is interest payable on unpaid costs?
Yes.

In most Eastern Caribbean States it is accepted that orders for costs are judgment debts on which interest will accrue at a statutory rate.

However, in at least one Eastern Caribbean State (Grenada) there is presently no statutory rate and so there is scope for argument in such countries. Subject to that, interest will run from the date of the relevant order.

5. Costs of an appeal

5.1 Are costs of an appeal treated differently?
Unless the Court of Appeal makes an order for budgeted costs, the prescribed costs rules will apply, save that the sums allowed will be limited to two-thirds of the amount that would otherwise be allowed.

The court can award less but normally two-thirds will be the allowed percentage. There is no jurisdiction in the rules, as with procedural applications, to disapply that cap.

If the draft Commercial Division PD is enacted, the anomalous position is likely to result that the costs awarded in the Commercial Division will be assessed on a different (and often, more favourable) basis than they would be in the Court of Appeal.

6. Funding of civil and commercial claims

6.1 Can costs be insured?
Yes, but the market is extremely limited.

6.2 Is legal aid available?
No, not for civil litigation.

6.3 Is third party funding of claims available?
There is no established commercial funding market.

Ad hoc third party funding is a feature of some litigation. There is relatively little regulation or judicial scrutiny of it, and it is debatable whether it is permissible.

There is, however, scope within the costs rules for third party funders to be subject to adverse costs orders.

Contributed by:
Andrew Willins

Appleby – British Virgin Islands.
England and Wales

1. Recoverability of costs

1.1 Can costs be recovered by a party to civil litigation?
Yes.

1.2 Does the losing party usually pay the successful party’s costs?
Yes.

Where a party succeeds against the other party, it is usual for the successful party to be awarded an order for costs against the losing party, which is called “costs following the event” or “costs shifting.”

Despite substantive success for a party; in many cases the court will exercise its discretion to adjust the order for costs to reflect the relative success of the parties on the substantive issues determined by the court.

Where a claimant succeeds against multiple defendants, costs will be ordered against each defendant, and the claimant can then recover costs against any one (or more) of the defendants. Any defendant paying such costs can then seek a contribution from the others under the Civil Liability (Contribution) Act 1978.

1.3 Can costs be ordered to be paid to, or by, a non-party?
Yes.

Costs orders in favour of or against non-parties are referred to in CPR Part 48.2. Where the court is considering whether to exercise its discretionary power under section 51 of the Supreme Court Act 1981 to make a costs order in favour of, or against, a person who is not a party to proceedings:

- that person must be added as a party to the proceedings for the purposes of costs only
- he must be given a reasonable opportunity to attend a hearing at which the court will consider the matter further.

2. Details of recoverability of costs

2.1 On what basis are costs recoverable?
Discretionary (but predictable). The costs payable by one party to another are in the discretion of the court (section 51 of the Supreme Court Act 1981 and CPR Part 44.3(1)).

In exercising its discretion the court is required to have regard to all circumstances, and in particular the following matters (CPR Part 44.3(4) & (5)):

- the extent to which the parties followed any applicable pre-action protocol
- the extent to which it was reasonable for the parties to raise, pursue or contest each of the allegations or issues
- the manner in which the parties pursued or defended the action or particular allegations or issues
- whether the successful party exaggerated the value of the claim
- whether a party was only partly successful
- any payment into court or admissible offer to settle.

There are two bases of assessment of costs: the standard basis and the indemnity basis.

Where costs are assessed on the standard basis a party only recovers a proportion of his costs and not the exact amount that he has paid. In assessing costs on the standard basis the judge will only allow costs which are proportionate to the matters in issue and he will resolve any doubt as to whether costs were reasonably incurred or reasonable and proportionate in amount, in favour of the paying party. This means that the party seeking to recover its costs has to prove the reasonableness of the amount claimed. Under standard assessment a party can usually obtain an order for around 60-70% of the costs claimed.

Where a judge assesses costs on the indemnity basis he will resolve any doubt as to whether the costs were reasonably incurred, or were reasonable in amount, in favour of the receiving party. There is no requirement for the costs to be proportionate. The onus is on the paying party to show that the costs being claimed are unreasonable. Thus, the receiving party is likely to obtain an order for a higher percentage of their costs on the assessment than an assessment on the standard basis. Indemnity costs are generally awarded for unreasonable conduct or abuse of process.

2.2 Is the amount of recoverable costs fixed?
Yes, in certain cases only.

In certain circumstances the amount of costs that a judge can award a successful party are fixed at certain amounts which are set out in Parts 45 and 46 of the CPR. These provisions set out the many types of claims in which fixed costs apply, but they do not include large complex commercial claims.

Under the “indemnity principle” a party cannot be liable to pay more to the other side in costs than the winner is liable to pay its own lawyers. If lawyers representing the successful party have intimated that their client need “not worry” about paying their fees, there is a prospect that the court will hold that the loser has no liability in costs: British Waterways Board v Norman (1993) 26 HLR 232.

2.3 Is the amount of recoverable costs calculated by reference to the amount in dispute?
Yes to the extent that this is considered as part of the court’s discretion.

CPR Part 44.5(5)(3)(b) states that in assessing costs, the court must have regard to the amount or value of any money or property involved when deciding the amount of costs.
2.4 What can be recovered as “costs”?
CPR Part 44 sets out what can be recovered as costs.

<table>
<thead>
<tr>
<th>Item</th>
<th>Recoverable</th>
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Other expenses
A party attending court to give evidence is entitled to an allowance for proved loss of earnings and expenses which can be claimed for on assessment.

3. Particular costs issues

3.1 Can a party agree with its own lawyer, a special costs arrangement?
Yes.

Conditional Fee Agreements (“CFA”) were introduced by section 58 of the Courts and Legal Services Act 1990. Since 1998 it has been possible to enter into CFAs in all types of civil litigation other than family work (Conditional Fee Agreements Order 1998, SI 1998/1860). Any concern that a CFA might be attacked by the opposite side as savouring of maintenance or champerty was removed by Hodgson v Imperial Tobacco Ltd [1998] 1 WLR 1056. Most of the technical rules on the format of CFAs were revoked with effect 1 November 2005 (Conditional Fee Agreements (Revocation) Regulations 2005, SI 2005/2305). The only continuing requirements are that a CFA must:

- be in writing
- relate to a type of case where CFAs are permitted (all civil proceedings other than family cases)
- specify the success fee, if any, which must not exceed 100%.

3.2 Which tribunal resolves costs disputes and how?
The court normally resolves costs disputes by way of summary or detailed assessment.

Assessment proceedings should be commenced within three months of the judgment, order, award or other determination giving rise to the right to costs (CPR Part 47.7). This is done by serving on the paying party a notice of commencement together with a copy of the bill of costs (CPR Part 47.6(1)). The paying party may dispute any item in the bill by serving the receiving party with points of dispute. These must be served within 21 days after service of the notice of commencement (CPR Part 47.9). If the paying party fails to serve points of dispute within the permitted time, the receiving party may, on filing a request, obtain a default costs certificate (CPR Parts 47.9(4) and 47.11). The receiving party has the right, but is not obliged, to serve a reply to any points of dispute. Any reply should be served on the party who served the points in dispute within 21 days after service (CPR Part 47.13).

Hearings are relatively informal, with the points of dispute being taken in turn and both sides making submissions and the costs officer making rulings on each point in turn.

3.3 Can a party be required to provide security for costs (or some other sum) in advance of costs being decided?
Yes, if order for security of costs is sought by claimant.

An order for security of costs can be made only against a party in the position of a claimant. Once security is given it may be retained, subject to the court’s discretion, pending an appeal. An order for security for costs usually requires the claimant to pay money into court as security for the payment of any costs order that may eventually be made in favour of the defendant, and staying the claim until the security is provided.

4. Costs awards

4.1 Can interim awards of costs be obtained?
Yes.

Costs of interim applications are in the discretion of the court, but the discretion is usually (but not always) exercised in favour of the party who was successful in the application.

In many interim applications an order is made for “costs in the case”, which means the cost is recovered at the end of the litigation by the successful party.

Costs of interim applications can be assessed summarily, based on a breakdown supplied by the receiving party, or by way of an interim payment with the balance to be assessed by the court at a later date if the parties fail to agree.

Costs of interim hearings which have been summarily assessed must be paid within 14 days of the court order.

4.2 Can an award of costs be increased or decreased by reference to such matters as a party’s conduct of the case?
Yes.

Misconduct by the successful party may result in costs not following the event (CPR Part 44.3(4)(a)).
The indemnity basis can be applied as a penalty for misconduct, or as a result of the claimant recovering more at trial than the amount offered in his own Part 36 offer (of settlement).

### 4.3 How are costs awards enforced?
Methods of enforcing money judgments are contained in CPR Part 70.2. A judgment creditor may enforce a judgment or order for the payment of money by any one or more of the following methods:

- a writ of fieri facias or warrant of execution (RSC Orders 46 and 47 and CCR Order 26)
- a third party debt order (CPR Part 72)
- a charging order, stop order or stop notice (CPR Part 73)
- in a county court, an attachment of earnings order (CCR Order 27)
- the appointment of a receiver (CPR Part 69).

### 4.4 Can a costs award be set off against a monetary judgment?
Yes.

In Arkin v Borchard Lines Ltd (2001) LtL 19/6/01, an interim costs order had been made in favour of the claimant and the defendant respectively on different interim applications. The two costs orders were set off against each other.

An application may be made to the court for permission to set off any sums, including costs, payable under several judgments or orders. The application may be heard and determined by the court and any order giving permission shall direct how any money paid into court is to be dealt with (CCR Order 22 Judgments and Orders Rule 11).

### 4.5 Is interest payable on unpaid costs?
Yes, at the court’s discretion.

Unless otherwise ordered, interest runs from the date of the order for costs.

The rule is that post-judgment interest runs at the rate provided by the Judgments Act 1838 (currently at eight per cent simple interest which is fixed by statutory instrument). The period when interest runs can, however, be varied by the court in appropriate cases.

Note that the court also has power to award interest on costs incurred and paid prior to an order for payment.

### 5. Costs of an appeal

#### 5.1 Are costs of an appeal treated differently?
No.

The costs of an appeal are essentially dealt with in the same way as above save that a court dealing with a case on appeal can make orders relating to the costs of the proceedings giving rise to the appeal as well as the appeal itself (CPR Part 44.13(2)).

If an appeal is successful, the appeal court may order the losing party to pay the costs “here and below,” or may make different orders relating to the proceedings at the two levels, or may leave the costs order of the court below undisturbed.

It may be appropriate to deprive a party of its costs if the decision on the appeal turned on points not raised below, or on points not raised in the notice of appeal, or where the appeal is only partly successful or where the court’s time has been wasted.

### 6. Funding of civil and commercial claims

#### 6.1 Can costs be insured?
Yes.

Before the event insurance (“BTE”) or legal expenses insurance (“LEI”) and after the event insurance (“ATE”) are permitted and widely available.

#### 6.2 Is legal aid available?
Yes.

Public funding of litigation is administered by the Legal Services Commission, with funding in civil cases being provided by help under the Community Legal Service. The courts have no power to provide litigants with such funding (Perotti v Collyer-Bristow [2004] 2 All ER 189).

The Community Legal Service (Funding) Order 2000 SI 2000/627, as amended by SI 2001/831, provides that the Legal Service Commission’s powers to fund cases are largely restricted to solicitors licensed under contract (Article 3). Generally, rates of remuneration under Community Legal Service contracts cannot exceed rates provided in Schedule 6 to the Legal Advice and Assistance Regulations 1989 (SI 1989/340) and the Schedules to SI 2001/831. The prescribed rates are substantially lower than market rates for private work.

Help under the Community Legal Service is available to clients who are unable to afford to litigate. The financial limits are set at very low levels, although they are subject to annual updating (Community Legal Service (Financial) Regulations 2000 (SI 2000/516).

#### 6.3 Is third party funding of claims available?
Yes.

Traditionally third party funding has been characterised as maintenance or champerty and has therefore been held to be unlawful. It is now recognised that many claimants cannot afford to pursue valid claims without third party funding; that it is better for such claimants to forfeit a percentage of their damages than to recover nothing at all; and that third party funding has a part to play in promoting access to justice.

Third party funding is currently unregulated.

Contributed by: Lovells LLP (London).
1. Recoverability of costs

1.1 Can costs be recovered by a party to civil litigation?
Yes.

1.2 Does the losing party usually pay the successful party’s costs?
Yes.

According to the Finnish Code of Judicial Procedure (4/1734), the party who loses the case shall be liable for all reasonable legal costs incurred by the opposing party, unless otherwise provided by an Act. A third party acting as an intervener may recover all reasonable legal costs incurred in relation to the intervention, unless otherwise provided by an Act.

1.3 Can costs be ordered to be paid to, or by, a non-party?
No.

2. Details of recoverability of costs

2.1 On what basis are costs recoverable?
The court has the power to order compensation for the costs provided that the parties have presented claims to this effect. In such a case, a losing party is, as a general rule, ordered to compensate the successful party’s legal fees and costs in full. The court may, however, also order only partial compensation or that each party shall bear its own costs, for example, in a case where the matter has been so unclear that there have been weighty grounds for a lawsuit.

If requested, a costs award shall carry an annual interest rate as referred to in the Finnish Interest Act (633/1982); the interest shall begin to accrue one month from the date when the order on liability was issued.

In general, a party receives information about the actual amount of legal fees of the other party at the end of the main hearing. This is the time when the parties announce their claims for costs.

2.2 Is the amount of recoverable costs fixed?
No.

However, if a case concerning the collection of a debt or the eviction of a tenant is decided by a judgment in default, the court shall of its own initiative assess the legal costs to be paid by the party in default, taking into account the amount of necessary work that was put into the application document, the amount of the debt and the unavoidable expenses. The Ministry of Justice has issued a decree (1311/2001) setting out detailed instructions on the bases for the assessment of such legal costs.

2.3 Is the amount of recoverable costs calculated by reference to the amount in dispute?
No.

2.4 What can be recovered as “costs”?
According to the Finnish Code of Judicial Procedure, the following are recoverable legal costs: the costs of preparation for the trial and participation in the proceedings, as well as the fees of the attorney or counsel. In addition, compensation shall be paid for the work of a party necessitated by the trial and for losses directly linked to the trial.

According to the Government Bill (191/1993), costs incurred by negotiations for settlement may also be recovered. As stated above, on request, the compensation can carry an annual interest after 30 days has passed from the date of the decision.

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<td>Recoverable costs include compensation to witnesses, compensation for the work of a party necessitated by the trial and the fees of the winning party’s counsel, to the extent that such expenses and counsel fees are considered reasonable.</td>
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3. Particular costs issues

3.1 Can a party agree with its own lawyer, a special costs arrangement?
Yes.

According to the Finnish Bar Association Rules, when special reasons exist, it is possible to enter into a contingent fee agreement, or to agree that a success fee will be paid. This kind of agreement has to be made in writing. Such agreements are not very common in Finland.

3.2 Which tribunal resolves costs disputes and how?
The same court that handles the main proceedings also resolves costs disputes simultaneously with the main proceedings.
3.3 Can a party be required to provide security for costs (or some other sum) in advance of costs being decided?
No.
The claimant has to pay/fund all the costs incurred to him/her whilst the case is pending, and these costs are then recovered from the losing party after the judgment.

4. Costs awards
4.1 Can interim awards of costs be obtained?
No.
4.2 Can an award of costs be increased or decreased by reference to such matters as a party’s conduct of the case?
Yes.
If a party has been absent from court, failed to obey orders issued by the court, made a statement which he/she has known or should have known to be impertinent, or otherwise prolonged the trial by unlawful conduct, and thus deliberately or negligently caused the other party to incur legal costs, he/she shall be liable for such costs regardless of how the liability for legal costs is otherwise determined.
Further, if the successful party has brought an action without the opposing party having given cause for him/her to do so, or otherwise deliberately or negligently caused a frivolous trial to be held, the successful party shall be liable for the legal costs of the opposing party, unless there is, under the circumstances, reason to order that the parties are to be liable for their own legal costs.

4.3 How are costs awards enforced?
If necessary, costs awards may be enforced through enforcement in accordance with the Finnish Enforcement Code (705/2007). The judgment does not, as a rule, have to be final in order for the costs award to be enforced by an execution officer. However, a party may prevent the enforcement by issuing a sufficient warranty.

4.4 Can a costs award be set off against a monetary judgment?
No.

4.5 Is interest payable on unpaid costs?
Yes.
On request, recoverable costs shall carry an annual interest rate, which shall begin to accrue one month from the date when the order on liability was issued. The annual interest is seven percentage points higher than the reference rate applied by the European Central Bank in force at the time in question.

5. Costs of an appeal
5.1 Are costs of an appeal treated differently?
The charges collected by the Appeal Courts are slightly higher than those collected by District courts, but still reasonable. Again, the most substantial costs in the Court of Appeal come from the lawyers’ fees, but they are usually lower than in the District court. This is because most of the “background work” is done in connection with the District court phase.

6. Funding of civil and commercial claims
6.1 Can costs be insured?
Yes.
Legal expenses insurance is provided by insurance companies. Legal expenses insurance can be applied for by any natural or legal person.
Legal expenses insurance covers reasonable legal fees (counsel’s fees and witnesses’ fees), and the insured has the right to choose the lawyer. Legal expenses insurance does not usually cover the other party’s costs, if the insured party loses the case.
The cost of legal expenses insurance varies. In some insurance companies they are included within other insurances without any additional cost. Cost also varies according to what maximum limit of legal costs incurred the insured wants the insurance company to cover.
Legal expenses insurance for private persons usually covers legal costs up to €8,500. The insured person usually has to pay 15% of the total amount claimed, but in any case at least €200. For companies, legal expenses insurance covers legal costs up to €25,000. The insured company usually has to pay 15% (at least €500) of the total amount claimed, but it should be noted that the insured amount can separately be agreed with the insurance company. In general, legal expenses insurance is easily available.
No form of after the event insurance is available in Finland.

6.2 Is legal aid available?
Yes.
Legal aid may be obtained both for trials and for other legal cases not heard by a court, such as distribution of matrimonial assets, distribution of an estate, estate inventories and so on. Legal aid may not be obtained if the case is of minor importance to the applicant or if the granting of legal aid would clearly be pointless in comparison with the benefit the applicant would derive from the case or if bringing the case to court would constitute an improper use of the law, or if the case is based on a transferred right.
For trials, legal aid may be provided to cover the costs of a private or public counsel. Applicants are entitled to look for counsel by themselves before contacting the legal aid office. The legal aid office may also help with finding a private counsel.
When applying for legal aid, applicants may specify their preference of counsel.

Legal aid covers all expenditure necessary for the case, such as counsel’s fees and charges, interpreting and translation costs, witnesses’ fees and initial claim costs. Legal aid does not cover the other party's costs, if the legal aid beneficiary loses the case.

A party is exempt from the obligation to pay court fees for example, if the party’s impecuniosity is proved and the case is about his benefits and rights. The court may also reduce the court fees a party is obliged to pay if payment is deemed to be unreasonable. Legal aid covers the court fees in cases where a party is a qualified beneficiary.

Where a party has been granted legal aid the State always covers at least 25% of his/her trial costs. The maximum portion a legal aid recipient is liable to pay is 75% of his/her total costs of the trial. The amount a legal aid beneficiary is required to pay also depends on their assets. If they have bank deposits or readily realisable assets of over €5,000, they must put towards their own trial costs at least 50% of that part of their assets that exceeds €5,000.

Legal aid is applied for from the legal aid offices. If the application is turned down, this decision may be appealed.

6.3  Is third party funding of claims available?
Yes.

If a party is unable to fund the proceedings by his/her personal funds and no legal aid is granted, it is possible to apply for a loan from a bank. Trade and other kinds of associations might be willing to pay the costs, if the case is significant, for example, in light of the potential for similar cases in the future. According to the available information, funding by trade associations etc. is not common.

Funding from a third party investor is in principle possible. In Finland there are no third party investors that would on a regular basis finance litigation.

Contributed by:
Mikael Segercrantz, Senior Associate
Essi Pokela, Associate
Roschier, Attorneys Ltd.
1. Recoverability of costs

1.1 Can costs be recovered by a party to civil litigation? Yes.

Under Articles 695 and 696 of French Civil Code: procedural costs (that is, "dépens", exhaustively listed) are borne by the losing party (for example courts’ costs, indemnification of witnesses, translation expenses if required by law or an international agreement etc.). However, such amount remains in general insignificant.

Under Article 700 of the French Civil Code, any other costs incurred in the course of legal proceedings and not listed in Article 695 (for example, lawyers’ fees) can also be recovered by the winning party at the Judge’s discretion.

"… The Judge shall order the party bearing the procedural costs, or failing that, the losing party, to pay to the other the sum of money that the judge shall determine and which corresponds to the costs incurred which are not included in the procedural costs… ".

Costs awards per se do not exist in France. The decision related to the allocation of the costs is part of the final judgment handed down by the court and, therefore, is subject to the same treatment as a judgment.

1.2 Does the losing party usually pay the successful party’s costs?

Yes.

The loser, in general, is ordered to pay all the procedural costs under Article 696 and a lump sum under Article 700 (but which never reaches the expenses actually incurred).

1.3 Can costs be ordered to be paid to, or by, a non-party? No.

2. Details of recoverability of costs

2.1 On what basis are costs recoverable?

Procedural costs: borne by the losing party and assessed by law but the judge can decide that these costs will be borne by another party if he gives reasons for his decision (Articles 695 and 696). However such amounts are in general not significant.

Article 700: This is done on a case by case basis. The judge will take into account the equity/economic position but other criteria can also be considered, such as the amount in dispute and the difficulty of the case.

2.4 What can be recovered as “costs”?

Under Article 695, notably:

- courts’ costs
- translation costs of procedural “actes” if required by law or an international agreement
- indemnification of witnesses
- indemnification of experts
- fixed expenses
- indemnification of public officers
- lawyers’ fees when regulated
- costs to notify an “acte” abroad
- interpreting and translation costs when necessary in view of a foreign investigation (under Regulation no. 1206/2001 of 28 May 2001).

Under Article 700: other costs that may be incurred in the course of the proceedings.

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<td>Agency fees (for example, local agents, appellate lawyer, bailiff/process-server)</td>
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</tr>
<tr>
<td>Court fees</td>
<td>Yes.</td>
</tr>
<tr>
<td>Disbursements (including, but not limited to, photocopying, expert witness, travel, translation, notarial, witness attendance etc.)</td>
<td>Yes.</td>
</tr>
<tr>
<td>Other expenses</td>
<td>Article 700 covers any other cost incurred during legal proceedings not covered by Article 695.</td>
</tr>
</tbody>
</table>

3. Particular costs issues

3.1 Can a party agree with its own lawyer, a special costs arrangement? Yes.

Contingency fee arrangements ("pacte de quota litis") are forbidden in France.
However, a party can enter into fee agreement stipulating an increase of fees in event of a particular positive result. This calculation must be set out in advance.

Fixed fee agreements are allowed.

3.2 Which tribunal resolves costs disputes and how?
Dispute regarding the “dépens”: Any party may ask the clerk office of the relevant court to verify the existence and the amount of the costs incurred (Article 704 of the French Code of Civil Procedure). A “verification certificate” will be produced and sent to the paying party. The latter may challenge the certificate by filing a request with the President of the same court, who will then hand down a “tax order” (“ordonnance de taxe”). An appeal against the order can be lodged with the First President of the Court of Appeal.

Disputes regarding costs covered by Article 700: These costs, not awarded for specific expenses but granted as a lump sum in the final judgment, cannot be separately challenged. However, they are reassessed if an appeal is lodged against the judgment as a whole.

3.3 Can a party be required to provide security for costs (or some other sum) in advance of costs being decided?
No.

The French Code of Civil Procedure does not provide that the claimant should provide security or make a deposit covering a possible order to pay its costs or an indemnity pursuant to Article 700 of the same Code to the defendant. However, a party who applies for an expert to be appointed is required to deposit with the clerk of the court a sum covering the payment of the expert’s fees. This sum may be recovered from the losing party at the end of the proceedings.

4. Costs awards

4.1 Can interim awards of costs be obtained?
No.

4.2 Can an award of costs be increased or decreased by reference to such matters as a party’s conduct of the case?
Yes.

As the judge has discretionary authority to fix the amount to be granted to a party under Article 700, he could be inclined to increase/decrease this amount should he be confronted with the misconduct of a party.

4.3 How are costs awards enforced?
In the absence of spontaneous payment of the amount due pursuant to a judgment awaiting costs, the successful party who wishes to enforce the decision has to seize a bailiff (“huissier de justice”). The latter will take all the necessary measures to recover the full amount due including the costs element of the order.

4.4 Can a costs award be set off against a monetary judgment?
Yes, legal compensation of mutual debts applies and results in an automatic set off.

4.5 Is interest payable on unpaid costs?
Yes.

Costs are subject to the same treatment as a monetary judgment: as from the date of the decision interest runs at the legal rate, which is fixed by law every year (for example, at 3.79% in 2009).

5. Costs of an appeal

5.1 Are costs of an appeal treated differently?
No, the same rules as above are applicable, with one exception.

Until 1 January 2011, legal agents known as “Avoués” hold, in general, the monopoly of the representation of the parties before the Courts of Appeal. Their fees are fixed by law (partly by reference to the sum in dispute) and are treated as “dépens.” Therefore, these costs are reimbursed to the winning party by the losing one. However, the monopoly of representation will end shortly and former “Avoués” will then act as lawyers. From that time on, their fees will thus be treated as lawyer fees (see question 3.1).

When a Court of Appeal upholds the decision of the First Instance Court, it can award additional amounts under Article 700. The Court of Appeal can also overrule the decision handed down by the First Instance Court, in particular regarding the amount granted under Article 700.

6. Funding of civil and commercial claims

6.1 Can costs be insured?
Yes.

Some insurance companies offer legal protection contracts (“contrat de protection juridique”). The type and the amount of the legal fees covered depend on the insurance company’s policy.

6.2 Is legal aid available?
Yes.

“Jurisdictional aid” is available in France and consists of financial aid (total or partial) in proceedings before State Courts (direct payment by the State to the appointed counsel or bailiffs, exoneration of certain taxes, etc.). Jurisdictional aid is only available for proceedings before French national courts. It is generally granted to individuals who can prove that their income is too low to afford access to justice.

In 2010:

Full legal aid – monthly income equal to or below €915.
Partial legal aid – monthly income between €916 and €1,372.

Available to:

- French citizens; or
- national of EU Member State; or
- national of country which has entered into a Convention with France; or
- permanent residents in France.

6.3 **Is third party funding of claims available?**

Yes.

This is not customary. Lawyers are also required to refuse third party funding, third party is breaching the law by paying fees (for example, there is a common problem of misuse of company assets so that the company bears the costs of legal proceedings initiated by or against an individual who takes part in the management of the company).

**Contributed by:**

Lovells LLP (Paris).
1. Recoverability of costs

1.1 Can costs be recovered by a party to civil litigation? Yes.

1.2 Does the losing party usually pay the successful party’s costs? Yes.

Two components have to be distinguished in the German costs regime.

First, the judgment regularly comprises an abstract order regarding the distribution of costs depending on the success of the claim (“Kostengrundentscheidung”). The Kostengrundentscheidung does not, however, contain a specific amount of costs. Where the claimant fully succeeds against the defendant, the defendant (the losing party) will “abstractly” be ordered to bear the full recoverable costs of the claimant. If the claimant succeeds only with a part of the claim, the costs generally will be proportionally shared by the parties.

In a second step, on application of a party, a judicial officer will determine the basis of the Kostengrundentscheidung, the “concrete” amount of costs (“Kostenfestsetzung”) and issue a costs order (“Kostenfestsetzungsbeschluss”). The costs order in favour of the successful party is based on statutory tariffs. If the successful party voluntarily agreed higher than statutory fees with its lawyer, the excess part of the fees will not be reimbursed by the losing party. This potential gap may be quite significant in particular in cases that are of high complexity combined with low value.

The same principles apply (vice versa) for recovery by a successful defendant.

Where a party fully succeeds against multiple opponents, costs will be ordered against each opponent. Multiple opponents are then basically liable proportionally (the proportion generally is in equal shares, unless the extent of participation in the lawsuit is significantly different).

A special rule is applicable if a successful claim was directed against multiple defendants as joint and several debtors (“Gesamtschuldner”). In such a case, the defendants have to bear the claimant’s costs as joint and several debtors. Any defendant paying costs as such a debtor can then seek a contribution from the others pursuant to Sec. 426 of the German Civil Code (“BGB”).

1.3 Can costs be ordered to be paid to, or by, a non-party? Yes.

Cost orders in favour of non-parties are available when a third party with a legal interest regarding the outcome of the dispute has intervened in the dispute to support the claimant or the defendant (“Nebenintervention”). If the supported party wins the case, the opponent has to bear the costs for the intervention of the third party.

2. Details of recoverability of costs

2.1 On what basis are costs recoverable? Tariff based. A costs order (“Kostenfestsetzungsbeschluss”) is rendered by a judicial officer of the court on application of the parties in accordance with the Kostengrundentscheidung of the judgment as defined above in question 1.2. The costs order is based on the statutory tariff rate which depends on the value of the dispute. The court basically does not have any discretion regarding the Kostengrundentscheidung and only exceptionally in relation to the Kostenfestsetzungsbeschluss. Recoverable costs are therefore in most cases predictable and transparent.

If the claim is not directed at a certain amount of money, the interpretation of “value of the dispute” can occasionally vary between different courts. However, as general principles apply, the value of the dispute can in general be predicted.

There are numerous reliable litigation costs calculators in the internet, for example: http://kostenrechner.anwaltssuche.de/kostenrechner/anwalt/index.html

2.2 Is the amount of recoverable costs fixed? Yes.

Costs within the statutory tariffs are fully recoverable. There is an overall cap to the “value of the dispute” (generally €30 million) which limits tariff-based fees and costs.

2.3 Is the amount of recoverable costs calculated by reference to the amount in dispute? Yes.

The successful party can recover all necessary costs, including court fees and legal costs which vary in accordance with the statutory tariff, based on the value in dispute.

2.4 What can be recovered as “costs”?

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<td>Yes</td>
</tr>
<tr>
<td>Additional lawyer fees (for example, counsel fees or trial advocate fees)</td>
<td>Yes, but only if additional lawyers are necessary (for example, patent lawyers in IP cases; inevitable exchanges of lawyers; exceptionally and subject to restrictions: associated lawyers/subagents).</td>
</tr>
<tr>
<td>Agency fees (for example, London agents, local agents, appellate lawyer, bailiff/process-server)</td>
<td>Only exceptionally, if necessary and appropriate.</td>
</tr>
<tr>
<td>Court fees</td>
<td>Yes</td>
</tr>
</tbody>
</table>
3. Particular costs issues

3.1 Can a party agree with its own lawyer, a special costs arrangement?

Yes.

Fee arrangements may be agreed instead of the statutory fees. However, limitations have to be observed. Generally, the negotiated fee for a lawyer’s activity in court proceedings must not be lower than the statutory fees. Negotiated fees which exceed the statutory fees are however permissible. The agreement between the client and the lawyer to apply negotiated fees is only valid if it is made in text form (that is, at least by email) and several additional formal aspects have to be observed. Otherwise the statutory fees will apply.

Possible types of fees arrangements under German law are:

- flat rate
- fee on hourly basis
- modification of statutory fee.

In July 2008, the German legislator introduced the possibility to agree on contingency fee arrangements (“Erfolgs Honorare”). Before that time, it was illegal to agree a lawyer’s litigation fee dependent on the success of the client’s case. However, Erfolgs Honorare are subject to limitations. First, this option is only available in a situation in which the client otherwise would not pursue the matter in court because of its financial constraints. Second, an appropriate bonus exceeding the statutory fee has to be part of the agreement if the case is won. Finally, some additional formal aspects have to be observed. For example, the agreement must not be purely oral.

3.2 Which tribunal resolves costs disputes and how?

As a general rule, an “abstract” costs order (Kostengrundentscheidung”) can only be challenged as an integral part of an appeal against the main decision in a case. Disputes concerning a “concrete” costs order (Kostenfestsetzungsbeschluss) have to be commenced within two weeks after the party has received the costs order. This is done by serving a notice of appeal on the court of first instance or the court of appeal. The application is first handled by a judicial officer of the first instance court, who has the power to allow the appeal. If the dispute refers to more than €200 and the judicial officer does not intend to allow the appeal, he will submit the application directly to the court of the second instance which will then decide on the appeal.

Before a decision to modify the costs order is made by the court of appeal, the opponent must have the possibility to make representations to the court. However, the costs appeal decision can be made without an oral hearing.

3.3 Can a party be required to provide security for costs (or some other sum) in advance of costs being decided?

Yes, in specific circumstances.

In general there is no requirement in Germany for a party to pay a sum of money in respect of another party’s costs while a case is ongoing. However, an exception exists under Sec. 110 of the German Code of Civil Procedure (“ZPO”), which provides for payments of this kind where:

- the claimant has a regular place of residence outside the EU and the EEA
- the country where the claimant is domiciled or habitually resident is not party to an international agreement stating that security for costs shall not be paid
- the country where the claimant is domiciled or habitually resident is not party to an international agreement providing for enforcement of German costs awards
- the claimant does not have sufficient assets in Germany
- the costs do not relate to a counterclaim.

Where all these conditions are satisfied, the defendant has the right to request security for his costs from the claimant. The amount of security to be provided is determined by the court according to the potential damage caused by an unjustified enforcement. It is within the discretion of the court what kind of security shall be provided.

In addition, a party which wins a dispute may have to provide security if it wants to enforce an award of costs relating to a judgment: (i) before the deadline passes for appealing the judgment; or (ii) during a pending appellate procedure against the judgment.

4. Costs awards

4.1 Can interim awards of costs be obtained?

No.

At the end of every instance (including temporary and interim judgments (“Einstweiliger Rechtsschutz”) an order will be made declaring which party should pay the costs. On this basis a cost order will be issued as described above in question 1.2. Each costs award is technically a ‘final’ one in relation to its subject matter.

As indicated at the end of question 3.3, a security may have to be provided if a party intends to enforce an award of costs before the judgment it relates to becomes unappealable.

4.2 Can an award of costs be increased or decreased by reference to such matters as a party’s conduct of the case?

No.
4.3 How are costs awards enforced?
Costs awards are enforced in the same way as other money judgments which generally may be enforced by any of the following methods:

- seizure of movable property ("Pfändung von beweglichem Vermögen")
- attachment of receivables ("Forderungspfändung")
- seizure of real property ("Zwangsvollstreckung in das unbewegliche Vermögen").

4.4 Can a costs award be set off against a monetary judgment?
This depends on the details of the individual situation – no general statement is possible; this is a complex and contentious topic.

4.5 Is interest payable on unpaid costs?
On application, yes.

On application of the respective party the court will rule that the costs compensation claim will be subject to interest. The interest runs usually from the date of the application to render an award for costs. The interest rate is five percentage points over the basic rate of interest ("Basiszinssatz"), which is defined in Sec. 247 of the BGB. As at 2009, the basic rate of interest is 0.12% (valid until 30 June 2010), so that the total interest rate is 5.12%.

5. Costs of an appeal

5.1 Are costs of an appeal treated differently?
Yes.

The same basic principles apply as in the first instance procedure. However, the statutory court costs and lawyer fees for an appeal are marginally higher than for a first instance procedure.

6. Funding of civil and commercial claims

6.1 Can costs be insured?
Yes.

Such insurance is generally available and relatively common for individuals.

It is also available and relatively widespread for companies, but only in certain areas, such as:

- product liability
- directors and officers liability (D&O)
- traffic
- general liability
- employment
- real estate and business/office equipment
- anti-discrimination law.

It is not available for competition law disputes.

As a general rule, insurances cover only the statutory costs and not individually agreed higher fees.

6.2 Is legal aid available?
Yes.

A party can apply for legal aid ("Prozesskostenhilfe") to the court that is also responsible for a decision in the case. The aid is available to both natural and judicial persons. It comprises the own lawyer’s fee of the applicant and the court’s costs, but never costs of the opponent’s lawyer if the case is lost. The idea of legal aid in Germany is to only provide the financial means to conduct litigation. Afterwards the party has to pay back the aid, if necessary, by instalments. Only in case the party is not able to repay the aid within 48 months according to the table set out in Sec. 115(2) of the ZPO, can the reimbursement be reduced. If his monthly income is below €15, the applicant will be exempted from repaying the aid.

Legal aid is only granted if the party is unable to finance the costs of the lawsuit and the party has a reasonable prospect of success. Companies only receive aid if, in addition, failure to pursue a case would conflict with the public interest, for example, by leading to the dismissal of a large number of employees.

It might be difficult to find a high quality lawyer on the basis of legal aid, as the financial support is limited to statutory fees on a reduced basis provided in the schedule in Sec. 49 of the German Attorney Remuneration Act ("RVG"). It is not possible to receive legal aid on the basis of hourly fees.

6.3 Is third party funding of claims available?
Yes.

An increasing number of private companies (market leader: Foris AG, www.foris.de) are offering third party funding ("Prozessfinanzierung") in exchange for a share of the amount received in a successful claim.

It is not allowed, however, that the involved lawyer himself offers funding of claims to the client (Sec. 49b(2)(1) of the German Federal Code for the Legal Profession ("BRAO").

Contributed by:
Lovells LLP (Hamburg).
1. **Recoverability of costs**

1.1 **Can costs be recovered by a party to civil litigation?**
Yes.

1.2 **Does the losing party usually pay the successful party’s costs?**
Yes.

In the same circumstances as exist in England and Wales, because the English Civil Procedure Rules “CPR” apply:

It is usual for the successful party in the action to be awarded an order for costs against the losing party, which is called “costs following the event.”

1.3 **Can costs be ordered to be paid to, or by, a non-party?**
Yes.

Same as in England, per the CPR:

Costs orders in favour of, or against, non-parties are referred to in CPR Part 48.2. Where the court is considering whether to exercise its power under section 51 of the Supreme Court Act 1981 (costs are at the discretion of the court) to make a costs order in favour of, or against, a person who is not a party to proceedings:

- that person must be added as a party to the proceedings for the purposes of costs only
- he must be given a reasonable opportunity to attend a hearing at which the court will consider the matter further.

2. **Details of recoverability of costs**

2.1 **On what basis are costs recoverable?**
Same as in England, per the CPR:

The costs payable by one party to another are at the discretion of the court. In exercising its discretion the court is required to have regard to all circumstances, and in particular the following matters (CPR Parts 44.3(4) & (5)):

- the extent to which the parties followed any applicable pre-action protocol
- the extent to which it was reasonable for the parties to raise, pursue or contest each of the allegations or issues
- the manner in which the parties pursued or defended the action or particular allegations or issues
- whether the successful party exaggerated the value of the claim
- whether a party was only partly successful
- any payment into court or admissible offer to settle.

There are two bases of assessment of costs: the standard basis and the indemnity basis.

2.2 **Is the amount of recoverable costs fixed?**
Yes.

Same as in England:

The amount of recoverable costs is fixed in certain cases only. The fixed costs regime is contained in Parts 45 and 46 of the CPR.

2.3 **Is the amount of recoverable costs calculated by reference to the amount in dispute?**
Yes.

Same as in England:

It is considered as part of the court’s discretion. CPR Part 44.5(5)(3)(b) states that the court must have regard to the amount or value of any money or property involved when deciding the amount of costs.

2.4 **What can be recovered as “costs”?**
Same as in England:

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<td>Yes.</td>
</tr>
<tr>
<td>Other expenses</td>
<td>At present additional liabilities in the form of after the event insurance cannot be recovered inter partes although preliminary indications are that legislation will be introduced so as to mirror the UK Access to Justice Act 1999.</td>
</tr>
</tbody>
</table>

3. **Particular costs issues**

3.1 **Can a party agree with its own lawyer, a special costs arrangement?**
Yes.
Charging is a matter for terms of engagement, which most often provide for fees being calculated on time spent, that is, on an hourly rate.

Conditional fee agreements are occasionally used but are not very common in Gibraltar. As in England, contingency fee agreements are not permissible for contentious business.

3.2 Which tribunal resolves costs disputes and how?
As in England the receiving party would apply for a Detailed Assessment, adopting the procedure set down in CPR Part 47. It is for the paying party to serve Points of Dispute, the Reply to which is optional. In the absence of an agreement between the parties, the Detailed Assessment is carried out by the Registrar of the Supreme Court in the same way as would be the case in England before a District Judge or Master.

3.3 Can a party be required to provide security for costs (or some other sum) in advance of costs being decided?
Yes.

Same as in England:

An order for security for costs can be made only against a party in the position of a claimant. Once security is given it may be retained, subject to the court’s discretion, pending an appeal. An order for security for costs usually requires the claimant to pay money into court as security for the payment of any costs order that may eventually be made in favour of the defendant, and staying the claim until the security is provided.

On application three matters arise:

- whether there are grounds for ordering security for costs
- if so, whether the court’s discretion should be exercised in favour of making the order
- if so, how much security should be provided.

Security for costs can be ordered only if one of the conditions set out in CPR Part 25.13(2) is satisfied. Note that CPR Part 25.14 allows a security for costs order to be made against a non-party.

4. Costs awards

4.1 Can interim awards of costs be obtained?
Yes.

Same as in England:

At the end of almost every interim application and when almost any interim application is disposed of by consent, an order will be made or agreed declaring which party should pay the costs of the application.

Costs of interim applications are in the discretion of the court, but the discretion is usually (but not always) exercised in favour of the party who was successful in the application.

4.2 Can an award of costs be increased or decreased by reference to such matters as a party’s conduct of the case?
Yes.

Same as in England:

Misconduct by the successful party may result in costs not following the event (CPR Part 44.3(4)(a)).

An indemnity basis can be applied as a penalty for misconduct, or as a result of the claimant recovering more at trial than the amount offered in a Part 36 offer.

4.3 How are costs awards enforced?
Gibraltar has its own enforcement of monetary judgment regime with not all of the means of enforcement in England and Wales being available locally. The most common means of enforcement is by way of writ of fieri facias.

4.4 Can a costs award be set off against a monetary judgment?
Same as in England:

An application may be made to the court for permission to set-off any sums, including costs, payable under several judgments or orders. The application may be heard and determined by the court and any order giving permission shall direct how any money paid into court is to be dealt with (CCR Order 22 Judgments and Orders Rule 11).

4.5 Is interest payable on unpaid costs?
Yes.

As in England, interest accrues on a judgment debt at the same prescribed rate as in England.

Interest may be payable on unpaid costs at the court’s discretion. The court has the power to award interest on costs and can do so from a date before the date of the order for costs, so compensating the receiving party for the delay between incurring the costs and receiving a payment in respect of them from the paying party (CPR Part 44.3(6)(g)).

5. Costs of an appeal

5.1 Are costs of an appeal treated differently?
Yes, partly.

Same as in England:

The costs of an appeal are determined at the court’s discretion. A court dealing with a case on appeal can make orders relating to the costs of the proceedings giving rise to the appeal as well as the appeal itself (CPR Part 44.13(2)).

If an appeal is successful, the appeal court may order the losing party to pay the costs ‘here and below’, or may make different
orders relating to the proceedings at the two levels, or may leave the costs order of the court below undisturbed.

It may be appropriate to deprive a party of its costs if the decision on the appeal turned on points not raised below, or on points not raised in the notice of appeal, or where the appeal is only partly successful or where the court’s time has been wasted.

6. Funding of civil and commercial claims

6.1 Can costs be insured?
Yes.

Insurance cover is available for litigation costs, but not after the event cover, and is not commonly used.

6.2 Is legal aid available?
Yes.

Legal aid is currently available to persons whose annual income is less than £5,000 and whose assets do not exceed £350. At present there are no restrictions on the type of cases for which it is available but the Ministry of Justice is currently conducting a very thorough review and update of our Legal Assistance Act. This reform is likely to limit the areas in respect of which such assistance is available.

6.3 Is third party funding of claims available?
Yes.

Same as in England:

Third party funding of claims was previously unavailable but it is now available out of recognition that many claimants cannot afford to pursue valid claims without third party funding; that it is better for such claimants to forfeit a percentage of their damages than to recover nothing at all; and that third party funding has a part to play in promoting access to justice.

Third party funding is currently unregulated.

Contributed by:
Hassans.
1. **Recoverability of costs**

1.1 **Can costs be recovered by a party to civil litigation?**
Yes.

1.2 **Does the losing party usually pay the successful party’s costs?**
Yes.

The general principle is that each party to the proceedings bears his own costs in advance, and these are eventually awarded by way of the judgment in favour of the party winning the action, according to a “loser pays” rule.

1.3 **Can costs be ordered to be paid to, or by, a non-party?**
No.

Especially in the case of court-appointed experts, the party interested in pursuing the trial pays the relevant costs and has a right to recover them from his opponent either through a costs award included in the respective court ruling or by way of a separate law suit.

2. **Details of recoverability of costs**

2.1 **On what basis are costs recoverable?**

The general principle is that each party to the proceedings bears his own costs in advance, and these are eventually awarded by way of the judgment in favour of the party winning the action, according to a “loser pays” rule.

Generally therefore, the losing party pays all the other party's costs including the lawyer’s fees. However, costs awarded tend to be extremely low and in no case do they correspond to or are even close to the actual costs of the successful party.

In practice, even the loser pays rule is often not followed by the courts, which may offset costs between the parties on the basis that the loser had justifiable doubts as to the outcome of the case, or that each party had partially won and partially lost.

Costs may even be ordered to be paid by the winning party where such a party breached the general principles of telling the truth and conducting litigation according to good morals and good faith.

Excessive costs, that is, those which were not absolutely necessary for the pursuance of the litigation, will not be awarded to the party which is entitled to them.

2.2 **Is the amount of recoverable costs fixed?**
No.

2.3 **Is the amount of recoverable costs calculated by reference to the amount in dispute?**
Yes.

Minimum amounts for lawyers’ fees are calculated as follows: one per cent for writing claimant’s submissions, and two per cent for writing defendant’s submissions. However, such amounts are rarely awarded in practice.

2.4 **What can be recovered as “costs”?**

<table>
<thead>
<tr>
<th>Lawyer – client fees</th>
<th>The actual lawyer-client fees are not awarded as a rule; instead nominal costs are awarded.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Court fees</td>
<td>No.</td>
</tr>
<tr>
<td>Disbursements (including, but not limited to, photocopying, expert witness, travel, translation, notarial, witness attendance etc.)</td>
<td>Yes, if they are analysed and specifically requested, and in proportion to the amount in dispute. They must not be excessive.</td>
</tr>
</tbody>
</table>

If the court appoints an expert, the party that notifies the appointment to the expert and invites them to take the oath, pays the experts fees regardless of whether that party requested the appointment of the expert or not. (Article 173(3) of the Greek Code of Civil Procedures (“GCCP”)). However, such fees form part of the costs of the action that a party can recover from the opposing party if it is successful (Article 189 of the GCCP).
3. Particular costs issues

3.1 Can a party agree with its own lawyer, a special costs arrangement?
Yes.

Lawyer’s fees are subject to an agreement with the client. The agreement may cover either the whole or only part of the proceedings and is not subject to any restrictions, save that such fees may in no case be lower than the minimum provided for by the Lawyers’ Code; otherwise the relevant agreement between lawyer and client is null and void.

Conditional fees, where the lawyer’s fees will depend upon the outcome of the case or any other condition agreed between the parties, are permitted. However, such fees must not exceed 20% of the (total) amount eventually awarded by the court. Additionally, conditional fee agreements have to be:

- certified by the competent tax authority within 10 days from their signature, otherwise they are null and void
- filed with the legal attorney’s competent Bar (especially those concerning labour and land expropriation disputes).

3.2 Which tribunal resolves costs disputes and how?
The court hearing the case itself will also resolve any disputes as to costs.

3.3 Can a party be required to provide security for costs (or some other sum) in advance of costs being decided?
Yes.

The court, following a request by the defendant, may order the claimant to give a guarantee against the expenses of the court procedure if the court considers that there exists a manifest risk that the claimant may be unable to pay the costs of the proceedings (Article 169 of the GCCP).

4. Costs awards

4.1 Can interim awards of costs be obtained?
Yes, but only exceptionally.

See question 3.3 above.

4.2 Can an award of costs be increased or decreased by reference to such matters as a party’s conduct of the case?
Yes.

Costs may be awarded in favour of the losing party if the successful party violated its legal obligations when pursuing the litigation; all litigants are under a legal duty to tell the truth and to act in accordance with the principle of good faith (Article 116 of the GCCP).

4.3 How are costs awards enforced?
Costs awards are enforced in the same way as the judgment under which they are granted.

There is a standard enforcement procedure for judicial decisions, provided for by Articles 904 et seq. of the Civil Procedure Code. This procedure applies to all judicial decisions; therefore, it also applies to decisions awarding costs to either of the litigants.

As a rule, only “final” decisions may be enforced; final decisions are those issued by the appellate courts or the decisions of the first instance if the deadline for the appeal has lapsed and no appeal has been filed. By way of an exception, decisions of the first instance may be declared “provisionally enforceable” by the adjudicating court, under certain conditions stipulated by law.

In order to initiate enforcement proceedings, the successful party must obtain a certified copy of the enforcement order bearing the enforcement formula, which is provided by the presiding judge of the court that issued the relevant decision. Subsequently, the successful party has to serve this copy on the losing party, inviting the latter to voluntarily comply with it. Once this order has been served, no other enforcement action may be taken until three working days have passed.

Substantive objections against the enforcement order may be raised by way of a petition for the annulment of the enforcement order (in Greek “anakopi”), usually accompanied by a request for stay of the enforcement procedure until the issuance of a decision on such petition (in Greek “anastoli”).

If no such request is filed, or if the request is rejected, then the court bailiff proceeds with the enforcement of the decision (seizure of any and all property and assets of the losing party up to the amount awarded plus interest, costs and enforcement procedure expenses).

4.4 Can a costs award be set off against a monetary judgment?
Yes.

4.5 Is interest payable on unpaid costs?
Yes.

Greek courts do not award interest on costs in the judgment as such. However, interest is payable on all money judgments as a rule from the day the action commenced, and, exceptionally
the court may rule that interest shall run from the day when the
cause of action arose. The rate applied is not decided by the
court, but is set by statute at regular intervals.

5. Costs of an appeal

5.1 Are costs of an appeal treated differently?
They are treated very similarly, with some minor changes.

Minimum lawyer’s fees, court fees and judicial stamps are all
slightly higher in the appeal courts. All other costs are practically
the same.

6. Funding of civil and commercial claims

6.1 Can costs be insured?
No. Legal expenses insurance coverage is very rare in Greece.
The concept of after the event insurance (ATE) does not exist
in Greece.

6.2 Is legal aid available?
Yes.

According to Law 3226/2004 enacted to implement EC Council

- citizens of other EU Member-States
- third countries’ citizens or persons without citizenship domiciled
  or residing within the EU

are entitled to legal aid from the Greek State, if they have a low
annual family income. A family income is considered low, if it is less
than the two thirds of the minimum annual income provided by the
(Greek) National General Collective Labour Agreements in force
from time to time.

In civil and commercial cases legal aid consists of the non-obligation
of the litigant to pay the court expenses (for example, stamp duty,
witness fees, etc.) as well as the appointment of an attorney,
if required.

Moreover, legal aid may only be granted if the hearing of the
case is not considered to be “apparently unjust or unfavourable.”
Such consideration is subject to the discretion of the court
adjudicating upon the relevant petition, and that court may also
request a lawyer’s opinion thereon. The interested person must
apply to the court giving proof of his financial status as above.

Legal aid is granted separately for each trial, it covers all
expenses of that trial and procedure and may be recalled
or limited ex-officio should the pre-requisites for granting it
subsequently cease to exist or change. Lastly, Law 3226/2004
which has not been enacted yet, will provide for the possibility of
introduction of legal aid regulation also in administrative cases.

6.3 Is third party funding of claims available?
No.

Loans or grants from banks, trade associations, etc., are unknown.
Also, funding by a lawyer or other third party investor is unknown
with the following exception: certain lawyers may provide rather
low-price services for poor citizens, limited to the particularities of
each specific case.

Contributed by:
Dimitris Emvalomenos – Christos Gramatidis
Bahas, Gramatidis & Partners.
1. Recoverability of costs

1.1 Can costs be recovered by a party to civil litigation?
Yes.

A court order is required for a party to recover costs (O 62 Rule 3(1) of the Rules of the High Court (“RHC”).

1.2 Does the losing party usually pay the successful party’s costs?
Yes.

The court has the discretion to order costs.

The court usually orders the losing party to pay the costs (including court fees and legal costs) of the successful party, which is called the “costs to follow the event” principle (O 62 Rule 3(2) of the RHC). In interlocutory proceedings, the court may depart from this principle (O 62 Rule 3(3) of the RHC).

The court also has the power to make an order awarding costs against a non-party to the relevant proceedings if it is satisfied that it is in the interests of justice to do so. (Also see question 1.3 below.)

1.3 Can costs be ordered to be paid to, or by, a non-party?
Yes, in limited circumstances.

If a third party is joined/joins himself as a third party or an intervener to the proceedings, costs can be ordered in his favour.

The court also has the power to order costs in favour of or against a non-party on condition that:

- that person must be joined as a party to the proceedings for the purpose of costs only
- he must be given a reasonable opportunity to attend at a hearing at which the court shall consider the matter fully (Sections 52A and 52B of the High Court Ordinance (“HCO”) and O 62 Rule 6A(1) of the RHC).

2. Details of recoverability of costs

2.1 On what basis are costs recoverable?
The court, in exercising its discretion as to costs, shall take into account the following special matters set out in O 62 Rule 5 of RHC:

- the underlying objectives (O 1A r 1)
- any offer of contribution
- any payment of money into court and the amount of such payment
- any admissible offer to settle made by a party
- the conduct of all the parties
- whether a party has succeeded on part of his case, even if he has not been wholly successful.

The court has the discretion to determine the basis on which the costs are to be assessed. The process of assessment of the amount of costs payable is called “taxation.” As to the basis on which costs are taxed:

- Party and party basis: the usual basis of taxation is the party and party basis, where the court will allow all such costs as were necessary or proper for the attainment of justice or for enforcing or defending the rights of the party whose costs are being taxed
- Other basis: the court may also direct that the costs shall be taxed on a more generous basis, namely, the common fund basis or on the indemnity basis where it is just to do so, for example, where the paying party has improperly conducted himself in the proceedings
- Common fund basis: on a taxation on the common fund basis, the court will allow recovery of a reasonable amount in respect of all costs reasonably incurred
- Indemnity basis: on a taxation on the indemnity basis, being the most generous basis, all costs shall be allowed except in so far as they are of an unreasonable amount or have been unreasonably incurred. Any doubts as to whether the costs were reasonably incurred or were reasonable in amount shall be resolved in favour of the receiving party.

(1) Indemnity costs can be awarded where a party fails to beat a sanctioned offer or sanctioned payment (like a Part 36 offer in the UK) (O 22 Rules 23-24 of the RHC) or where a party misleads the court.

The taxation process is carried out by the taxation master. The parties have opportunities to make submissions at the taxation hearing.

In determining the amount of costs payable, the taxing master shall have regard to all relevant circumstances, and in particular to:

- the complexity of the item or of the cause or matter in which it arises and the difficulty or novelty of the questions involved
- the skill, specialised knowledge and responsibility required of, and the time and labour expended by, the solicitor or counsel
- the number and importance of the documents prepared or perused
- the place and circumstances in which the business involved is transacted
- the importance of the cause or matter to the client
- where money or property is involved, its amount or value
- any other fees and allowances payable to the solicitor or counsel in respect of other items in the same cause or matter, but only where work done in relation to those items has reduced the work which would otherwise have been necessary in relation to the items in question.

(2) Indemnity costs can be awarded where a party fails to beat a sanctioned offer or sanctioned payment (like a Part 36 offer in the UK) (O 22 Rules 23-24 of the RHC) or where a party misleads the court.

2.2 Is the amount of recoverable costs fixed?
Yes, in limited circumstances only.
Fixed costs regime contained in O 62 Second Schedule Part II of the RHC, for example, where a claimant obtains judgment in default of defence.

2.3 Is the amount of recoverable costs calculated by reference to the amount in dispute?
Yes, this is one of the factors considered by the court in exercising its discretion.

As mentioned in question 2.1 above, where money or property is involved, the taxing master shall have regard to its amount or value in determining the amount of costs payable.

In addition, one of the underlying objectives of the RHC is to promote a sense of reasonable proportion and procedural economy in the conduct of proceedings (O 1A Rule 1(c) of the RHC).

2.4 What can be recovered as “costs”?

<table>
<thead>
<tr>
<th>Item</th>
<th>Recoverable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lawyer – client fees</td>
<td>Yes</td>
</tr>
<tr>
<td>Additional lawyer fees (for example, counsel fees or trial advocate fees)</td>
<td>Yes. Note that the amount of counsels’ fee to be allowed on taxation is subject to the same test as that of solicitors’ costs (O 62 First Schedule Part II paragraph 2(5) of the RHC).</td>
</tr>
<tr>
<td>Agency fees (for example, London agents, local agents, appellate lawyer, bailiff/process-server)</td>
<td>Yes</td>
</tr>
<tr>
<td>Court fees</td>
<td>Yes</td>
</tr>
<tr>
<td>Disbursements (including, but not limited to, photocopying, expert witness, travel, translation, notarial, witness attendance etc.)</td>
<td>Yes</td>
</tr>
<tr>
<td>Other expenses</td>
<td>Transcription services during hearings, if agreed between parties as costs recoverable.</td>
</tr>
</tbody>
</table>

3. Particular costs issues

3.1 Can a party agree with its own lawyer, a special costs arrangement?
Yes.

The client can agree with its lawyer the basis of charging, for example, fixed fee or hourly rate with or without a cap. However, contingency fees are not allowed.

2.2 Which tribunal resolves costs disputes and how?
The court in awarding costs may direct that costs be taxed or make a summary assessment of the costs (O 62 Rules 9(4)(b) and 9A of the RHC). If taxation is ordered, the taxation process will be undertaken by a taxing master at a later date. On the other hand, summary assessment is carried out by the court who makes the costs order and is carried out immediately or a few days after the costs order is made. Summary assessment is often ordered in interlocutory proceedings.

For summary assessment, the receiving party shall provide a brief breakdown of costs incurred. The paying party can raise objections to the amount claimed. Costs summarily assessed are generally payable within 14 days of the order (O 62 Rule 9B of the RHC).

Summary assessment is not ordered if:

- there is a substantial dispute in relation to the sum claimed which cannot be dealt with summarily
- the receiving party is legally aided or a person under disability and his legal representative has not waived the right to any further sum of money in respect of the costs of the interlocutory application. (O 62 Rule 9C of the RHC).

Taxation is generally not done until the conclusion of the action (O 62 Rule 9D of the RHC). The procedure of taxation is set out in O 62 Rules 21-21C of the RHC. The receiving party shall file a Notice of Commencement of Taxation and an itemised bill of costs within three months of the costs order or the date on which that party becomes entitled to taxation, whichever is later (O 62 Rule 22 of the RHC). The receiving party may set down the taxation for hearing. If the taxation is not set down for hearing, the taxing master may tax the bill without a hearing and make an order nisi, subject to the right of the parties to apply for a hearing within 14 days thereafter (O 62 Rules 21A and 21B of the RHC).

3.3 Can a party be required to provide security for costs (or some other sum) in advance of costs being decided?
Yes.

An order for security for costs can be made against a party in the position of a claimant. An order usually requires the claimant to pay money into court as security for the payment of any costs order that may eventually be made in favour of the defendant, and staying the claim until the security is provided. The defendant may apply for security any time after proceedings are issued.

An order for security for costs can be made against:

- a claimant who ordinarily resides out of Hong Kong (O 23 of the RHC); or
- a claimant which is a limited company incorporated in Hong Kong and is impecunious (Section 357 of the Companies Ordinance, Cap 32).
4. **Costs awards**

4.1 **Can interim awards of costs be obtained?**

Yes.

Costs may be dealt with by the court at any stage of the proceedings or after the conclusion of the proceedings. However, the court may, if it thinks fit, require the costs to be paid forthwith notwithstanding that the proceedings have not been concluded (except where the paying party is legally aided). (O 62 Rule 4(1) of the RHC.)

At the conclusion of interlocutory applications, the court usually orders summary assessment of the costs of that application. The assessment is usually carried out forthwith and the amount is generally payable within 14 days.

4.2 **Can an award of costs be increased or decreased by reference to such matters as a party’s conduct of the case?**

Yes.

As referred to in question 2.1 above, the conduct of the parties is one of the matters taken into account by the court when exercising its discretion as to costs (O 62 Rule 5(1) of the RHC). In this regard, the conduct of the parties includes:

- whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue
- the manner in which a party has pursued or defended his case or a particular allegation or issue
- whether a claimant who has succeeded in his claim, in whole or in part, exaggerated his claim
- conduct before, as well as during, the proceedings.

(O 62 Rule 5(2) of the RHC.)

For example, if a winning party’s conduct unnecessarily increases the costs incurred, the court may award to him only a portion of his costs.

As to misconduct and neglect, where anything is done or omission is made improperly or unnecessarily by a party, the court may disallow that party any costs occasioned by that act or omission and order that party to pay any costs occasioned by it to other parties. In this connection, the court shall have regard in particular to the following matters:

- the underlying objectives (O 1A Rule 1 of the RHC)
- the omission to do any costs-saving acts
- the doing of any thing calculated to occasion unnecessary costs
- any unnecessary delay in the proceedings.

(O 62 Rule 7 of the RHC.)

In interlocutory proceedings, the court may depart from the principle of “costs to follow the event” (O 62 Rule 3(3) of the RHC), for example where the unreasonable attitude of the winning party renders the interlocutory application necessary.

Misconduct by a paying party may attract an award on a higher basis, such as the indemnity basis.

4.3 **How are costs awards enforced?**

Upon assessment of the amount payable, costs can be enforced like any monetary judgment by any of the following methods:

- writ of fieri facias; or
- garnishee proceedings; or
- a charging order; or
- the appointment of a receiver; or
- an order of imprisonment following examination.

(O 45 Rule 1 of the RHC.)

4.4 **Can a costs award be set off against a monetary judgment?**

There is no automatic set off. However, where a party entitled to be paid costs is also liable to pay costs, the taxing master may:

- tax the costs which that party is liable to pay and set off the amount allowed against the amount he is entitled to be paid and direct payment of any balance; or
- delay the issue of a certificate for the costs he is entitled to be paid until he has paid or tendered the amount he is liable to pay.

(O 62 Rule 18 of the RHC.)

4.5 **Is interest payable on unpaid costs?**

Yes.

At the judgment rate from the date of the costs order (unless otherwise ordered), the judgment rate being a rate fixed by the court and is changed from time to time. The current judgment rate is eight per cent per annum.

Enhanced interest on costs (up to 10% above judgment rate) can be awarded where a party fails to beat a sanctioned offer or sanctioned payment (like a Part 36 offer in UK) (O 22 Rules 23-24 of the RHC).

5. **Costs of an appeal**

5.1 **Are costs of an appeal treated differently?**

The same principles apply.

The court hearing an appeal may deal with the costs of the proceedings giving rise to the appeal, as well as the costs of the appeal and of the proceedings connected with it (O 62 Rule 4(2) of the RHC).

In respect of an appeal to the Court of Final Appeal, the appellant will generally be required to put up security for costs in the sum of HK$400,000 in respect of each respondent (Section 25 of the Hong Kong Court of Final Appeal Ordinance, Cap 484).
6. Funding of civil and commercial claims

6.1 Can costs be insured?
Yes.

Legal expenses insurance is available both before and after the event. Lockton Companies (Hong Kong) Limited launched the first after the event Insurance product in Hong Kong in June 2009.

6.2 Is legal aid available?
Yes.

The Legal Aid Department provides legal representation to eligible applicants by a solicitor and, if necessary, a barrister in the proceedings.

In respect of civil proceedings, legal aid is available, inter alia, to cases in the District Court, the Court of First Instance, the Court of Appeal and the Court of Final Appeal.

Any person, whether or not resident in Hong Kong, who is involved in proceedings in the above courts may apply for legal aid. Legal aid is granted to those who satisfy the statutory criteria as to financial eligibility and the merits for taking or defending the proceedings. Legal aid is only provided to individuals, but is available for commercial disputes. Certain types of claims are, however, not covered, such as money claims in derivatives of securities, currency futures or other futures contracts.

Legal aid is not necessarily free. A person receiving legal aid may be required to contribute towards the costs and expenses incurred by the Legal Aid Department out of his financial resources and/or out of the money or property recovered or preserved on his behalf.

There are two legal aid schemes for civil cases:

- Ordinary Legal Aid Scheme: In addition to passing the merits test, applicants’ financial resources must not exceed the financial eligibility limit. Applicants are required to pay a contribution calculated in accordance with their financial resources.
- Supplementary Legal Aid Scheme: This applies to those who are financially not eligible for legal aid under the Ordinary Legal Aid Scheme but whose financial resources are below a certain amount. The Supplementary Legal Aid Scheme is a self-financing scheme funded by contribution and damages or compensation recovered. Applicants must pay an initial application fee plus an interim contribution upon acceptance of legal aid, and a final contribution upon conclusion of the case if successful.

As of 29 May 2009, the financial eligibility limit for the Ordinary Legal Aid Scheme is HK$175,800, and that for the Supplementary Legal Aid Scheme is HK$488,400.

The Director of Legal Aid may waive the financial eligibility limit in certain cases.

6.3 Is third party funding of claims available?
Yes, in limited circumstances.

Maintenance and champerty are still criminal offences in Hong Kong, with the following exceptions:

- “common interest” cases — where the person funding the litigation has a legitimate common interest in the outcome of the litigation
- cases involving access to justice considerations
- cases where a trustee in bankruptcy sells causes of action and the proceeds of those actions, or where an insurer exercises the right of subrogation under insurance contracts.

In the first ever criminal convictions for maintenance and champerty in Hong Kong, a solicitor and a recovery agent were found guilty in June 2009. They were found to have agreed to share 25% from the damages paid to the mother of a man who became mentally incapacitated after a car crash in March 2001. They never told the mother that she could apply for legal aid. The solicitor was sentenced to 15 months’ imprisonment and the recovery agent to 16 months’ imprisonment. (Case number: DCCC 610/2008.)

The prevalence of recovery agents in Hong Kong in recent years presents problems. They typically perform “ambulance chasing” on accident victims, offering to arrange lawyers to handle their claims on a “no win, no fee” basis. If the claim succeeds, the recovery agents share a portion of the damages. This is seen as deception on uneducated victims who are ignorant of the availability of legal aid. The division of the damages in effect deprives the victims of the just compensation that they are entitled to for their bodily injury. The intermeddling of recovery agents in the lawsuit may also undermine the impartiality of lawyers in advising on settlement.

Contributed by:
Lovells (Hong Kong).
1. Recoverability of costs

1.1 Can costs be recovered by a party to civil litigation? Yes.

1.2 Does the losing party usually pay the successful party’s costs? Yes.

Act III of 1952 on Civil Procedures provides that, in principle, the expenses of the successful party are borne by the unsuccessful party. However, this general rule is subject to the exceptions listed below:

- if the defendant did not give any cause for litigation and admits the whole claim immediately at the first trial, the judge shall order the claimant to bear the defendant’s costs
- if a dispute has already been settled by the parties in mediation, but one of the parties brings an action concerning the same dispute, this party may be obliged to bear all of the costs notwithstanding his success
- if one of the parties does not meet deadlines or causes unnecessary costs, such party shall not be entitled to claim any compensation for these costs, or it shall be obliged to cover the costs incurred as a result of its conduct
- if the parties are legal entities (that is companies, trusts etc.) and prior to proceedings being launched the defendant did not co-operate with the claimant (that is, during negotiations held in order to reach a solution acceptable for both of the parties without legal proceedings) the defendant may be obliged to cover all or part of the costs incurred in the legal proceedings
- in the case of partial success the court takes the proportion of success and the costs of each of the parties into account. If there is no significant difference between the portion of success and the costs incurred the judge may rule that the parties bear their own costs.

In the case of a third party entering a legal procedure on the side of the successful party the costs of the intervening party shall be recovered from the losing party.

In the case of a third party entering a legal procedure on the side of the losing party the costs incurred in relation to the intervention shall be covered by the intervening party.

1.3 Can costs be ordered to be paid to, or by, a non-party? No.

2. Details of recoverability of costs

2.1 On what basis are costs recoverable?

The court establishes the amount of costs based on information and detailed accounts provided by the parties. The amount of costs established by the court may not be higher than the party requested. If the party fails to inform the court about its costs, the court decides ex-officio.

According to Decree 32 of 2003 on lawyers’ fees in legal procedures, unless the lawyer and the party agree otherwise, the lawyers’ fees that are to be borne by the losing party are calculated as percentages by reference to the value of the claim. Lawyers’ disbursements can only be recovered from the losing party on the basis of detailed accounts.

Where a party and their lawyer agreed on a fee differing from the above, the losing party has to cover such fees, however, the court is entitled to mitigate it.

2.2 Is the amount of recoverable costs fixed? Yes, in certain cases (see response to question 2.1 above).

The lawyers’ fees may be fixed unless the party and their lawyer agree otherwise.

2.3 Is the amount of recoverable costs calculated by reference to the amount in dispute? Yes.

The lawyers’ fees shall be established by reference to the value in dispute, unless the party and their lawyer have agreed otherwise (see response to question 2.1 above).

2.4 What can be recovered as “costs”?

All expenses incurred in relation to the good faith conduct of the parties in the procedure (for example, stamp duty, costs of correspondence and receiving preliminary information, costs of the witnesses, fees of experts etc.) and the fees and disbursements of the lawyer (if any) shall be considered as costs.

<table>
<thead>
<tr>
<th>Cost Category</th>
<th>Recoverable?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lawyer – client fees</td>
<td>Yes.</td>
</tr>
<tr>
<td>Additional lawyer fees (for example, counsel fees or trial advocate fees)</td>
<td>Yes.</td>
</tr>
<tr>
<td>Agency fees (for example, London agents, local agents, appellate lawyer, bailiff/process-server)</td>
<td>Yes.</td>
</tr>
<tr>
<td>Court fees</td>
<td>Yes.</td>
</tr>
<tr>
<td>Disbursements (including, but not limited to, photocopying, expert witness, travel, translation, notarial, witness attendance etc.)</td>
<td>Yes.</td>
</tr>
<tr>
<td>Other expenses</td>
<td>In general all expenses incurred in relation to the procedure shall be recovered from the losing party, however, the successful party must prove such expenses with detailed accounts.</td>
</tr>
</tbody>
</table>

Hungary
3. Particular costs issues

3.1 Can a party agree with its own lawyer, a special costs arrangement?
Yes.

The lawyer and client can freely determine the fee payable for the lawyer’s services. This is not regulated by law.

Hourly rates, fixed fees, success fees and pro bono mandates are all common in Hungary.

3.2 Which tribunal resolves costs disputes and how?
There is not any special tribunal in Hungary to resolve cost related disputes. The decision of the court hearing the main action relating to the costs may be appealed within 15 days from receipt.

3.3 Can a party be required to provide security for costs (or some other sum) in advance of costs being decided?
Yes.

In the event the claimant is a foreign (legal) entity (save where there is a bilateral or multilateral agreement between the home countries of the parties regarding such matter) the defendant is entitled to ask the court to oblige the claimant to give security which covers the litigation costs. The court has discretion to set the amount of the advanced payment, which shall be held in an escrow account until the final judgment.

Costs incurred in relation to “evidencing” of a fact shall be advanced by the evidencing party.

4. Costs awards

4.1 Can interim awards of costs be obtained?
Yes.

In general the court decides on costs in its final judgment or order, however, if any cost is payable by a witness, expert or other third party, such persons are obliged to meet this payment obligation forthwith.

If the cost is payable by one party regardless of the outcome of the litigation such party shall be obliged to pay the costs forthwith. An example of such a scenario might be where the claimant issues proceedings against an incorrect defendant. In such a case the costs of that defendant shall be borne by the claimant regardless of the outcome of the litigation.

4.2 Can an award of costs be increased or decreased by reference to such matters as a party’s conduct of the case?
Yes.

If a particular cost was incurred as a result of delay or other misconduct by a party that party shall bear those incurred costs regardless of their success (or otherwise) in the case.

4.3 How are costs awards enforced?
In the event the person who is obliged to pay the litigation costs fails to do so within due time, the entitled person should initially try to collect the money through a prompt collection order to the account holding bank of the obliged person. This is a less formal procedure whereby the entitled person attempts to recover directly from the obliged’s bank. If there is not any/enough money in the bank account the claim may be enforced by a bailiff.

4.4 Can a costs award be set off against a monetary judgment?
Yes.

Costs awarded to the parties may be set off against sums due to each other according to the general law. This means that one of the parties is entitled to off set his overdue claims against his debts by providing a statement addressed to the other party or submitting one in the course of court proceedings.

4.5 Is interest payable on unpaid costs?
Yes.

Within 15 days of receipt of the final judgment the party who is obliged to bear the costs shall pay such costs to the other party. If the paying party fails to pay within 15 days that party shall pay interest on such amount. The interest shall be equal to the rate established by the Hungarian Central Bank applicable on the last day of the month preceding the relevant month. Where both parties are business entities a further seven per cent shall be added to the above rate.

5. Costs of an appeal

5.1 Are costs of an appeal treated differently?
Yes.

According to Decree 32 of 2003, if the parties do not agree otherwise, the lawyers’ fees to be borne by the unsuccessful party are 50% of the fees which are payable in first instance proceedings.

6. Funding of civil and commercial claims

6.1 Can costs be insured?
Yes.

Before the event insurance (“BTE”) and legal expenses insurance (“LEI”) are available.

Some legal expenses insurance groups have appeared in Hungary since 2002 and they will cover services such as legal protection in respect of compensation claims, consumer protection, legal protection in cases relating to driving licences, insurance services, legal advice and legal protection in respect of social security.

However, these services are not very common.

6.2 Is legal aid available?
Yes.
There are several levels of legal aid which can be granted to parties depending on their income or the subject of the lawsuit. Legal aid takes the form of an exemption from certain legal costs (for example, stamp duties, fees occurred during the procedure). In general a party must request such allowance from the first instance court and will then be entitled to the exemption during the whole procedure.

In some cases (regardless of the income of the parties) a party may be entitled to an exemption from the costs on the basis of law, for example, in paternity lawsuits, procedures relating to the custody of children and guardianship matters.

A party may be entitled to legal assistance in a procedure if the conditions set out in Act LXXX of 2003 are met (most of these conditions depend on his/her income and fortune).

6.3 Is third party funding of claims available?
Yes, in limited circumstances.

Third party funding is available, however, it is unusual for a third party investor to finance the bringing or defending of a legal claim.

Contributed by:
Dr László Partos
Christopher Noblet

Partos & Noblet (Lovells’ associated Budapest office).
Iceland

1. Recoverability of costs

1.1 Can costs be recovered by a party to civil litigation?
Yes.

Any costs, as “costs” is defined, can be recovered. The general rule is that the party that loses the case in all or a material sense, should pay the costs of the other party as decided by the court. The court can also decide that each party should bear his own costs.

1.2 Does the losing party usually pay the successful party's costs?
Yes.
The loser pays, see question 1.1 above.

1.3 Can costs be ordered to be paid to, or by, a non-party?
No.

2. Details of recoverability of costs

2.1 On what basis are costs recoverable?
The court will assess the costs incurred by the parties and decide on the amount that should be paid. The issue of costs is decided at the same time and by the same judge who decides on the merits of the case. Lawyers often deliver their tariff to the court but the court is not bound by it in any way.

2.2 Is the amount of recoverable costs fixed?
No.

2.3 Is the amount of recoverable costs calculated by reference to the amount in dispute?
No.

A cost judgment is sometimes based on the amount in dispute, but the cost award is rarely reasoned entirely by reference to the amount in dispute.

2.4 What can be recovered as “costs”?

<table>
<thead>
<tr>
<th>Description</th>
<th>Recoverable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lawyer – client fees</td>
<td>Yes</td>
</tr>
<tr>
<td>Additional lawyer fees (for example, counsel fees or trial advocate fees)</td>
<td>Yes</td>
</tr>
<tr>
<td>Agency fees (for example, London agents, local agents, appellate lawyer, bailiff/process-server)</td>
<td>Yes</td>
</tr>
<tr>
<td>Court fees</td>
<td>Yes</td>
</tr>
<tr>
<td>Disbursements (including, but not limited to, photocopying, expert witness, travel, translation, notarial, witness attendance etc.)</td>
<td>Yes</td>
</tr>
</tbody>
</table>

3. Particular costs issues

3.1 Can a party agree with its own lawyer, a special costs arrangement?
Yes.

This is open to negotiation between the lawyer and his client. There are no types of arrangement that are prohibited. One could negotiate percentage deals, contingency fees and success fees.

3.2 Which tribunal resolves costs disputes and how?
The court handling the case and as a part of the overall judgment.

3.3 Can a party be required to provide security for costs (or some other sum) in advance of costs being decided?
Yes.

There is a special provision in the Civil Code that allows one to claim security for costs in advance if it is proved by either party that the other party is not likely to be able to pay the costs in the event that they lose the case.

4. Costs awards

4.1 Can interim awards of costs be obtained?
Not as a general rule.

4.2 Can an award of costs be increased or decreased by reference to such matters as a party’s conduct of the case?
If a party files a suit without sufficient grounds and the court deems his actions to be grave, then a court can increase the award of costs.

4.3 How are costs awards enforced?
As a part of the enforcement of the judgment, by the District Commissioner if necessary.

4.4 Can a costs award be set off against a monetary judgment?
It would depend on the situation, but it is possible; this would be looked at on a case by case basis.

4.5 Is interest payable on unpaid costs?
Yes.

The interest rate is set according to a decision of the Central Bank of Iceland each month. Penalty interest, at a higher rate, can be claimed 15 days after the judgment is rendered.

5. Costs of an appeal

5.1 Are costs of an appeal treated differently?
No.
6. Funding of civil and commercial claims

6.1 Can costs be insured?
No, but some insurance companies have court costs insurance, with major exceptions, in their home and family insurance.

6.2 Is legal aid available?
Yes.

The State has a special free legal aid programme, mainly for low income individuals. If such aid is granted the lawyer handling the case cannot claim any further payment from the client, if not negotiated otherwise. A special committee appointed by the Ministry of Justice decides whether one gets such aid or not.

6.3 Is third party funding of claims available?
Yes.

There are no special rules on the subject, so there is nothing that prohibits third party funding.

Contributed by:

LOGOS.
India

1. Recoverability of costs

1.1 Can costs be recovered by a party to civil litigation?
Yes.

1.2 Does the losing party usually pay the successful party’s costs?
Yes.

Note that costs are generally defined by the Indian courts to mean statutory allowances a succeeding party is entitled to get from the losing party to reimburse himself for expenses incurred in defending or prosecuting the proceedings (Ganesh Das Ram Gopal v The Munsif, South Lucknow and Anr (AIR 1976 All 111)). Sections 35, 35A and 35B of the Code of Civil Procedure, 1908 (“CPC”), contemplate two situations in which costs can be recovered/awarded by the courts in India:

- firstly, courts can award costs to a party who succeeds against the other party
- secondly, the court can also award costs by way of compensation if it is proved to the satisfaction of the court that the defence or claim made by a party is false or vexatious.

The courts have also held that the primary object of levying costs is to compensate a litigant for the expenses incurred by him in litigation to vindicate or defend his right (Ashok Kumar Mittal v Ram Kumar Gupta and Anr (2009) 2 SCC 666).

Further, costs are granted entirely at the discretion of the court but, as a practice, the amounts generally granted are not enough to cover the actual legal and other costs of a party. Historically, the courts followed a practice of granting only nominal costs but the Supreme Court of India in 2005 held that the courts should award actual reasonable costs.

1.3 Can costs be ordered to be paid to, or by, a non-party?
Yes, in certain cases only.

There are no specific provisions in Indian law which allow or prohibit a party who is not a party to any proceedings from recovering costs from a party to a suit. However, the courts have held that a party against whom no relief is claimed in the suit should not be granted costs (Rangalal Rameshwar Lal v Utkal Rastabhasa Prachar Co-operative Press & Publishing Society Ltd (AIR 1975 Ori 137)). Therefore, it is important that the party should become a party to the proceedings/suit.

In certain very exceptional circumstances which are based on the specific facts and circumstances of a case, the court has ordered costs from a person who is not a party to the proceedings. For example, in Asuram Sadasuk v Sub-Collector, Rajahmundry, 53 Mad. 708, a person executing a Security Bond has been directed to pay the costs payable under a decree although he was not a party to the suit and no decree was passed against him on the ground that he made himself liable under the Bond for payment of the costs.

2. Details of recoverability of costs

2.1 On what basis are costs recoverable?
Section 35 of the CPC states that costs of and incident to all suits are in the discretion of the court and the court has full power to determine by whom or out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid.

The award of the cost of the suit is at the discretion of the court deciding the dispute. There are no fixed tariffs prescribed for the same.

The courts have held that though in the matter of awarding costs the courts have got a wide discretion, this discretion should be exercised in a judicial manner and not arbitrarily and capriciously. The discretion of courts should be exercised on sound legal principles and not by chance nor by caprice nor in temper (L.I.C. v B. Chandravathamma (AIR 1971 AP 41)).

However, the successful party will not be allowed to make any profit out of the order for costs made in his favour (N. Peddanna Ogeti Balayya v Kartta v Srinivasaya Setti Sons (AIR 1954 SC 26)).

If the court considers it a fit case, the court may award exemplary costs (Gayatri De v Mousumi Co-op. Housing Society Ltd. (2004) 5 SCC 90).

2.2 Is the amount of recoverable costs fixed?
No, but the amount is considered as part of the court’s discretion.

Section 35 of the CPC states that in the case of false and vexatious claims (or defence), which are later on disallowed or abandoned or withdrawn in whole or in part, the court can order for costs by way of compensation. Sub-section (2) provides that in such cases, the court shall not pass an order for payment of costs exceeding 3,000 rupees or the limits of its pecuniary jurisdiction, whichever amount is lesser.

2.3 Is the amount of recoverable costs calculated by reference to the amount in dispute?
No, but the amount is considered as part of the court’s discretion.

The courts have held that the amount of costs should be proportionate to the amount of compensation involved in a particular claim (State of Haryana v Rajinder Kumar, 1987 Supp SCC 20).

2.4 What can be recovered as “costs”?
Order XX-A Rule 1 of the CPC states that when awarding costs, the court may reimburse the following:

- expenditure incurred for the giving of any notice required to be given by law before the institution of the suit
- expenditure incurred on any notice which, though not required to be given by law, has been given by any party to the suit to any other party before the institution of the suit
- expenditure incurred on the typing, writing or printing of pleadings filed by any party
- charges paid by a party for inspection of the records of the court for the purposes of the suit
- expenditure incurred by a party for producing witnesses, even though not summoned through court
- in the case of appeals, charges incurred by a party for obtaining any copies of judgments and decrees which are required to be filed along with the memorandum of appeal.

<table>
<thead>
<tr>
<th>Category</th>
<th>Allowed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lawyer – client fees</td>
<td>Yes but only reasonable fees.</td>
</tr>
<tr>
<td>Additional lawyer fees (for example, counsel fees or trial advocate fees)</td>
<td>Yes but as fixed by the court.</td>
</tr>
<tr>
<td>Agency fees (for example, London agents, local agents, appellate lawyer, bailiff/process-server)</td>
<td>Yes.</td>
</tr>
<tr>
<td>Court fees</td>
<td>Yes.</td>
</tr>
<tr>
<td>Disbursements (including, but not limited to, photocopying, expert witness, travel, translation, notarial, witness attendance etc.)</td>
<td>Yes.</td>
</tr>
<tr>
<td>Other expenses</td>
<td>Cost of the transportation and lodging, if any, or any other incidental cost. (Salem Advocate Bar Association, Tamil Nadu v Union of India (UOI) (AIR 2005 SC 3353)).</td>
</tr>
</tbody>
</table>

3. Particular costs issues

3.1 Can a party agree with its own lawyer, a special costs arrangement?

No.

Part – VI, Chapter – II, Section II, Rule 20 of the Bar Council of India Rules state that an advocate shall not stipulate a fee contingent on the results of litigation or agree to share the proceeds thereof.

3.2 Which tribunal resolves costs disputes and how?

There is no special tribunal or court which determines or resolves disputes on costs. The same can be challenged before the appellate court. However, usually an appellate court does not interfere with an award of costs by the trial/lower court, unless the reasons cited therein are totally unjustified (Indian Bank v Mocro Electronics (AIR 2005 AP 328)).

The discretion under section 35 of the CPC in the matter of costs is a judicial discretion to be exercised in accordance with definite principles and, where it has properly been exercised by the trial court, the appellate court and the High Court in revision will not interfere with the exercise of that discretion. However, appellate court/High Court can inter alia interfere in the order of the lower court in the following scenarios:

- where a question of principle is involved, the High Court will interfere in revision with orders for costs (Kameshwar Singh v Nebial Mistri (AIR 1945 Pat 184))
- where the trial court did not exercise its discretion in awarding costs based upon materials which were before it, or such discretion was not based on legal principles consistent with justice and reason (Ghasiram v Mahadevamma (AIR 1975 Kant 158)).

3.3 Can a party be required to provide security for costs (or some other sum) in advance of costs being decided?

Yes.

The court may order costs to be paid in advance of the end of litigation to provide security for the costs likely to be incurred by any defendant – Under Order XXV Rule 1 of the CPC, the court may, at any stage of a suit, either of its own motion or on an application of any defendant, order the claimant to give security for the payment of all costs incurred and likely to be incurred by any defendant within the time fixed by the court. Such an order shall be made in all cases in which it appears to the court that the claimant resides out of India and such claimant does not possess any sufficient immovable property with India other than the property in suit.

The court can order costs during the course of proceedings if a party fails to take steps which he was required to (take) on a particular date or he obtains an adjournment for taking such steps or for producing evidence or on any other grounds. Such costs would (in the discretion of the court) only be “reasonably sufficient” to reimburse the other party in respect of the expenses incurred by him for attending the court on that particular date. The costs so awarded are required to be paid on the next date following the date of the order.

4. Costs awards

4.1 Can interim awards of costs be obtained?

Yes.

At the interlocutory stage (that is, when an application is filed for interim reliefs pending the final disposal of the suit), the party which succeeds in the interlocutory application may be awarded costs (Austin Nichols and Co. and Seagram India Pvt. Ltd. v Arvind Behl, Director, Jagaft Industries Ltd. and Jagaft Industries Ltd (2006 (32) PTC 133 (Del))).

4.2 Can an award of costs be increased or decreased by reference to such matters as a party’s conduct of the case?

Yes.

The view of the judge on the equity and the conduct of the parties before and during the litigation and other like intangible
factors have a play in shaping the judicial verdict regarding costs (A Yousuf Rawther v Sowramma (AIR 1971 Ker 261)).

Courts have also held that the claimant, even though successful, may be denied costs and interest for his dubious conduct (Jasraj Inder Singh v Hemraj Multanchand ((1977) 2 SCC 155).

4.3 How are costs awards enforced?
Order XX Rule 6 of the CPC provides that a decree shall also state the amount of costs incurred in the suit and by whom or out of what property and in what proportions such costs are to be paid. Under section 36 of the CPC, the provisions of the CPC relating to the execution of decrees (including payment under the decree) shall be applicable to the execution of all orders (including payment under an order).

Order XI, Rule 10 of the CPC states for the execution of any decree, an application would have to be made to the court which has passed the decree.

Under Order XXI Rule 30 of the CPC, every decree for the payment of money may be executed either by:

- detention in the civil prison of the judgment-debtor; or
- attachment and sale of his property; or
- by both.

4.4 Can a costs award be set off against a monetary judgment?
Order XX Rule 6(3) of the CPC states that the court may direct that the costs payable to one party by the other shall be set off against any sum which is admitted or found to be due from the former to the latter.

4.5 Is interest payable on unpaid costs?
Yes, but at the court’s discretion.

While awarding costs, the courts may also direct that interest be payable on the costs so awarded in case of delay in payment. However, where the judgment does not provide for interest on costs, it cannot be awarded in the decree. (Janaki Nath Roy, Narendra Nath Roy & Co. Ltd. v Sambhu Nath Mullick (AIR 1971 Cal 504)). In such cases, the claimant would have to approach the court seeking an order of interest.

5. Costs of an appeal

5.1 Are costs of an appeal treated differently?
At the court’s discretion.

A court of appeal may direct that any one of the parties shall bear the costs of the suit and the cost in the court of appeal. (Dambaru Prasad Bhuunya v Muralidhar Bhuunya (AIR 1986 Ori 15)).

6. Funding of civil and commercial claims

6.1 Can costs be insured?
Yes.

In India, certain insurance policies such as directors and officers’ liability insurance policy, shopkeepers’ insurance policy etc. provide insurance against third party litigation expenses. However such policies cover litigation expenses only for certain limited events.

6.2 Is legal aid available?
Yes.

Article 39A of the Constitution of India provides that the State shall provide free legal aid to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disability.

The National Legal Services Authority has been constituted under the Legal Services Authorities Act, 1987 (“Legal Services Authorities Act”) to inter alia:

- lay down policies and principles for making legal services available under the provisions of the Legal Services Authorities Act
- frame effective and economical schemes for the purpose of making legal services available under the Legal Services Authorities Act
- take necessary steps by way of social justice litigation with regard to consumer protection, environmental protection or any other matter of special concern to the weaker sections of the society and for this purpose, give training to social workers in legal skills.

Under the Legal Services Authorities Act, legal aid is available to inter alia:

- a member of a Scheduled Caste or Scheduled Tribe
- a woman or a child
- a person with disability.

6.3 Is third party funding of claims available?
No.

There seems to be no recognition of the concept of third party funding of claims by the courts and any statutes or regulations. As such, there seem to be no precedents.

A claimant may have a private arrangement for funding as the same is not regulated.

Contributed by:
Phoenix Legal.
Ireland

1. Recoverability of costs

1.1 Can costs be recovered by a party to civil litigation? Yes.

1.2 Does the losing party usually pay the successful party’s costs? Yes.

Costs follow the event, and if a claimant is successful in their claim, then they will be awarded costs against the party sued.

A successful defendant will generally recover costs from the claimant. In some circumstances costs may be awarded against a co-defendant or a third party.

1.3 Can costs be ordered to be paid to, or by, a non-party? Yes, depending on the circumstances.

In some circumstances a non-party may be ordered to pay costs at the discretion of the court. For example, if a non-party has failed to comply with a discovery order from the court, that non-party may be ordered to pay costs.

2. Details of recoverability of costs

2.1 On what basis are costs recoverable? Discretionary.

The Court (District, Circuit, High, Supreme) has discretion to award the costs incidental to every proceeding before it (Order 99 Rule 1(1) of the Rules of the Superior Courts).

There are three key steps to costs recovery:

- determination of the entitlement to costs. A party who seeks to recover costs must first obtain an order directing another party to pay them
- determination of the criterion for quantification of costs
- calculation or taxation of costs. This is not usually a matter for judicial determination. In the absence of agreement between the parties the costs will be sent to taxation by the Taxing Master of the High Court, whose role is to adjudicate and measure the quantum of costs payable.

2.2 Is the amount of recoverable costs fixed? No, except in some proceedings in the lower courts for example, District and Circuit Courts, where a scale would apply.

The costs which the court generally award are on a basis known as “party and party” (see question 2.4 below).

2.3 Is the amount of recoverable costs calculated by reference to the amount in dispute? Yes among other factors.

Order 99 Rule 37(22) which sets out the criteria for the assessment of costs:

“(22)(i) where in Appendix W there is entered either a minimum and a maximum sum, or the word “discretionary”, the amount of costs to be allowed in respect of that item shall, subject to any order of the court, be in the discretion of the Taxing Master, within the limits of the sums so entered (if any).

(ii) In exercising his discretion in relation to any item, the Taxing Master shall have regard to all relevant circumstances, and in particular to:
(a) the complexity of the item or of the cause or matter in which it arises and the difficulty or novelty of the questions involved;
(b) the skill, specialised knowledge or and responsibility required of, and the time and labour expended by, the solicitor;
(c) the number and importance of the documents (however brief) prepared or perused;
(d) the place and circumstances in which the business involved is transacted;
(e) the importance of the cause or matter to the client;
(f) where money or property is involved, its amount or value; and
(g) any other fees and allowances payable to the solicitor in respect of other items in the same cause or matter but only where work done in relation to those items has reduced the work which would otherwise have been necessary in relation to the item in question.”

2.4 What can be recovered as “costs”? All charges and expenses reasonably incurred or those that were necessary or proper for the attainment of justice or for the enforcing or defending the rights of the party whose costs are being taxed (Order 99 Rule 10(2) of the Rules of the Superior Courts).

“Rule 10:

(1) This rule applies to costs which by or under these Rules or any order or direction of the court are to be paid to a party to any proceedings either by another party to those proceedings or out of any fund (other than a fund which the party to whom the costs are to be paid holds as trustee or personal representative).

(2) Subject to the following provisions of this rule, costs to which this Rule applies shall be taxed on the party and party basis, and on a taxation on that basis there shall be allowed all such costs as were necessary or proper for the attainment of justice or for enforcing of defending the rights of the party whose costs are being taxed.

(3) The court in awarding costs to which this Rule applies may in any case in which it thinks fit to do so, order or direct that the costs shall be taxed on the solicitor and client basis.

(4) The foregoing provisions of this Rule shall be subject to the limitation imposed by Rule 8.”

Lawyer – client fees

The costs that can be recovered are generally confined to party and party as stated above, not as between solicitor and client.
Fees in respect of discovery

As discovery costs now account for a significant percentage of the overall costs in litigation in particular in electronic format, parties should try and have in advance Letters of Agreement concerning the same so that the court can reflect this in any final order given before the Taxing Master gets involved.

Additional lawyer fees (for example, counsel fees or trial advocate fees)

Yes, the costs that can be recovered are generally confined to party and party as stated above, not as between solicitor and client.

Agency fees (for example, London agents, local agents, appellate lawyer, bailiff/process-server)

Yes, the costs that can be recovered are generally confined to party and party as stated above, not as between solicitor and client. However, if a UK law firm were to instruct an Irish law firm it is difficult to obtain the UK law firm’s costs.

Court fees

Yes, the costs that can be recovered are generally confined to party and party as stated above, not as between solicitor and client.

Disbursements (including, but not limited to, photocopying, expert witness, travel, translation, notarial, witness attendance etc.)

Yes, the costs that can be recovered are generally confined to party and party as stated above, not as between solicitor and client. Stenographer costs have to be particularly mentioned in any costs order. See Order 123 Rule 3 of the RSC.

Other expenses

Who bears the costs of any expert’s fees will be determined by the court. Detailed particulars of the ways in which the fees were incurred will need to be provided. These are generally recoverable on a party to party basis.

3. Particular costs issues

3.1 Can a party agree with its own lawyer, a special costs arrangement?

No.

There are no conditional fee agreements or success fees. However, many lawyers act for clients on a “no foal, no fee” basis, meaning that the lawyers will only seek to recover costs from the client if the client is successful and will cap their costs at the level which is recovered from the losing party.

3.2 Which tribunal resolves costs disputes and how?

Taxing Master. However, one could end up on appeal in the High Court on a Motion to review the Taxing Master’s ruling and subsequently on appeal to the Supreme Court.

3.3 Can a party be required to provide security for costs (or some other sum) in advance of costs being decided?

Yes, if order for security of costs is sought by claimant.

The court has discretion whether to make an order to provide security for costs under Order 29 of the Rules of the Superior Courts.

In the case of personal claimants, a prerequisite of the court granting an order for security is that the claimant is ordinarily resident outside the jurisdiction (excluding Northern Ireland), and that the defendant establishes a defence on the merits.

Conversely, section 390 of the Companies Act 1963 provides that where a limited liability company is a claimant in legal proceedings it may be required to provide sufficient security for the costs of the proceedings, where there is reason to believe that the company would be unable to pay the costs of the defendant if the defendant is successful.

If security for costs is granted it is then usual for the Master of the High Court to determine the appropriate sum to be lodged as security.

An order for security for costs of discovery under Order 31 Rule 12(2) of the Rules of the Superior Courts can also be made.

4. Costs awards

4.1 Can interim awards of costs be obtained?

Yes.

At interlocutory applications.

4.2 Can an award of costs be increased or decreased by reference to such matters as a party’s conduct of the case?

Yes.

They can be decreased depending on the claimant’s behaviour or they can be increased depending on the conduct of the...
defendant. There have been awards (although rare) of costs on the highest indemnity basis being solicitor and own client.

4.3 How are costs awards enforced?
A Certificate of Taxation is obtained which is then enforced through the court process in the same manner as any debt or award.

4.4 Can a costs award be set off against a monetary judgment?
Yes.

4.5 Is interest payable on unpaid costs?
Yes.
From the date of agreement or date of taxation or order at a rate of eight per cent.

5. Costs of an appeal

5.1 Are costs of an appeal treated differently?
No.

6. Funding of civil and commercial claims

6.1 Can costs be insured?
Yes.
Depends on what Legal Cost Insurance Policy is in place.

6.2 Is legal aid available?
Yes.
The Legal Aid Board provides legal advice and Legal Aid in civil cases to persons who satisfy the requirements of the Civil Legal Aid Act 1995 and Regulations made thereunder.

6.3 Is third party funding of claims available?
Yes.
It is not common for a third party to fund litigation. Issues of champerty and maintenance may arise if the third party is not connected to the litigants. The parties bringing and defending the case usually bear the costs.

Contributed by:
Arthur Cox.
The court in the Isle of Man has power to award costs under section 53 of the High Court Act 1991 which provides that, subject to any relevant Rules of Court, the costs of and incidental to all proceedings in the High Court, shall be in the discretion of the court and the court has full power to determine by whom such costs are paid.

With effect from 1 September 2009, Part 11 of the Rules of the High Court of Justice 2009 (“MHCR”) have full force of law and apply to the recovery of costs.

Decisions of the English Court referred to herein are not binding in the Isle of Man but are considered to be persuasive authority. Decisions of the English Court of Appeal and what was the House of Lords (now the Supreme Court) will be of high persuasive authority in the Isle of Man in the absence of any contrary provision of Isle of Man statute (Frankland & Moore v R [1987-89] MLR 65, Privy Council).

1. Recoverability of costs

1.1 Can costs be recovered by a party to civil litigation?
Yes.

1.2 Does the losing party usually pay the successful party’s costs?
Yes.

It is usual for the successful party in the action to be awarded an order for costs against the losing party, which is called “costs following the event.”

Where the claimant succeeds against multiple defendants, costs will be ordered against each defendant, and the claimant can then recover costs against any one (or more) of the defendants. Any defendant paying such costs can then seek a contribution from the others under the Civil Liability (Contribution) Act 1981.

1.3 Can costs be ordered to be paid to, or by, a non-party?
Yes.

Costs orders in favour of or against non-parties are referred to in MHCR 11.41. Where the court is considering whether to exercise its power under section 53 of the High Court Act 1991 to make a costs order in favour of or against a person who is not a party to proceedings:

● that person must be added as a party to the proceedings for the purposes of costs only
● he must be given a reasonable opportunity to attend a hearing at which the court will consider the matter further.

2. Details of recoverability of costs

2.1 On what basis are costs recoverable?
Discretionary.

The costs payable by one party to another are in the discretion of the court (High Court Act 1991, section 53 and MHCR 11.3).

In exercising its discretion the court is required to have regard to all the circumstances of the case and in particular the following matters (MHCR 11.3(9) and (6)):

● the time when and extent to which each party disclosed his case to the other party or parties
● the extent to which it was reasonable for the parties to raise, pursue or contest each of the allegations or issues
● the manner in which the parties pursued or defended the action or particular allegations or issues
● whether the successful party exaggerated the value of the claim
● whether a party was only partly successful
● any payment into court or admissible offer to settle.

In addition, MHCR 11.5(3) provides that the court must also have regard to:

● the conduct of the parties, including the conduct before, as well as during the proceedings and efforts made to resolve the dispute
● the amount or value of the matter to all the parties
● the importance of the matter to all the parties
● the particular complexity of the matter or the difficulty or novelty of the questions raised
● the skill, effort, specialist knowledge and responsibility involved
● the time spent on the case
● the place where and the circumstances in which work or any part of it was done.

There are two bases of assessment of costs: the standard basis and the indemnity basis (MHCR 11.4).

Distinct from the indemnity basis, the indemnity principle is that a party cannot be liable to pay more to the other side in costs than the winner is liable to pay its own lawyers. If lawyers representing the successful party have intimated that their client need ‘not worry’ about paying their fees, there is a prospect that the court will hold the loser has no liability in costs: British Waterways Board v Norman (1993) 26 HLR 232.

2.2 Is the amount of recoverable costs fixed?
Yes, in certain cases only.

Fixed costs regime is contained in MHCR Part 11, Chapter 2. This provides, among other things, that unless the court orders otherwise, fixed costs may only be recovered in the case of monetary claims (exceeding £25) where judgment is entered by default in filing an acknowledgement of service or a defence, the defence is struck out without trial, judgment follows an admission or where the claim is paid in full within 14 days of service of the claim form.

2.3 Is the amount of recoverable costs calculated by reference to the amount in dispute?
Is considered as part of the court’s discretion.
MHCR 11.5(3)(b) states that the court must have regard to the amount or value of any money or property involved when deciding the amount of costs.

2.4 What can be recovered as “costs”? See MHCR Part 11.

<table>
<thead>
<tr>
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<td>Agency fees (for example, London agents, local agents, appellate lawyer, bailiff/process-server)</td>
<td>Yes to the extent that they are proportionate and reasonably incurred.</td>
</tr>
<tr>
<td>Court fees</td>
<td>Yes.</td>
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<tr>
<td>Disbursements (including, but not limited to, photocopying, expert witness, travel, translation, notarial, witness attendance etc.)</td>
<td>Yes.</td>
</tr>
<tr>
<td>Other expenses</td>
<td>“Costs” includes “expenses” (MHCR 11.1(1), definitions).</td>
</tr>
</tbody>
</table>

3. Particular costs issues

3.1 Can a party agree with its own lawyer, a special costs arrangement? No.

Advocates Practice Rules 2001, Rule 9 states that:

“All an advocate who is retained or employed to prosecute or defend any action, suit or other contentious proceedings shall not enter into any arrangement to receive a contingency fee in respect of that proceeding other than in accordance with regulations made by the Council and approved by the Advocates Act Committee from time to time.”

No contingency fee regulations have been approved to date.

3.2 Which tribunal resolves costs disputes and how?

Assessment proceedings must be commenced within three months of the judgment, order, award or other determination giving rise to the right to costs (MHCR 11.26). This is done by filing and serving on the paying party a notice of the proceedings and a copy of the bill of costs (MHCR 11.25(1)). The receiving party must also serve a copy of the notice and the bill on any person who has taken part in the proceedings and who is directly liable under a costs order made against him and any other person the court orders to be treated as a party to the proceedings. The paying party may dispute any item in the bill by serving the receiving party with points of dispute. These must be served within 21 days after service of the notice under MHCR 11.28(1) and (2). If the paying party fails to serve points of dispute within the permitted time, the receiving party may, on filing a request, obtain a default costs certificate (MHCR 11.30). The receiving party has the right, but is not obliged to serve a reply to any points of dispute. Any reply should be served on the party who served the points in dispute within 21 days after service (MHCR 11.32).

Hearings are relatively informal, with the points of dispute being taken in turn and both sides making submissions and the costs officer making rulings on each point in turn.

3.3 Can a party be required to provide security for costs (or some other sum) in advance of costs being decided? Yes, if order for security of costs is sought by claimant (MHCR 7.27.)

Subject to MHCR 7.29, an order for security of costs can be made only against a party in the position of a claimant. Once security is given it may be retained, subject to the court’s discretion, pending an appeal. An order for security for costs usually requires the claimant to pay money into court as security for the payment of any costs order that may eventually be made in favour of the defendant, and staying the claim until the security is provided.

On application three matters arise:

- whether there are grounds for ordering security for costs,
- if so, whether the court’s discretion should be exercised in favour of making the order,
- if so, how much security should be provided.

Security for costs can be ordered only if one of the conditions set out in Rule 7.28(2) is satisfied.

4. Costs awards

4.1 Can interim awards of costs be obtained? Yes.

MHCR 11.8(2) provides that as a general rule the court shall make a summary assessment of the costs at the conclusion of any hearing which has not lasted more than one day, in which case the order shall deal with the costs of the hearing and, under MHCR 11.9, such costs must be paid within 14 days.

4.2 Can an award of costs be increased or decreased by reference to such matters as a party’s conduct of the case? Yes.

Misconduct by the successful party may result in costs not following the event (MHCR 11.3(6)(a)).

The indemnity basis can be applied as a penalty for misconduct, or as a result of the claimant recovering more at trial than the amount offered in a MHCR Part 7 (Chapter 6) offer.
4.3 How are costs awards enforced?
Methods of enforcing money judgments are contained in MHCR 12.2. A judgment creditor may enforce a judgment or order for the payment of money by any of the following methods:

- execution (see MHCR 12.8)
- the appointment of a receiver (see MHCR 12.15)
- an arrestment order (see MHCR 12.26)
- a charging order (see MHCR 12.37)
- an attachment of earnings order (see MHCR 12.47).

4.4 Can a costs award be set off against a monetary judgment?
Yes.
MHCR 11.3(9) provides that where a party entitled to costs is also liable to pay costs, the court may assess the costs which that party is liable to pay and set-off the amount assessed against the amount the party is entitled to be paid and direct him to pay the balance.

4.5 Is interest payable on unpaid costs?
At the court’s discretion.
Unless otherwise ordered, interest runs from the date of the execution order for costs (Parkinson Ltd v Simmonds, [1999-01] MLR N-2).

The court has power to award interest on costs paid and can do so from a date before the date of the judgment giving rise to the order for costs, so compensating the receiving party for the delay between incurring the costs and receiving a payment in respect of them from the paying party (MHCR 11.3(7)(g)).

5. Costs of an appeal

5.1 Are costs of an appeal treated differently?
At the court’s discretion.

A court dealing with a case on appeal can make orders relating to the costs of the proceedings giving rise to the appeal as well as the appeal itself (MHCR 11.13(4)).

If an appeal is successful, the appeal court may order the losing party to pay the costs ‘here and below’, or may make different orders relating to the proceedings at the two levels, or may leave the costs order of the court below undisturbed.

It may be appropriate to deprive a party of its costs if the decision on the appeal turned on points not raised below, or on points not raised in the notice of appeal, or where the appeal is only partly successful or where the court’s time has been wasted.

6. Funding of civil and commercial claims

6.1 Can costs be insured?
Yes.
Before the event insurance or legal expenses insurance and after the event insurance are available.

6.2 Is legal aid available?
Yes.
Public funding of litigation is administered pursuant to the Legal Aid Act 1986 and regulations made thereunder which provide for the constitution of the Legal Aid Committee. Day to day administration is dealt with by The Legal Aid Office at the General Registry (see http://www.gov.im/registries/legal/?menuid=8759).

Legal Aid in civil proceedings is subject to an assessment of a litigant’s means and, if eligible, may be subject to a financial contribution from the litigant.

Legal Aid is available in all civil proceedings except:

- proceedings wholly or partly in respect of defamation
- related actions
- proceedings for the recovery of a penalty where the proceedings may be taken by any person and the whole or part of the penalty is payable to the persons taking the proceedings
- election petitions
- proceedings incidental to any of the above proceedings.

6.3 Is third party funding of claims available?
Third party funding in civil litigation in the Isle of Man, outside insolvency proceedings, is at a nascent stage in its development, but in principle the arguments below for its availability (borrowed from the English jurisdiction) equally apply in the Isle of Man.

Traditionally third party funding has been characterised as maintenance or champerty and has therefore been held to be unlawful. It is now recognised that many claimants cannot afford to pursue valid claims without third party funding; that it is better for such claimants to forfeit a percentage of their damages than to recover nothing at all; and that third party funding has a part to play in promoting access to justice.

Contributed by:
Cains.

1 “MLR” = Manx Law Reports.
1. Recoverability of costs

1.1 Can costs be recovered by a party to civil litigation?
Yes.

1.2 Does the losing party usually pay the successful party’s costs?
Yes.

Where a party succeeds, the other party will usually be ordered to pay its costs, as may be awarded by the court.

1.3 Can costs be ordered to be paid to, or by, a non-party?
Yes.

A witness/expert who was called to testify in court may be awarded a refund of costs incurred.

2. Details of recoverability of costs

2.1 On what basis are costs recoverable?
The court may exercise discretion in determining the amount of legal costs to award to a party.

In determining the amount of legal fees, the courts may follow the recommended minimum tariff for legal fees set out in the Rules of the Chamber of Advocates (Recommended Minimum Tariff), 5760-2000 (the “Tariff”). The legal fees ordered by the court are often considerably lower than the actual legal fees incurred by the parties. This is particularly the case when the claimant is ordered to pay the legal fees of a successful defendant.

2.2 Is the amount of recoverable costs fixed?
No. However, the Bar Association Regulations determine the maximum fee rates in motor vehicle accident claims.

The Tariff:

- eight per cent of the amount achieved when the case ended without filing a lawsuit in court
- 11% of the amount achieved by compromise after filing a claim
- 13% of the amount awarded by judgment.

2.3 Is the amount of recoverable costs calculated by reference to the amount in dispute?
It is considered as part of the court’s discretion.

For example, the Tariff is proportionate to the amount awarded.

2.4 What can be recovered as “costs”?

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3. Particular costs issues

3.1 Can a party agree with its own lawyer, a special costs arrangement?
Yes.

Israeli law permits contingency fee arrangements. They are commonly used in personal injury cases and subrogation claims.

3.2 Which tribunal resolves costs disputes and how?

According to sections 511-513 of the Civil Procedures Regulations, the court will decide on costs and lawyer’s fees at the end of the litigation. A request to assess the costs, if awarded, should be referred to the Court Registrar who will provide a ruling in respect of the costs awarded to the successful party, based on invoices and approval of payment presented to it.

3.3 Can a party be required to provide security for costs (or some other sum) in advance of costs being decided?

Yes.

The court may order the claimant to provide security of costs in the following circumstances:

- if the claimant is a foreign resident of a country which is not a signatory to the Hague Convention and has no assets in Israel; or
- if the claimant is an Israeli or foreign corporation with no apparent means to pay the defendant’s legal costs.

The courts tend to be reluctant to award security for costs, as it runs contrary to the claimant’s right of access to the courts.
4. Costs awards

4.1 Can interim awards of costs be obtained?
Yes.

Costs can be awarded in respect of interim applications.

4.2 Can an award of costs be increased or decreased by reference to such matters as a party’s conduct of the case?
Yes.

The court will take into consideration the parties’ behaviour during the trial, including efficiency, good faith, the justification of the arguments raised based on previous precedents, etc. The court may even choose not to award any costs to the winning party when the dispute was justified and the trial was efficiently handled.

4.3 How are costs awards enforced?
Costs awards are enforced by the same method for enforcing monetary judgment – the Execution Law.

4.4 Can a costs award be set off against a monetary judgment?
No.

4.5 Is interest payable on unpaid costs?
Yes.

In accordance with the Interest and Linkage Award Law.

5. Costs of an appeal

5.1 Are costs of an appeal treated differently?
No.

6. Funding of civil and commercial claims

6.1 Can costs be insured?
Yes.

A party may purchase insurance against potential legal costs. In addition, liability policies usually cover the cost of litigation which is payable over and above the limit of the sum insured.

6.2 Is legal aid available?
Yes.

Under the Legal Aid Law 1972, a party lacking in financial means may apply for legal aid to the Legal Aid Unit of the Ministry of Justice. A registered legal aid lawyer will be appointed to act for a successful applicant. The aided party will be required to pay a symbolic fee, commensurate with its means. A party may appeal the rejection of a legal aid application.

Court filing fees may be waived for a party in poor financial circumstances.
Italy

1. Recoverability of costs

1.1 Can costs be recovered by a party to civil litigation? Yes.

1.2 Does the losing party usually pay the successful party’s costs? Yes.

The Italian legal system provides the same set of rules on litigation costs for both claimant and defendant.

The general rule is that each party shall bear its own litigation costs; at the end of the proceedings, the judge deciding the case on the merits will order the losing party to reimburse the litigation costs incurred by the successful party (Article 91 of the Civil Procedure Code “CPC”) in the amount assessed by the judge.

The judge, on the contrary, may require each party to bear all or part of its own costs if:

● parties are both partly successful
● the case involves the examination of complex matters or new principles of law
● there are “other serious and exceptional reasons” that must be specifically indicated in the judgment (Article 92, paragraph 2 of the CPC, as amended by Law Number 69/2009).

Moreover:

● when ordering the unsuccessful party to reimburse litigation costs borne by the other party the judge may reduce on his own motion the amount sought by the successful party when he deems such costs to be excessive or unnecessary (Article 92 of the CPC)
● according to Article 92 of the CPC, the judge may order the reimbursement of costs incurred by a party (regardless of whether this is successful or not) due to the other party’s infringement of the duty to act loyally and fairly in the proceedings as provided by Article 88 of the CPC
● pursuant to Article 91 of the CPC, as amended by Law Number 69/2009, in case where the successful party had refused, without any specific reason, a settlement proposal in an amount not higher than that awarded with the final judgment, the judge may order the successful party to bear all legal costs incurred by the other party after the settlement proposal was put forward.

1.3 Can costs be ordered to be paid to, or by, a non-party? No.

Please note that a third party may join the proceedings.

Moreover:

● the judge may reduce the amount of costs sought by the successful party if he deems it excessive or unnecessary (Article 92 of the CPC)
● according to Article 92 of the CPC, the judge may order the reimbursement of costs incurred by a party (regardless of whether this is successful or not) due to the other party’s infringement of the duty to act loyally and fairly during the proceedings as provided by Article 88 of the CPC
● in case of settlement, each party shall bear its own costs, unless otherwise agreed (Article 92, paragraph 3 of the CPC).

2. Details of recoverability of costs

2.1 On what basis are costs recoverable? The award is discretionary. The amount of recoverable costs is discretionarily established by the judge who decides the case. However in exercising his discretion the judge usually applies the legal tariffs (which vary depending on the amount in dispute).

Moreover:

● the judge may reduce the amount of costs sought by the successful party if he deems it excessive or unnecessary (Article 92 of the CPC)
● according to Article 92 of the CPC, the judge may order the reimbursement of costs incurred by a party (regardless of whether this is successful or not) due to the other party’s infringement of the duty to act loyally and fairly during the proceedings as provided by Article 88 of the CPC
● in case of settlement, each party shall bear its own costs, unless otherwise agreed (Article 92, paragraph 3 of the CPC).

2.2 Is the amount of recoverable costs fixed? No, only court fees are fixed. The Court fees regime is contained in Decree Number 115/2002, as amended by Article 1, paragraph 1307, Law Number 296/2006.

2.3 Is the amount of recoverable costs calculated by reference to the amount in dispute? Yes, however the court has a discretionary power to calculate the amount of the costs awarded.

The parties file with the court particulars of all costs incurred, including lawyer fees (according to the legal tariffs and by reference to the amount in dispute), court fees and other expenses.

The judge exercises his discretion in determining the amount to be recovered by the successful party (see above question 2.1).

2.4 What can be recovered as “costs”? In general terms “recoverable costs” are all the expenses borne by parties for the proceedings and fees charged by lawyers (see Article 75 of the provisions for the implementation of the CPC).
1. Lawyer – client fees

Yes. Pursuant to Decree 8 April 2004 number 127 (so called “Tariffario forense”), lawyer fees are calculated on the basis of tariffs and by reference to the amount in dispute. Lawyer fees represent compensation for lawyers’ services, including representing the client before the court, study of the case, correspondence with the client and with the opposing parties’ counsels, consultations with experts etc.

However, the amount of fees awarded by courts is usually substantially lower than the amount which is actually charged by lawyers to their clients (in many cases the awarded fees may be under 50% of those quantified by the lawyers).

3. Particular costs issues

3.1 Can a party agree with its own lawyer, a special costs arrangement?

Yes.

Until 2006, the Italian legal system did not allow parties to derogate from the minimum rate provided by legal tariffs and prohibited any contingency/conditional fees.

According to Legislative Decree number 233/2006, the parties are allowed to:

- derogate from legal tariffs provided by Legislative Decree number 127/2004 (that is, setting hourly fees)
- negotiate contingency/conditional fees relating to success in the case (so-called "Patto di quota lice "). The relevant agreement between lawyer and client shall be executed in writing.

3.2 Which tribunal resolves costs disputes and how?

The costs order is part of the judgment. Any dispute arising on costs will be subject the rules set out for the appeal of the judgment (see Article 339 of the CPC and following).

3.3 Can a party be required to provide security for costs (or some other sum) in advance of costs being decided?

No.

The Italian legal system does not provide for security for costs.

4. Costs awards

4.1 Can interim awards of costs be obtained?

Yes, but only under certain circumstances.

At the end of interim proceedings, the judge rules on legal costs according to the aforesaid general rules.

Moreover, in proceedings on the merits the judge may render interim or partial awards and decide also on legal costs in the following cases:

- when, during the proceedings, the judge issues an injunction for payment of sums based on the debtor’s acknowledgment (Article 186 bis of the CPC) or, in certain cases, based on written evidence (Article 186 ter of the CPC)
- when, at the end of the evidentiary phase, the judge issues a temporary injunction for payment of sums or release of goods as far as he deems that the relevant right has been already proved (Article 186 quarter of the CPC).
4.2 Can an award of costs be increased or decreased by reference to such matters as a party’s conduct of the case?
Yes.

Where a party violates the duty to act loyally and fairly in the proceedings (as provided by Article 88 of the CPC) the judge may sanction that party by ordering to reimburse all costs borne by the other party.

In case of abuse of process by the claimant (that is, he was aware that his claim had no legal ground) upon the defendant’s request, the judge may award in addition to the reimbursement of legal costs a compensation for the relevant damage suffered by the defendant (so called “Responsabilità aggravata” (Article 96, paragraphs 1 and 2 of the CPC).

Finally, according to Article 96, paragraph 3, recently introduced by Law number 69/2009, the judge, when deciding upon costs, may increase on his own motion the amount of costs awarded to the successful party with an extra amount determined on an “equitable basis”.

4.3 How are costs awards enforced?
Costs awards can be enforced in accordance with the rules set out in the third book of the CPC for the enforcement of judgments.

In 2004, the Supreme Court stated that awards of legal costs contained in a judgment can be autonomously enforced (that is, independently from the other parts of the judgment – Court of Cassation, nr. 21367/2004).

4.4 Can a costs award be set off against a monetary judgment?
Although in theory setting off of costs awards against a monetary judgment is possible according to the general rules of civil law (Articles 1241-1252 of the Civil Code) we are not aware of any judicial precedent in which this has ever occurred.

4.5 Is interest payable on unpaid costs?
Yes.

Interest on costs can be awarded according to Article 1282 of the Civil Code (regulating the “Interest on pecuniary obligations”). Interest accrues as from the date of the judgment awarding legal costs and is calculated on yearly basis at an interest rate (around two to three per cent) which is set every year by the Government.

5. Costs of an appeal

5.1 Are costs of an appeal treated differently?
Yes, but only as far as the amount is concerned.

The rules in relation to legal costs are the same both for first instance and for appeal proceedings. However, in the latter case, legal tariffs are calculated at higher rates.

6. Funding of civil and commercial claims

6.1 Can costs be insured?
Yes.

Several kinds of policy are provided by insurance companies allowing policy holders to recover legal fees/costs.

6.2 Is legal aid available?
Yes.

The Legal Aid system (“gratuito patrocinio”) is regulated by Presidential Decree number 115/2002.

Legal aid is available to individuals whose yearly incomes are less than €10,628.16, provided that the disputed case is not manifestly groundless. If the litigant is married or lives with other relatives their incomes will be considered too (exceptions are provided in specific cases).

Due to the above, legal aid is granted very seldom. In addition, legal aid is also available to non-profit organisations/associations.

Where legal aid is granted, lawyers fees (which are calculated at a lower rate then the one provided by the normal lawyer legal tariff) and any other cost will be afforded by the State. Moreover the beneficiary is exempted from paying certain fees (for example, registry fees, judicial mortgage and land registry fees). Legal aid does not cover the cost of out-of-court consultancy.

The State has the right of reimbursement and, where it does not recover the money from the losing party, it may claim repayment from the party eligible for legal aid under certain circumstances.

6.3 Is third party funding of claims available?
Yes.

Third party funding of claims is not regulated by Italian law. However, it seems generally possible, according to general civil law principles, that a third party (for instance, a private organisation) may provide individuals with funds for civil proceedings in order to promote access to justice. It may possibly happen for members of a class, holders of certain specific interests defended by the same organisation.

Contributed by:
Lovells LLP (Milan).
1. Recoverability of costs

1.1 Can costs be recovered by a party to civil litigation? Yes, (subject to certain limitations imposed by statute).

1.2 Does the losing party usually pay the successful party’s costs? No.

However, according to the Japanese Code of Civil Procedure (‘CCP’), a losing party shall bear court costs (Article 61).

In cases of a partial success, the burden of court costs on the successful party shall be determined by the court in its discretion; provided, however, that depending on the circumstances, the court may have the successful or losing party bear all the court costs (CCP 64). In practice courts look at the amount which the claimant sought and the amount which the claimant actually won to determine the amount of recoverable costs (see answer to question 2.1 below).

Usually co-parties bear court costs equally. However, the court may, depending on the circumstances, order that co-parties bear court costs jointly and severally or in any other manner (CCP 65(1)).

The court may order the successful party to bear court costs caused by any act that is:

- unnecessary for the expansion or defence of his/her rights; or
- necessary, in light of the progress of the suit as of the time of the act, for the expansion or defence of their opponent’s rights (CCP 62, 65(2)).

The court may also order the successful party to bear court costs incurred because of delay if that party has delayed a suit due to his/her failure to advance allegations or evidence in a timely manner or due to the non-observance of a date or period or any other grounds attributable to the successful party (CCP 63).

An assisting intervener is treated as a party to the proceedings in respect of court costs. As a result the assisting intervener can recover court costs when the assisted party is successful (CCP 66).

1.3 Can costs be ordered to be paid to, or by, a non-party? Yes.

A non-party can be ordered to pay costs but only under very limited circumstances.

If a person who acted as a statutory representative or an attorney fails to establish its representative capacity and the court dismisses the lawsuit, such person bears the court costs (CCP 70). These are the only circumstances in which a non-party will be ordered to pay costs.

2. Details of recoverability of costs

2.1 On what basis are costs recoverable? It is in the court’s discretion to decide the proportion of costs which each party shall bear.

The total amount of court costs to be borne will be fixed (upon petition) by a clerk of the court of first instance once a judicial decision on the apportionment of costs becomes enforceable (CCP 71(1)).

2.2 Is the amount of recoverable costs fixed? Part of the amount is fixed.

The court costs are classified in four categories:

- filing fee which a claimant will pay when he/she submits a complaint;
- other fees for making other requests to the court (including appeals);
- costs of proceedings such as the examination of evidence and service of documents; and
- costs which are paid by a party to third parties other than the court and which are deemed by statute to be court costs.

Category (i) is calculated based on the amount in dispute and the method of calculation is provided by law (the Act on Costs of Civil Procedure, (“ACCP”)) in a tariff (ACCP 3(1), appended table 1).

Category (ii) is either fixed or calculated based on the amount in dispute.

Category (iii) is not fixed.

Category (iv) is not fixed, but the items that are deemed to be court costs are limited and provided in the ACCP (ACCP 2(iii)-(xviii)).

2.3 Is the amount of recoverable costs calculated by reference to the amount in dispute? A part of the amount will be calculated by the amount in dispute.

The filing fee (category (i) and part of category (ii) in answer to question 2.2 above) is usually calculated approximately in proportion to the amount in dispute (ACCP appended table 1).
### 2.4 What can be recovered as “costs”?

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<td>● a lawyer who is appointed by a court order (ACCP 2(x))</td>
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<td>● an administrator of properties or a trustee appointed by court order pursuant to a statute related to enforcement (ACCP 2(xv)).</td>
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### 3. Particular costs issues

#### 3.1 Can a party agree with its own lawyer, a special costs arrangement?
Yes, to some extent.

Lawyers are allowed flexibility in their cost arrangements with their clients to some extent. However, the Bar Association rules provide that cost arrangements must be “appropriate and reasonable.”

As a consequence of this rule most lawyers understand that a 100% contingent fee (“no win, no fee”) deal is not permissible.

#### 3.2 Which tribunal resolves costs disputes and how?
As mentioned in answer to question 2.1 above, the court decides the proportion of the costs which each party shall bear. A party may appeal against that court order only if it is made together with an appeal against judgment on the merits. The court of second instance will then conduct a trial and make its own judgment on both matters.

If there is no appeal the amount of court costs to be borne is fixed by a clerk of the court after a judicial decision on the burden of costs becomes enforceable. A party may make an objection to the disposition of the court clerk within a non-extendable period of one week from the day on which a notice from the court clerk is received (CCP 71(4)). The court of first instance will then seek to resolve the costs dispute (CCP 71(6)). An immediate appeal may be filed against the court’s order (CCP 71(7)) within a non-extendable period of one week from the day on which notice of the order is received (CCP 332).

#### 3.3 Can a party be required to provide security for costs (or some other sum) in advance of costs being decided?
Yes.

Generally, a party may claim costs only after the judgment that ends the litigation becomes final and the judicial decision on the apportionment of costs becomes enforceable (see question 2.1 above). However, if a claimant does not have any domicile, business office or other office in Japan, the court, during litigation and upon the petition of a defendant, shall make an order to the effect that the claimant should provide security for court costs (CCP 75(1)).

The amount of security shall be specified on the basis of the total amount of court costs to be paid by the defendant in every instance (CCP 75(6)).

### 4. Costs awards

#### 4.1 Can interim awards of costs be obtained?
Yes.

Depending on the circumstances, when making a judicial decision on part of a case or on an interlocutory dispute, the court may also make a judicial decision on the burden of court costs (CCP 67(1)).

#### 4.2 Can an award of costs be increased or decreased by reference to such matters as a party’s conduct of the case?
Yes.

See answer to question 1.2 above.

#### 4.3 How are costs awards enforced?
Compulsory execution may be carried out based on a disposition given by a court clerk which specifies the court costs (Civil Execution Act 22(iv-2)).

A successful party may seize assets belonging to the losing party by means of compulsory execution if necessary.

#### 4.4 Can a costs award be set off against a monetary judgment?
No.
4.5 **Is interest payable on unpaid costs?**
Yes.

Interest accrues on unpaid costs only after the order for costs becomes final. There is no retroactive accrual of interest. In other words, even if a party who is awarded costs by court order has paid the costs in an early stage of the litigation (for example, transportation fees for witness, the filing fee, etc.) the interest does not accrue from the date of payment, but from the date the order for costs becomes final.

The applicable interest rate is likely to be five per cent per annum (the basic interest rate provided in the Civil Code).

5. **Costs of an appeal**

5.1 **Are costs of an appeal treated differently?**
Yes to a limited extent.

The court, when making a judicial decision to conclude a case, shall, by its own authority, also make a judicial decision on the burden of all court costs incurred in that case to date (CCP 67(1)). Thus, the court will make a decision on the court costs incurred only in that instance.

However, where an appeal court modifies a judicial decision on its merits it shall also make a decision on the burden of the total costs of the suit (CCP 67(2)). The same applies where the case is returned to the lower court or is transferred to another court.

6. **Funding of civil and commercial claims**

6.1 **Can costs be insured?**
Yes.

Several insurance companies provide insurance products for individuals, public servants, or executives related to court costs.

6.2 **Is legal aid available?**
Yes.

Legal aid is available for a person who lacks the financial resources to pay the expenses necessary for preparing for and conducting a suit. It is also available for a person who will suffer substantial detriment in his or her standard of living by paying such expenses. The court, upon petition, may make an order to grant judicial aid (CCP 82(1)). However, according to CCP 83(1), this judicial aid is limited to:

- grace for payment of court costs as well as fees for a court execution officer and expenses for the performance of his/her duties
- grace for payment of compensation and expenses for an attorney at law who is ordered by the court to be an attendant
- exemption from providing security for court costs.

In order to cater for costs which are not covered by the relevant CCP Articles above, the Japan Legal Support Centre (established by the Comprehensive Legal Support Act (2004)) provides services including free legal counselling, loans for attorney’s fees and loans for the costs of making legal documents. These services are provided to people who need the assistance of legal experts but do not have the financial resources to pay for them.

6.3 **Is third party funding of claims available?**
No.

There is no statute that allows or prohibits third party funding of claims.

**Contributed by:**
Yusuke Inui
Lovells LLP (Tokyo).
1. Recoverability of costs

1.1 Can costs be recovered by a party to civil litigation? Yes.

Liechtenstein law is quite strict regarding the determination of a cost award in favour of one party or another. The Liechtenstein costs regime draws on the principle of success in the proceedings (“loser pays the winner’s costs”).

Initially, every party is obliged to bear his own costs resulting from any action taken in the course of the proceedings. According to Section 41 section 1 of the Civil Procedure Law (“Zivilprozessordnung,” “ZPO”) the party that prevails over the other is entitled to recover his costs. However, the recoverability of costs incurred on the successful party’s side is limited to such costs that are deemed to have been necessary in order to pursue or contest the claim through all reasonable means.

If both parties succeed partially, the costs are either set-off or split proportionally pursuant to Section 43 section 1 of the ZPO. If one party failed in its arguments but only to a negligible extent, it is still considered to have won the case.

1.2 Does the losing party usually pay the successful party’s costs? Yes.

According to the principles set out above, the successful party is entitled to recovery of his costs from the losing party.

If a claimant succeeds against multiple defendants, each defendant is liable for the reimbursement of the costs awarded. The defendant reimbursing may then recover the costs proportionally from the others.

In addition to the eventuality when there is more than one party on the claimant’s and/or the defendant’s side, the procedure also provides for the possibility of a third person entering into the proceedings as an intervenor on either the claimant’s or the defendant’s side. This person needs to be admitted officially and is then treated as a party. An intervenor is entitled to have his costs reimbursed if the party he is supporting prevails, but is not liable for the counterparty’s costs if the party he supports fails.

1.3 Can costs be ordered to be paid to, or by, a non-party? No.

Costs are only awarded to persons engaged in proceedings as parties. There are forms of non-dual procedural relationships which require that every additional person is admitted to the proceedings formally by court.

2. Details of recoverability of costs

2.1 On what basis are costs recoverable? The costs that a party may incur comprise lawyer’s fees, court charges and expenses, including costs of experts, translators, the attendance of witnesses, travel expenses etc. Lawyer’s fees and court charges are calculated in accordance with a fixed legal tariff and are therefore only recoverable to that extent. They are not subject to the court’s discretion. The only discretion of the court is to determine the necessity of particular steps that were taken to defend or pursue the claim. Expenses are to be reimbursed in the actual amount they incurred.

The relevant provisions are contained in the Law regarding the Tariff for Lawyers and Agents (“Gesetz über den Tarif für Rechtsanwälte und Rechtsagenten,” “RATG”) and the respective enactment (Enactment concerning the Tariff of Remuneration for Lawyers and Agents, “Verordnung über die Tarifansätze der Entlohnung für Rechtsanwälte und Rechtsagenten,” “RATV”).

The court deciding the main case will also issue the cost order. The cost order can be appealed separately.

2.2 Is the amount of recoverable costs fixed? Yes.

The amount of recoverable costs are fixed by law through tariffs. The amount is dependent on the type of service rendered and the actual sum in dispute.

2.3 Is the amount of recoverable costs calculated by reference to the amount in dispute? Yes.

Besides the type of service rendered by a lawyer, the amount in dispute is the second determining factor as regards the actual reimbursable figure. The higher the amount in dispute, the larger the amount recoverable according to the applicable tariff.

2.4 What can be recovered as “costs”? The costs recoverable comprise lawyer’s fees, court charges and expenses. Costs of experts and translators, fees for the attendance of witnesses, travel costs and other disbursements (for example, costs for photocopying) are regarded as expenses.

Since there is not a split profession in Liechtenstein, they only have “lawyer’s fees.” As a consequence, there are no counsel fees, trial advocate fees or agency fees (for London agents, local agents, appellate lawyers, bailiffs, process-servers).

<table>
<thead>
<tr>
<th>Description</th>
<th>Recoverable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lawyer – client fees</td>
<td>Yes</td>
</tr>
<tr>
<td>Additional lawyer fees (for example, counsel fees or trial advocate fees)</td>
<td>Not applicable in Liechtenstein</td>
</tr>
<tr>
<td>Agency fees (for example, London agents, local agents, appellate lawyer, bailiff/process-server)</td>
<td>Not applicable in Liechtenstein</td>
</tr>
<tr>
<td>Court fees</td>
<td>Yes</td>
</tr>
</tbody>
</table>

At what cost? A Lovells multi jurisdictional guide to litigation costs

Disbursements (including, but not limited to, photocopying, expert witness, travel, translation, notarial, witness attendance etc.)

Yes.

Other expenses
Not applicable in Liechtenstein.

3. Particular costs issues

3.1 Can a party agree with its own lawyer, a special costs arrangement?
Yes.

Although the legal tariff is binding when it comes to the right of the successful party to seek recovery of his costs, a party can enter into a fee agreement with his lawyer on a different basis. In particular, lawyers often charge clients on a time spent basis. The Fee Guidelines of the Liechtenstein Bar drawn up in 1995 and still in force at time of writing suggest an hourly rate in the range of CHF 300 to CHF 1,000, depending on the difficulty of the case and the actual amount in dispute.

According to Section 879 section 2 lit. 2 of the Civil Code ("Allgemeines Bürgerliches Gesetzbuch," “AGBG”) a contract between a lawyer and his client is considered null and void, if the lawyer shall participate with a certain percentage in the amount awarded to the winning party by court (no “quota litis”-arrangements). Nonetheless, a remuneration clause based on the outcome of the proceedings is legally admissible, making a “no win, no fee” deal permissible. A higher fee in the event of a successful case is permissible, as long as it is not a “quota litis” or out of proportion. Note, however, that third party funders other than the lawyer are allowed to make “quota litis” and percentage contingency deals.

3.2 Which tribunal resolves costs disputes and how?
The court rendering the judgment in the main issue also decides the cost award. This is done simultaneously with the main issue judgment.

If any disputes regarding the cost award subsequently arise, the parties may challenge the cost decision within the regular court framework in Liechtenstein. The cost decision can therefore either be contested in the course of an appeal against the main judgment or separately.

In either case, the second instance (Court of Appeals) is then entitled to decide about the costs, without being bound by the contested decision. A decision of the second instance regarding costs, which fully confirms the first instance’s judgment, cannot be appealed to the third instance (Supreme Court). In such a case, the appeal decision is final and binding. However, if the decisions of the first and second instance do differ, the third instance may then be addressed.

3.3 Can a party be required to provide security for costs (or some other sum) in advance of costs being decided?
Yes.

Under certain circumstances a claimant is obliged to pay security for costs in order to be able to commence legal proceedings in Liechtenstein.

The provisions have recently been changed. Persons who want to act as claimants or appellants before Liechtenstein courts and do not permanently reside within the country are required to provide security for litigation costs, unless international treaties provide otherwise. There is no necessity to provide security if a cost award against the claimant or appellant can be enforced in the country where he resides, or if the claimant or appellant is in possession of sufficient immovable property in a country where cost decisions can be enforced. A company has to show assets in a jurisdiction where a cost award can be enforced, independent of the company’s legal domicile.

Liechtenstein has so far only entered into bilateral treaties regarding the recognition and enforcement of civil judgments with Switzerland and Austria and is not a signatory to the Lugano Convention.

4. Costs awards

4.1 Can interim awards of costs be obtained?
Yes.

An interim award of costs can be obtained for interim disputes in proceedings that do not have a material impact on the main decision. This is, for example, the case with disputes arising in connection with the question of whether a claimant needs to provide security for costs in order to be admitted with his claim. The decision rendered in an interim dispute will have a separate cost order.

4.2 Can an award of costs be increased or decreased by reference to such matters as a party’s conduct of the case?
Yes.

According to Section 45 of the ZPO, the court may order the claimant, even if he is successful in his claim, to reimburse all costs incurred by the defendant if the defendant did not give cause to file the claim. The same principle applies if the defendant admits liability during the first hearing. In such a case, although succeeding in the proceedings, the claimant is obliged to bear the defendant’s costs.

Furthermore, regardless of the outcome of the proceedings, one party may ex officio or by application be ordered to reimburse the costs of a certain phase of the proceedings if that party caused unreasonable costs through his procedural behaviour, as set out in Section 48 section 1 of the ZPO (separation of costs). In such a case, a party is held liable for the costs incurred on the counterparty’s side, if they result from the party’s default.
4.3 How are costs awards enforced?
Cost decisions are enforceable in the same manner as the main award. A cost award is always a monetary judgment.

According to Article 1 lit. a of the Execution Act ("Exekutionsordnung", "EO"), a judgment or an order that came into legal effect and therefore became unappealable constitutes a title to execution. This means that any court decision that is enforceable, including the cost decision, may be pursued by the entitled party through filing an application for execution with the court of first instance at the debtor’s domicile. The execution proceedings therefore need to be initiated separately by the party wishing to enforce the award.

Movable, as well as immovable property, bank accounts, salary and receivables or other assets are subject to execution. Receivables are collected by a court order to the debtor to pay to the party claiming enforcement instead of his original creditor. Other assets can be sold by auction or placed under receivership.

4.4 Can a costs award be set off against a monetary judgment?
There is no provision regarding the set off of costs against a monetary judgment. This means that even though a court’s decision contains both a monetary judgment and a cost award the amounts are not set off against one another by the court. However, pursuant to the general civil rules, the parties may set off the amounts subsequently. Note though that due to Article 24 section 1 of the Lawyers Act ("Rechtsanwaltsgesetz", "RAG") this is not possible if the party entitled to recovery of costs was represented by a lawyer whose fees are still unpaid. This provision stipulates that the lawyer representing the party has a lien "ex lege" in respect of his own remuneration and expenses, if his party is awarded costs.

4.5 Is interest payable on unpaid costs?
No.

5. Costs of an appeal
5.1 Are costs of an appeal treated differently?
Yes.

There is no difference as regards the general treatment of costs that occur in appeal proceedings. Nonetheless, the rates covering court costs as well as the tariffs for lawyers’ services are higher as compared to the first instance.

The fact that a party’s position may have been accepted by a lower instance court is without relevance for the costs decision in an appeal.

6. Funding of civil and commercial claims
6.1 Can costs be insured?
Yes.

It is possible to obtain insurance for potential litigation costs. The exact coverage depends on the insurance policy. After the event insurance ("ATE") is unusual.

6.2 Is legal aid available?
Yes.

Liechtenstein’s civil procedure provisions also provide for legal aid for any natural person being confronted with legal actions to pursue or contest his or her rights. Upon application, a party may ask for legal aid, if this person is presumably unable to bear the costs of the proceedings without being able to uphold a basic standard of living at the same time. In addition to the needs of the party the claim must not be malicious or futile. A party must submit a declaration of assets in order to enable the court to assess the party’s needs.

Legal aid may only be granted with regard to a specific dispute. Depending on the financial situation of the applicant, legal aid may be awarded to the full extent or only partially with regard to certain benefits (translations, court fees). If the complexity of a case makes it necessary, legal aid also provides for a lawyer and will then cover the lawyer’s remuneration. If the party is furnished with a lawyer, the Lichtenstein Bar is competent to choose the lawyer. In practice, the Bar follows the party’s wishes.

One has to bear in mind that, even if legal aid is granted to the fullest extent possible, the party is only exempt from his own costs. Legal aid does not affect the obligation to reimburse the other party’s costs, if the case is lost. Additionally, if the financial situation of the party with legal aid changes significantly within three years after proceedings were completed, the party may be asked to refund the legal aid.

6.3 Is third party funding of claims available?
Yes.

The funding of claims through third parties is, in general, admissible. All third parties except the party’s own lawyer may fund litigation in advance, even if the funding is set up as a percentage contingency or “quota litis” deal. There are companies that will fund claims as a business.

Contributed by:
Walch & Schurti.
1. Recoverability of costs

1.1 Can costs be recovered by a party to civil litigation? Yes.

In principle, under Article 238 of the New Code of Civil Procedure, the party which has lost the case bears the procedural costs ("dépens"). Nevertheless, the judge may decide to split the costs between the parties, if for example, the parties are both held liable or if a party loses in part.

Under Article 240 of the New Code of Civil Procedure, any other costs incurred during legal proceedings can be recovered by the winning party (although the indemnity never covers the full cost of expenses actually incurred).

1.2 Does the losing party usually pay the successful party’s costs? Yes.

The successful party can recover his costs through the indemnity for proceedings as provided for by Article 240 of the New Code of Civil Procedure, although the indemnity never covers the full cost of expenses actually incurred.

1.3 Can costs be ordered to be paid to, or by, a non-party? Yes.

The judge may ask, for example, the claimant to pay a provision to the court-appointed expert, but the judge may not order a non-party to pay costs.

2. Details of recoverability of costs

2.1 On what basis are costs recoverable?

The procedural costs ("dépens") are borne by the party which has lost the case.

There are three different types of litigation costs:

- "Emoluments" which are fixed by law
- lawyers’ fees
- disbursements/legal costs.

Costs under Article 240 of the New Code of Civil Procedure: the costs payable by one party to another are at the discretion of the court. It should be noted that this amount rarely exceeds €10,000.

2.2 Is the amount of recoverable costs fixed? No.

2.3 Is the amount of recoverable costs calculated by reference to the amount in dispute? It is considered as part of the court’s discretion.

Under Article 240 of the New Code of Civil Procedure the judge will take into account the fairness/economic position of the parties. The judge will also take into account the value of the litigation.

2.4 What can be recovered as “costs”?

Under Luxembourg law, the costs referred to in Article 238 ("dépens") include bailiff costs, expert costs, expenses paid to witnesses, translation costs, indemnification of experts, fixed expenses, but not counsel’s costs.

However, Article 240 of the New Code of Civil Procedure allows the judge to award the successful party a lump sum intended to cover costs incurred as a result of the trial, which include lawyers’ fees. Article 240 states that “when it would be inequitable to leave one of the parties with the liability of settling expenses incurred by that party and which are not included as costs, the judge can order the other party to make such payment as he shall see fit.”

The award under Article 240 is usually low.

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</tr>
<tr>
<td>Court fees</td>
<td>Yes.</td>
</tr>
<tr>
<td>Disbursements (including, but not limited to, photocopying, expert witness, travel, translation, notarial, witness attendance etc.)</td>
<td>Yes.</td>
</tr>
<tr>
<td>Other expenses</td>
<td>Yes, all other expenses incurred during legal proceedings which are not included in the legal costs (&quot;dépens&quot;).</td>
</tr>
</tbody>
</table>

3. Particular costs issues

3.1 Can a party agree with its own lawyer, a special costs arrangement? Yes.

Contingency fees ("pacte de quota litis") for the totality of the lawyers’ fees are prohibited by Luxembourg Bar Rule 2.4.5.3. of 12 September 2007.
However, this does not preclude a lawyer and his client from entering into agreements under which the client and his lawyer agree to set a maximum or a minimum for an amount as regards to the lawyer’s fees, or a supplementary fee calculated on the basis of the results obtained or services provided.

Contingency fees may only represent a limited portion of the total fees.

3.2 Which tribunal resolves costs disputes and how?
During the proceedings the parties can make an application for costs, and the counterparty can challenge costs that they object to. The judge will listen to the arguments and decide what costs to award, however there is no further opportunity to appeal this figure.

3.3 Can a party be required to provide security for costs (or some other sum) in advance of costs being decided?
Yes.

Under Article 257 of New Code of Civil Procedure, a “cautio judicatum solvi” may be required in cases where a party does not reside in a jurisdiction which is party to the Hague Convention; otherwise the costs have to be paid at the end of the litigation.

The judge will order the parties to make a security deposit regarding the expert’s fees. Under Articles 238 and 239 of the New Code of Civil Procedure, the court will order the losing party to pay full or partial litigation expenses, or the parties to share the expenses, including reimbursing the party for the expert’s fees he has already paid.

4. Costs awards

4.1 Can interim awards of costs be obtained?
No.

4.2 Can an award of costs be increased or decreased by reference to such matters as a party’s conduct of the case?
Yes – but only to a small extent.

4.3 How are costs awards enforced?
Methods for enforcing money judgments (including costs orders) are the same as for an ordinary judgment.

4.4 Can a costs award be set off against a monetary judgment?
Yes, through the legal compensation of mutual debts.

4.5 Is interest payable on unpaid costs?
No.

Interest is only payable on the judgment, although note that lawyers’ fees may be recovered pursuant to common rules on debt recovery which do allow for interest to be payable.

5. Costs of an appeal

5.1 Are costs of an appeal treated differently?
No.

The rules as set out above remain the same, save that “Avoués” fees are currently included in the procedural costs of Article 238 of New Code of Civil Procedure. They are fixed by reference to the amount of the claim.

6. Funding of civil and commercial claims

6.1 Can costs be insured?
Yes.

Insurance covering the risks of litigation in civil proceedings exists in Luxembourg. The cost of such cover is dependent on the insurance company.

The standard insurance policy covers the fees for the proceedings and lawyers.

6.2 Is legal aid available?
Yes.

“Jurisdictional aid” is available in Luxembourg for a natural person of insufficient means. Persons with insufficient means can obtain legal assistance or legal advice from a lawyer for a specific case. The legal assistance granted in Luxembourg always covers all costs relating to courts, procedures or acts in respect of which it was granted.

The following costs of a trial can be paid through legal aid:

- stamp and registration duty
- costs incurred by the clerk’s office
- fees and costs charged by bailiffs
- experts’ costs and fees
- translators’ and interpreters’ fees
- notaries’ costs and fees
- allowances to witnesses
- travel expenses
- publication costs
- lawyers’ fees and emoluments.

Persons with insufficient means are eligible for legal aid to defend their interests, provided that they are:

- Luxembourg nationals; or
- aliens authorized to take up residence in Luxembourg; or
- nationals of a Member State of the European Union; or
- aliens placed on the same footing as Luxembourg nationals for legal aid purposes by virtue of an international agreement.

Legal aid may also be granted to any other aliens with insufficient means in proceedings relating to aliens’ rights of asylum, entry, residence, establishment and expatriation.
Means testing is based on the total gross income and capital of the applicant and any other members of the household.

Finally, please note that legal aid does not cover automobile accidents and generally does not cover litigation resulting from the commercial or professional activities of a person in business, industry, the liberal professions or an artisan.

6.3 Is third party funding of claims available?
Yes.

This is treated with considerable caution and is not customary.

Contributed by:
Arendt & Medernach.
Malta

1. Recoverability of costs

1.1 Can costs be recovered by a party to civil litigation?
Yes.

Only lawyers’ fees, legal procurators’ fees, court expenses and any other court approved expenses that may be recovered.

1.2 Does the losing party usually pay the successful party’s costs?
Yes.

Generally, the successful party recovers costs from the losing party. The court may also award a percentage of the total costs, for example, costs may be borne one-third by the claimant and two-thirds by the defendant.

1.3 Can costs be ordered to be paid to, or by, a non-party?
No.

2. Details of recoverability of costs

2.1 On what basis are costs recoverable?
Costs are established by law in a tariff. The tariff is found as a schedule to the Code of Organisation and Civil Procedure.

The tariff is applicable, although the court may apportion costs at its discretion. Apportionment generally takes place in tort-based actions where the court has the discretion to share costs on the basis of the fault of each party. For example, in a case regarding a traffic collision, the injured party may be required to pay a third of the costs if his actions contributed to the collision in question.

2.2 Is the amount of recoverable costs fixed?
Yes, in part (see question 2.3).

It is fixed according to the tariff.

2.3 Is the amount of recoverable costs calculated by reference to the amount in dispute?
Yes.

A tariff is set out in the Code of Organisation and Civil Procedure.

2.4 What can be recovered as “costs”?

<table>
<thead>
<tr>
<th>Item</th>
<th>Recoverable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lawyer – client fees</td>
<td>Yes, however these are limited to those applicable under the tariff and as billed by the Court Registry. Lawyer’s and legal procurator’s fees, as established by tariff, are both recoverable.</td>
</tr>
<tr>
<td>Additional lawyer fees (for example, counsel fees or trial advocate fees)</td>
<td>No.</td>
</tr>
<tr>
<td>Agency fees (for example, London agents, local agents, appellate lawyer, bailiff/process-server)</td>
<td>No.</td>
</tr>
<tr>
<td>Court fees</td>
<td>Yes.</td>
</tr>
</tbody>
</table>
| Disbursements (including, but not limited to, photocopying, expert witness, travel, translation, notarial, witness attendance etc.) | Court expenses, photocopying, expert witness, translations are all recoverable. Any expense is recoverable so long as such expense is ordered by the court.

3. Particular costs issues

3.1 Can a party agree with its own lawyer, a special costs arrangement?
Yes.

Hourly or other fixed rates may be agreed, however no stipulations “quotae litis” may be made (that is, fees cannot be agreed on a contingency, or percentage of recovery basis).

3.2 Which tribunal resolves costs disputes and how?
The same court which decides the matter being litigated.

3.3 Can a party be required to provide security for costs (or some other sum) in advance of costs being decided?
Yes.

Security for costs is only required in the case of an appeal from a judgment given by the First Hall Civil Court, and therefore on an appeal before the Court of Appeal as a superior jurisdiction.

Security for costs shall be in an amount determined by the registrar on a case by case basis, after taking into consideration the claims made in the sworn application, the claims made in the appeal application and also the taxed bill of costs for the first instance case. There is therefore no strict formula used for this type of security.

Security for costs is to be produced and deposited in court within 12 months from the date of the notification of the amount to be deposited or, if the appeal is to be heard earlier than 12 months from the notification herein mentioned, not later than two days before the date set for the hearing of such appeal.

4. Costs awards

4.1 Can interim awards of costs be obtained?
No.
4.2 Can an award of costs be increased or decreased by reference to such matters as a party’s conduct of the case?
No.
A judge may not vary costs, although he may apportion them (see question 2.1).

4.3 How are costs awards enforced?
In the same manner as enforcement of the judgment, including executive warrants.

4.4 Can a costs award be set off against a monetary judgment?
Only after a judicial intimation for payment of unpaid costs and claiming interest thereon.

4.5 Is interest payable on unpaid costs?
No. Unless a judgment specifically states so (which is unusual) interest does not automatically accrue on unpaid costs.

5. Costs of an appeal

5.1 Are costs of an appeal treated differently?
Yes.
Costs for an appeal are fixed according to Article 2(2) of Tariff A.

6. Funding of civil and commercial claims

6.1 Can costs be insured?
There is no specific insurance for judicial costs. However, in certain circumstances where an insurer has been subrogated in the rights of the insured for purposes of litigation, the insurer will incur the risk relating to such costs.

6.2 Is legal aid available?
Yes, for a natural person only.
Appointment of a lawyer and legal procurator to represent the applicant can be made.

It is available from the Advocate for Legal Aid.

All costs of the trial are covered, for civil matters.

Article 912 of the Code of Organisation and Civil Procedure provides certain restrictions. These are:

- that the applicant does not possess property of any sort the net value of which exceeds circa €7000
- that the applicant’s yearly income is not more than the national minimum wage.

6.3 Is third party funding of claims available?
No.

Contributed by:
Katrina Zammit Cuomo
Antonio Ghio
Fenech & Fenech Advocates.
1. **Recoverability of costs**

1.1 **Can costs be recovered by a party to civil litigation?**
Yes.

1.2 **Does the losing party usually pay the successful party’s costs?**
Yes.

In respect of proceedings that are commenced by the service of a writ of summons (which is usually the case), the losing party is usually ordered to pay the successful party’s legal costs (Article 237 of the Dutch Code on Civil Procedure (“DCCP”).

In respect of proceedings that start with an application (which only happens in certain situations prescribed by law), the order for costs is at the discretion of the judge (Article 289 DCCP).

It is possible to deviate from the Dutch principle that the losing party has to pay the legal costs of the successful party in the following cases:

- the court decides to compensate the costs of both parties, (wholly or partially) because of the close relationship of the parties (for example, in relation to a dispute that has arisen between husband and wife); or
- the court decides to compensate the costs of both parties (wholly or partially) because both of the parties have been partially successful in their arguments; or
- the court decides that the costs which have been incurred unnecessarily (“nodeloos gemaakte kosten”) will be for the account of the party who caused such costs to be incurred.

In the event that the parties did not request the court to make an order for costs, the court may make an order of its own initiative (“ambtshalve”). This will not apply where the parties have included a derogation clause in the contract which derogates from Dutch law.

Furthermore, if one of the parties is ordered by the court to pay the costs, the court does not have to state any grounds for its decision.

If a third party does not formally join the proceedings (as a party), costs incurred by such third party can only be recovered by the claimant or defendant that instructed such party or in whose interest such third party (such as witnesses, translators, advertising agencies etc.) has acted.

1.3 **Can costs be ordered to be paid to, or by, a non-party?**

Under Dutch law, witnesses, including expert witnesses, can claim the costs they have incurred in relation to their appearance before the court. The payment in relation to witnesses differs from that in relation to experts.

Witnesses can, for example, claim travel and accommodation expenses. Pursuant to Article 182 of the DCCP the court may – if a witness has claimed full compensation – estimate the costs of the witness, which will be included in the record of the court hearing (proces-verbaal). The party in whose interests that witness has acted will have to pay the costs of the witness.

Experts not only have the right to claim full compensation of their costs (for example, travel expenses), but may also claim full payment for services rendered. The rules in relation to the payment of expert costs are set out in Article 195 DCCP and Article 199 DCCP. In most cases, the plaintiff has to pay the expert costs by way of advance payment to the court registry. Under certain circumstances however it is possible that the defendant will be ordered to make such advance payment, or even that both parties might do so jointly. At the end, the expert’s costs will form part of the cost award in accordance with Article 237 DCCP, and if the winning party paid the advance costs, they will get them back.

2. **Details of recoverability of costs**

2.1 **On what basis are costs recoverable?**

In principle, the court has total discretion in respect of the amounts of costs awarded.

In legal proceedings the following cost items – amongst others – must be noted:

- court registry fee (“griffierecht”). These rules are laid down in the Civil Cases Fees Act (Wet Tarieven Burgerlijke Zaken). The scale of fee will depend on the type of case, the extent of the monetary claim, the judicial authority etc.
- costs in relation to legal assistance (“kosten rechtsbijstand”). These costs will be fixed by the court, according to a scheme, which is based on the “value of the case.” The costs as fixed by the court are usually much lower than the actual costs. The successful party, however, has no action at his disposal to claim the remaining part of his legal costs.
- bailiff’s expenses and other costs. These costs will in principle be paid in full.

2.2 **Is the amount of recoverable costs fixed?**

Yes with respect to costs for legal assistance.

As explained under question 2.1 the costs in relation to legal assistance will be fixed by the court, according to a scheme, which is based on the “value of the case.” The costs as fixed by the court are usually much lower than the actual costs. The successful party, however, has no action at his disposal to claim the remaining part of his legal costs.

2.3 **Is the amount of recoverable costs calculated by reference to the amount in dispute?**

Yes.

The calculation of costs under the “tariff list” (“liquidatietarief”) as mentioned above depends on the value of the claim and the steps that were taken during the proceedings.

2.4 **What can be recovered as “costs”?**

**Lawyer – client fees**
Yes.
3. Particular costs issues

3.1 Can a party agree with its own lawyer, a special costs arrangement?

Yes.

“No win, no fee” arrangements are prohibited by the Dutch Bar Association (Article 25 sub-paragraphs 2 and 3 of the Rules of Conduct legal profession).

Contingency and conditional fee arrangements are permitted provided that the agreement entitles the lawyer to be paid his disbursements and a modest or reasonable salary if the client loses. If the client wins, the lawyer is entitled to a contingent fee provided that it is not extravagant. The contingent fee is not recoverable from a losing opponent.

3.2 Which tribunal resolves costs disputes and how?

In the Netherlands there is not a specific tribunal which resolves costs disputes in general. If the paying (and so losing) party wishes to dispute the cost award, the way to do this would be to initiate appeal proceedings before the Court of Appeal against the judgment of the court in the first instance. It is not common at all in the Netherlands to appeal against a cost award only. This will most often (commercially) not be worthwhile and most probably a waste of money in view of the rule of Dutch law that the losing party must pay the legal costs of the winning party.

Since the quantum of these costs will be calculated by the court on the basis of a rigid system, it is not likely that the court will make a mistake with such a calculation. So besides the fact that this party would incur additional costs in bringing the appeal, the Court of Appeal will most probably dismiss such an appeal anyway.

If it is obvious that the court has made a mistake within the cost award, then the party has to request that court to review its own judgment (rectification).

3.3 Can a party be required to provide security for costs (or some other sum) in advance of costs being decided?

Yes, if an order for security of costs is granted.

Pursuant to Article 224 of the DCCP it is possible that a defendant, who is brought into the proceedings by a person with no domicile or place of business in the Netherlands, may make a request to the court for security for costs.

In practice however this right is not often used because of the large number of exceptions mentioned in Article 224 sub-paragraph 2 of the DCCP, international treaties prohibiting security for costs, and the EU legislation.

4. Costs awards

4.1 Can interim awards of costs be obtained?

Yes.

Yes it is possible that an interim award of costs can be obtained. Most of the time this will be the case if the court has given a (final) decision on an interlocutory claim.

It is also possible that by interim award the decision in relation to the costs will be stayed until final judgment (Article 237.
At what cost? A Lovells multi-jurisdictional guide to litigation costs

sub-paragraph 2 of the DCCP), since it will then be clear who the successful and losing parties are.

4.2 Can an award of costs be increased or decreased by reference to such matters as a party’s conduct of the case?
Yes.

As explained in question 1.1 it is possible that the successful party will be ordered to pay its own costs which have been incurred unnecessarily.

There is a lot of Dutch case law in relation to costs incurred unnecessarily by a party. Consideration has to be given to, amongst other things, the situation in which the party has put forward improper incidental proceedings or an appeal, or when the party has made the proceedings more complicated than necessary, etc.

4.3 How are costs awards enforced?
By way of service and enforcement of the judgment.

The judgment of the court (in which the cost award is included) must contain the specific amount which the losing party is ordered to pay. In cases where the court has declared the judgment to have immediate effect, the successful party will be entitled to levy execution immediately after the judgment has been served upon the losing party, in order to enforce payment by the losing party.

4.4 Can a costs award be set off against a monetary judgment?
The court will handle the cost order separately to the monetary judgment but in one final judgment so it is possible that the two amounts will be set off against each other.

4.5 Is interest payable on unpaid costs?
Yes.

Statutory interest is due if payment of a sum is delayed. Interest is calculated on the basis of the sum over the period that the debtor is in default. The interest rate is determined by governmental decree and is a compound interest.

In a trade agreement the contractual rate is applicable and due the day following the agreed final payment date. If there is no such date, the DCC sets out the effective date of statutory interest. If the contractual interest is more than the valid statutory interest, contractual interest is due.

The court has no discretionary power to award interest. Parties must therefore claim statutory or contractual interest on their costs. A party will try to claim the interest from the "specific date" set by the court, as prescribed by the legislation.

5. Costs of an appeal

5.1 Are costs of an appeal treated differently?
At the court’s discretion.

Pursuant to Article 353 sub-paragraph 1 in conjunction with Article 237 of the DCCP the costs of an appeal have to be treated by the court in the same way as costs were treated in the first instance.

6. Funding of civil and commercial claims

6.1 Can costs be insured?
Yes.

Before the event (BTE) insurance (known as Legal Aid Insurance in the Netherlands) is permitted and is widely used. A legal expenses policy is required to state that the insured is entitled to choose its own lawyer and the insurer is required to pay the insured’s lawyer within the financial limit of the particular policy.

After the event (ATE) insurance is not widely used.

6.2 Is legal aid available?
Yes.

Pursuant to the Act on Legal Aid (“Wet op de Rechtsbijstand”) a distinction must be made between single householders and people who run a joint household with one or more persons. Single householders with an income of less than approximately €23,800 per year and people who run a joint household with one or more persons with an income not more than €33,600 per year have a right to legal aid paid by the State if certain criteria are met (Article 12 in conjunction with Article 34 Acts on Legal Aid).

Those criteria are “inter alia”: the legal interests must concern the Netherlands and the costs of the legal aid must be in reasonable proportion to the interest of the case. The aid consists of the payment of most of the individual’s own legal fees. The individual always has to pay a small amount himself. Recipients of legal aid must pay an income-related fee. The lowest fee in 2009 was €98, and the highest was €732. In criminal cases fees are generally not payable. The costs of legal aid must be a reasonable proportion to the interest of the case.

In addition, he has to pay the court fees and, in the event he loses the case, the other party’s costs, as ordered by the court.

Legal persons, or companies, can also claim legal aid and will qualify if it can be shown that it cannot reasonably be required that the legal person should pay the costs of legal assistance from its capital or income.

6.3 Is third party funding of claims available?
No.

Third party funding of claims is not permitted under Dutch law.

Contributed by:
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New Zealand

1. Recoverability of costs

1.1 Can costs be recovered by a party to civil litigation?
Yes.

1.2 Does the losing party usually pay the successful party’s costs?
Yes.

Although costs are in the discretion of the court, this discretion is usually exercised so that costs follow the event (that is, are paid by the loser to the winner), unless there are features of the case which warrant departing from such an approach.

In respect of costs recoverable, where there are multiple defendants, High Court Rule ("HCR") 14.15 provides that the court must not allow more than one set of costs, unless it appears to the court that there is good reason to do so, if:

- several defendants defended a proceeding separately
- it appears to the court that all or some of them could have joined in their defence.

Where there is more than one defendant, the court may decide that an unsuccessful defendant should pay a successful defendant’s costs and order that the claimant pays those costs and add them to the amount to be recovered from the unsuccessful defendant (this is known as a “Bullock” order).1

Alternatively, the court may order the unsuccessful defendant to pay the successful defendant’s costs direct (this is known as a “Sanderson order”).2

1.3 Can costs be ordered to be paid to, or by, a non-party?
Yes.

The court can make an order for costs in favour of a person who is not a party to the proceeding (Dymocks Franchise Systems (NSW) Pty Ltd v Todd (No 2) [2005] 1 NZLR 145), for example, in non-party discovery orders. “Such an order can be made after judgment has been sealed if it adds a costs liability to those fixed in the judgment.”3

The determination of non-party costs claims are essentially fact specific. The courts have expressly avoided attempting to create exhaustive rules in respect of non-party costs awards. Nonetheless the Privy Council has set out several key guiding principles in Dymocks Franchise Systems (NSW) Pty Ltd v Todd (No 2) [2005] 1 NZLR 145, New Zealand’s leading case on non-party costs awards:

- a non-party will not ordinarily be made liable for costs if those costs would have been incurred in any event without that non-party’s involvement in the proceedings
- if sufficient causation can be shown, the court may exercise its discretion to award costs against a non-party, noting at 155, paragraph 25:
  - an award of costs against a non-party is “exceptional” in that it is outside the normal run of cases; the ultimate question being whether it is just to make the order in all the circumstances
  - generally non-party costs will not be awarded against those who have no personal interest in the litigation, do not stand to benefit from it, do not fund it, or do not seek to control its course
  - where a non-party funds, controls and is to benefit from proceedings, justice will ordinarily require that party to meet any award of costs, given that in essence, that party is the “real party” to proceedings
  - where a non-party promotes or funds proceedings by an insolvent company solely or substantially for their own financial benefit they will generally be liable for an award of costs. This will not be the case however, where a non-party can realistically be regarded as acting in the interests of the Company (its shareholders and creditors) rather than in the non-party’s own interests.

2. Details of recoverability of costs

2.1 On what basis are costs recoverable?
Discretionary: The HCRs provide for the recovery of costs according to a fixed scale. The court has an overall discretion as to costs.

HCR 14.2 provides that the following general principles apply to the determination of costs (in particular, the second and fourth bullet points below are considered when determining the appropriate fixed scale costs):

- the party who fails with respect to a proceeding or an interlocutory application should pay costs to the party who succeeds
- an award of costs should reflect the complexity and significance of the proceeding
- costs should be assessed by applying the appropriate daily recovery rate to the time considered reasonable for each step reasonably required in relation to the proceeding or interlocutory application
- an appropriate daily recovery rate should normally be two-thirds of the daily rate considered reasonable in relation to the proceeding or interlocutory application
- what is an appropriate daily recovery rate and what is a reasonable time should not depend on the skill or experience of the solicitor or counsel involved or on the time actually spent by the solicitor or counsel involved or on the costs actually incurred by the party claiming costs
- an award of costs should not exceed the costs incurred by the party claiming costs
- so far as possible the determination of costs should be predictable and expeditious.

Under the scale, proceedings can be classified as Categories 1, 2 or 3 of the (HCR 14.3):
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- Category 1: Proceedings of a straightforward nature able to be conducted by counsel considered junior in the High Court; or
- Category 2: Proceedings of average complexity requiring counsel of skill and experience considered average in the High Court; or
- Category 3: Proceedings that because of their complexity or significance require counsel to have special skill and experience in the High Court.

The second level to the scale, is to classify the proceedings as fitting into one of three bands (HCR 14.5):

- Band A: if a comparatively small amount of time is considered reasonable; or
- Band B: if a normal amount of time is considered reasonable; or
- Band C: if a comparatively large amount of time for the particular step is considered reasonable.

In the ordinary course, proceedings will be categorised as 2B proceedings (that is, proceedings of average complexity in which a normal amount of time is considered reasonable).

There is a fixed daily recovery rate for the three categories of proceedings (Schedule 2 of the HCR):

- Category 1 proceedings: NZ$1,070 per day
- Category 2 proceedings: NZ$1,600 per day
- Category 3 proceedings: NZ$2,370 per day.

Schedule 3 to the HCR sets out the time allocations for each step in the proceeding that is claimable as costs. For example, a successful claimant can claim as step one under the HRC schedule for “Commencement of proceeding by claimant (receiving instructions, researching facts and law, and preparing, filing, and serving statement of claim and notice of proceeding or equivalent or originating application)” . If the proceeding is classified as a Category 1, band A proceeding the claimant can claim 1.6 days multiplied by NZ$1,070 (being the daily rate for Category 1 proceedings), that is, NZ$1,712 for that step. If the proceeding is classified as 2B, a successful claimant can claim NZ$4,800 for the same step (being three days x NZ$1,600).

The total costs are calculated by adding up the total days allocated for the applicable steps in the proceeding and multiplying that total by the daily recovery rate for the applicable category. In practice, costs under the fixed scale can total as little as one-third of actual costs.

The fixed scale costs are applied to most proceedings. However, the court does have the power to make an order under HCR 14.6 for increased costs (costs above the fixed scale) or indemnity costs (the actual costs, disbursements, and witness expenses incurred).

Increased costs can be awarded under HCR 14.6 when:

- the nature of the proceeding or the step in it substantially exceeds the time allocated for the highest category (Category C in the scale); or
- the opposing party has unnecessarily contributed to the time or expense of the proceeding or step.

Indemnity costs may be ordered in the circumstances set out in HCR 14.6(4). Examples include if the party has acted vexatiously or improperly or if there is an entitlement under a contract or some other reason justifying such an order.

2.2 Is the amount of recoverable costs fixed?
Yes in most cases.

See answer to question 2.1 above.

2.3 Is the amount of recoverable costs calculated by reference to the amount in dispute?
It is considered as part of the court’s discretion.

The complexity and significance of the proceedings is a relevant consideration when considering costs and the amount in dispute is a relevant consideration in assessing complexity/significance. This in turn can influence which costs category the case is allocated within (see answer to question 2.1 above). This can also be a relevant factor when considering increased or indemnity costs.

2.4 What can be recovered as “costs”?

Lawyer – client fees
Yes, but generally only the amount specified in the fixed scale rather than actual costs, unless this is stipulated in the contract or in exceptional circumstances. See question 2.1 above.

Additional lawyer fees (for example, counsel fees or trial advocate fees)
In New Zealand, there is no separate bar for solicitors and barristers. The lawyer’s time to appear at a hearing (which could by a barrister or solicitor) is a step claimable under the fixed scale costs. Counsel fees (being barrister fees) are specifically excluded as a disbursement that is recoverable (see HCR 14.12). If the complexity of the case allows, the court can allow scale costs to be claimable for a second counsel. However, this will not generally be actual costs as set out above at question 2.1.
Agency fees (for example, London agents, local agents, appellate lawyer, bailiff/process-server) Yes, if it falls within HCR 14.12, that is, if approved by the court for the purposes of the proceeding; specific to the conduct of the proceeding; reasonably necessary for the conduct of the proceeding; and reasonable in amount. The costs of service are specifically included as a recoverable disbursement.

Court fees Yes, as a disbursement under HCR 14.12.

Disbursements (including, but not limited to, photocopying, expert witness, travel, translation, notarial, witness attendance etc.) Yes, if it falls under HCR 14.12.

Other expenses Yes, if it falls under HCR 14.12.

3. Particular costs issues

3.1 Can a party agree with its own lawyer, a special costs arrangement?

Yes.

Whether contingency fee agreements are permissible appears to be a grey area, upon which differing views are held. Such an arrangement is not common. However, conditional fee agreements (“CFAs”) are permissible in relation to most civil cases. Success fees paid under CFAs are not recoverable from opposing parties under costs orders. Furthermore, the rules of professional conduct require that the total fees charged to the client (including any success fee) must be reasonable.

The Lawyers and Conveyancers Act 2006 provides that conditional fee arrangements are legal. Under the Act, a conditional fee arrangement is defined as “an agreement under which a lawyer agrees with a client that some or all of the lawyer’s fees and expenses for the provision to that client of advocacy or litigation services in respect of a matter are payable only if the outcome of that matter is successful.”

In addition, there are private companies who will fund litigation. Generally, to be eligible for funding, the litigation has to have a high chance of success and a high chance of recovery. Sometimes the funder will require the claimant to use specified counsel. Litigation funding is more common in Australia but there are signs that it is starting to increase in New Zealand.

3.2 Which tribunal resolves costs disputes and how?

The costs of trial or interlocutory applications are dealt with by the trial judge. Because costs are awarded by the court, the relevant appeal body is the appellate court (that is, the Court of Appeal from the High Court). The Court of Appeal is generally reluctant to interfere with costs awards given costs are discretionary; the judge must have acted on a wrong principle, failed to take relevant matters into account or made a wrong decision.

3.3 Can a party be required to provide security for costs (or some other sum) in advance of costs being decided?

Yes, if order for security for costs is sought.

An order for security for costs can be made only against a party in the position of claimant (including a defendant bringing a counterclaim). An order can be made on application by the defendant or if the judge considers it is just to do so.

The grounds for ordering security are that the claimant is resident overseas or there are grounds to believe the claimant will be unable to pay a costs award against it and whether the court should exercise its discretion (HCR 5.45).

4. Costs awards

4.1 Can interim awards of costs be obtained?

Yes.

Generally, the party who loses an interlocutory application is required to pay costs. HCR 14.8 provides that, unless there are special reasons to the contrary, costs on an opposed interlocutory application must be fixed in accordance with the fixed scale and become payable when they are fixed.

4.2 Can an award of costs be increased or decreased by reference to such matters as a party’s conduct of the case?

Yes.

Where a party has conducted proceedings, or conducted itself in relation to a step in the proceedings, by wasting time or by acting in a vexatious or improper manner, the other party may be entitled to “increased costs” or “indemnity costs.” See the answer to question 2.1 above.

The effect of a “without prejudice except as to costs offer” is in the court’s discretion. “It does not grant automatic protection in the event of lesser recovery, nor result in full exposure to costs if a greater sum is recovered. Nor is any such offer the sole consideration as all relevant circumstances are to be considered.”

Subject to that, HCR 14.11 provides that the maker of such an offer has a right to costs from the time of the offer, if the offer is worth more (in dollar terms) or more beneficial to the recipient than a judgment subsequently obtained. The offer may be taken into account in fixing costs if it is close to the “value or benefit” of the judgment.
The making of a “without prejudice offer” does not prevent the court from awarding increased costs or indemnity costs (HCR 14.11).

4.3 How are costs awards enforced?
Methods for enforcing money judgments are contained in HCR 17. A judgment creditor may enforce a judgment or order for the payment of money by any of the following methods:

- attachment order; and/or
- distress warrant; and/or
- garnishee proceedings; and/or
- charging order; and/or
- bankruptcy/liquidation proceedings.

4.4 Can a costs award be set off against a monetary judgment?
The former HCR 53 specified that where opposite parties are awarded costs against each other, their respective costs, unless the court otherwise directs, shall be set off and the lesser sum shall be deducted from the greater. This amendment is not reflected in the new HCRs.

The parties can agree to set off costs by consent.

4.5 Is interest payable on unpaid costs?
Yes, but at the court’s discretion.

The court has the power to order that interest be payable on unpaid costs that have been fixed or agreed but such an order is at its discretion and authority suggests that it would “clearly not be allowed in the run of the mill situation” (AFFCO NZ Ltd v ANZCO Foods Wairarapa Ltd [2005] 17 PRNZ 676, per Ronald Young J). We note that interest on costs at 7.5% per annum from the date of demand for costs was ordered in AFFCO but on the basis that costs (NZ$100,000 plus) had been agreed over six months earlier.

5. Costs of an appeal

5.1 Are costs of an appeal treated differently?
Yes.

A simplified system of scale fees prevails in the Court of Appeal.

There are two bands:

- Band A: standard appeals, which are appeals of average complexity requiring counsel of skill and experience considered average in the Court of Appeal.
- Band B: complex appeals, which are appeals that because of their complexity or significance require senior counsel.

The scale fee for each step in Court of Appeal proceedings is derived following the same procedure as applies to High Court proceedings.

In addition, the Court of Appeal may make an order for increased costs or indemnity costs.

6. Funding of civil and commercial claims

6.1 Can costs be insured?
Yes.

After the event insurance is permissible under New Zealand law, however, it is not widely used. Before the event legal expenses insurance is also permissible, however, this too is not widely used.

See answer to question 3.1 above regarding litigation funding.

6.2 Is legal aid available?
Yes.

Legal aid is available in New Zealand for certain civil proceedings. However, it is distinguished from criminal legal aid in that it is a loan that must be paid back. The granting of legal aid is means and merits tested. The financial limits for legal aid are low, so that few persons qualify. However, anyone who qualifies for legal aid is generally protected against an adverse costs order.

6.3 Is third party funding of claims available?
Yes.

The tort of maintenance and champerty still exists in New Zealand which limits the availability of third party funding. However, third party funding is permissible under New Zealand law, and case law from the last decade indicates a move by the courts towards allowing such funding and applying a more relaxed application of the tort. For example, the courts have allowed funding by parties with a “genuine commercial interest” in taking a case through.

A recent example is Houghton v Saunders [2008] BCL 1032, where the court refused to stay proceedings on the basis that the claimant bringing representative proceedings on behalf of shareholders of a company fell under the tort of champerty.

French J noted at 175 that: "at one time, the common law took a particularly hostile approach to champertous arrangements for reason for public policy ... the purchase of a stake in litigation was seen as presenting an obvious temptation to the suborning of witnesses and exploitation of worthless claims." However, His Honour considered that the stringent position no longer adheres in many jurisdictions and that there is an increasingly important place for professional funders in a time where litigation is particularly expensive to ensure that legal rights can be pursued. Although there were factors which pointed towards an abuse of process (for example, that the claimant had a substantial degree of control over the conduct of the litigation and stood to make a considerable profit), His Honour declined to stay the proceeding because of the size, complexity and importance of the claim.
In practice, third party funding has not been extensively used outside insolvency proceedings but is gaining popularity in relation to class action litigation.

**Contributed by:**
Sarah Armstrong  
Misha Henaghan  
Russell McVeagh.

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1. Laws of New Zealand, Civil Procedure: High Court, Costs (5), paragraph 35.  
2. Above number 1.  
5. Above number 5.  
6. Above number 5.
1. **Recoverability of costs**

1.1 **Can costs be recovered by a party to civil litigation?** Yes.

1.2 **Does the losing party usually pay the successful party’s costs?** Yes.

A party who is in all material respects successful in an action is, as a general rule, entitled to full compensation for his legal costs from the opposite party, to the extent that the court finds the costs to be necessary.

1.3 **Can costs be ordered to be paid to, or by, a non-party?**

A non-party can never recover costs. However a non-party may in certain instances be ordered to pay costs to the other party:

- the Government, in the event of a relevant mistake made by the court, which has incurred costs for a party (section 20-12)
- a legal person’s representative, in the event of dismissal on the grounds of lack of capacity to sue and be sued, or if the legal person lacks ability to pay costs and legal action was taken without adequate grounds (section 20-7).

2. **Details of recoverability of costs**

2.1 **On what basis are costs recoverable?**

According to the Civil Dispute Act of 17 June 2005 number 90 sections 20-2, a party who is successful in an action is, as a general rule, entitled to full compensation for his legal costs from the opposite party. An action is deemed successful if the court finds in favour of the party in the whole or in the main, or if the opposite party’s action is summarily dismissed or quashed because it is waived or because the courts do not have jurisdiction. If the action relates to several claims between the same parties, the overall outcome shall be decisive.

The court can, however, exempt the opposite party from liability for legal costs in whole or in part if the court finds that “weighty grounds” justify exemption.

According to sections 20-3 of the Civil Dispute Act a party who has not won the case but has succeeded to a significant degree may be awarded legal costs from the opposite party in whole or in part if “weighty reasons” so suggest. In addition to the factors mentioned in sections 20-2, the court shall have particular regard to the extent to which the court has found in favour of the party and the proportion of the legal costs that relate to that part of the case.

According to the Civil Dispute Act sections 20-4 a party can recover costs irrespective of the outcome of the case, if:

- the action is quashed for reasons beyond the control of the party and there is no doubt that the party would otherwise have succeeded; or
- to the extent the costs have arisen due to the opposite party’s omission.

Usually, payments must be made within 14 days from the service of the judgment. Penalty interest accrues from the same date.

2.2 **Is the amount of recoverable costs fixed?**

No, but see question 2.3.

2.3 **Is the amount of recoverable costs calculated by reference to the amount in dispute?**

No.

There is however an exception to this rule in cases where the amount in dispute is less than NOK 125,000 (the Dispute Act sections 10-2). These costs are limited to 20% of the amount (sections 10-5).

2.4 **What can be recovered as “costs”?**

Main rule: Full compensation for costs shall cover all necessary costs incurred by the party in relation to the action, unless there is cause to exclude the costs pursuant to special provisions. In assessing whether costs have been necessary, the court shall have regard to whether it was reasonable to incur them in view of the importance of the case.

<table>
<thead>
<tr>
<th>Lawyer – client fees</th>
<th>The unsuccessful party must pay the successful party’s legal fees; however in practice, the court often makes deductions in the lawyer fees especially when larger or expensive law firms are used. In cases where both sides are represented by large law firms, such objections are rarely an issue.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Additional lawyer fees</td>
<td>In principle recoverable.</td>
</tr>
<tr>
<td>Agency fees</td>
<td>In principle recoverable.</td>
</tr>
<tr>
<td>Court fees</td>
<td>In principle recoverable.</td>
</tr>
</tbody>
</table>
Disbursements (including, but not limited to, photocopying, expert witness, travel, translation, notarial, witness attendance etc.) Any expenses related to witnesses, experts and translators (who are themselves able to make claims for compensation regarding expenses incurred).

3. Particular costs issues

3.1 Can a party agree with its own lawyer, a special costs arrangement?
Yes.
Success fees and uplifts may be allowed in Norway, but such arrangements must be considered in the light of the Lawyer Directive of 12 December 1996 section 2.1, which states, that a lawyer may not take assignments where personal economical interests may come in conflict with the assignment and his client’s interests.

An agreement where the lawyer’s original fee is increased due to a good result should be allowed. Contingency fees where there is no agreed fee, but only a percentage of the result if the client wins, are not allowed in Norway and are directly regulated in the Lawyer Directive section 3.3.2. “No win, no fee” arrangements may be allowed, but not arrangements where the lawyer receives a percentage of the result or in other ways may have economical interests in the case.

3.2 Which tribunal resolves costs disputes and how?
The same court that resolves the case. Costs disputes may be appealed separately. No particular rules apply.

3.3 Can a party be required to provide security for costs (or some other sum) in advance of costs being decided?
Yes.
In insolvency cases, the petitioning creditor must guarantee approx NOK 45,000 to the bankruptcy estate.

4. Costs awards

4.1 Can interim awards of costs be obtained?
No.

4.2 Can an award of costs be increased or decreased by reference to such matters as a party’s conduct of the case?
Yes.
A party who has clearly either brought or resisted an action for no good reason may be ordered to pay the opposite party’s costs without regard to the outcome of the case.

The same applies to costs that a party has inflicted upon the opposite party by negligent conduct, without regard to the outcome of the case.

4.3 How are costs awards enforced?
Through the customary execution and enforcement authority, pursuant to the Enforcement Act of 26 June 1992 number 86 of the Enforcement Act.

4.4 Can a costs award be set off against a monetary judgment?
Yes, but set off must be declared before enforcement proceedings are initiated, pursuant to the Enforcement Act sections 4-3.

4.5 Is interest payable on unpaid costs?
Yes.
Interest is due and calculated from 14 days after the decision. The rate is seven per cent above the interest rate set by Norges Bank (National Bank of Norway), pursuant to the Act of 17 December 1976 relating to Interest on Overdue Payments etc. section 3.

5. Costs of an appeal

5.1 Are costs of an appeal treated differently?
No.

6. Funding of civil and commercial claims

6.1 Can costs be insured?
Yes.
Legal Expenses Insurance (before the event): typically private house insurance usually includes insurance for legal disputes up to normally NOK 100,000. For companies, typically the directors and officers liability insurance will cover amounts from NOK 10,000,000 upwards.

After the event (“ATE”) insurance: we are not aware of any after the event insurance. Legal Aid/legal costs insurance are entered into before the event as described above. The insurance company HELP offers legal dispute and lawyer consultation insurances on various legal areas for individuals.

6.2 Is legal aid available?
Yes.
All big law firms in Norway offer pro bono services to some extent. Pro bono implies that the legal assistance is free. The client will however usually have to cover other expenses such as court fees.

If a party has been granted free legal aid the State will cover this party’s cost with the exception of the party’s own share of 25% which the party must cover himself.

According to the Free Legal Aid Act of 13 June 1980 number 35 section 4, free legal aid may only be awarded to physical persons, and only in cases where there is a profound need for legal aid such as in divorce and child custody cases, dismissal cases, and personal injury compensation cases. In order to be entitled
to free legal aid a single person cannot have an annual income above NOK 246,000. With regard to families the income may not exceed NOK 369,000.

6.3 Is third party funding of claims available?
Yes.

We are not aware of any laws against loans and grants from banks and trade associations, but this is quite uncommon in Norway. It is however quite normal with amicus curiae, typically an interest group, which intervenes in a legal process and in that respect often also covers all or parts of the legal fees.

Contributed by:
Advokatfirmaet Thommessen AS.
1. Recoverability of costs

1.1 Can costs be recovered by a party to civil litigation?
Yes.

1.2 Does the losing party usually pay the successful party’s costs?
Yes.

In general the losing party is obliged to cover all the necessary costs of the successful party. Therefore, where the claimant is successful, it will usually recover its costs from the defendant in whole or in part.

If a party’s claims are only partially satisfied, the court costs are either proportionally divided between the parties or lifted. However, the defendant is entitled to reimbursement if it admitted the claim at the first opportunity in the proceedings. In particular circumstances the court may charge the losing party only with part of the court costs or not charge it with any part of the court costs at all.

Regardless of the outcome of the proceedings the court can charge any party with court costs if such party was acting carelessly or behaved improperly.

The costs which might be recovered include:

- court fees
- legal counsel’s fees
- travel costs incurred by a party due to their presence at the hearing
- remuneration lost by a party due to their presence at the hearing (but only if the claimant was not represented by professional legal counsel or an advocate).

The sum of travel costs and lost remuneration must not exceed the statutory advocate's fee.

A third party which joined the proceedings against both the plaintiff and the defendant (interwenient główny) can recover costs from the losing party.

A third party which joined the proceedings on the plaintiff’s or the defendant’s side (interwenient uboczny) can recover costs from the adverse party if that adverse party loses the case, but only if the reason for joining the proceedings was for the third party to defend its rights. The joining party may not, however, claim costs from the party which it joined.

A third party which joins proceedings and takes the place of a plaintiff or defendant can recover costs from the losing party.

A third party who is summoned to join the proceedings due to a defendant’s ungrounded motion may recover its costs from that defendant.

1.3 Can costs be ordered to be paid to, or by, a non-party?
No.

2. Details of recoverability of costs

2.1 On what basis are costs recoverable?
The lawyers’ fees for which a successful party is entitled to reimbursement from the losing party are regulated by the Ordinance on advocates’ fees and the Ordinance on legal counsels’ fees.

These Ordinances provide the statutory minimum lawyers’ fees which should be reimbursed by the losing party depending on the value of claims. The fees provided in the Ordinances may be increased by up to six times depending on the complexity of the matter, as well as the workload required of the lawyer and his contribution to the settlement of the case, however, these fees must not exceed the value at stake, that is the value of the recoverable fees must not exceed the value of the claim itself.

The fees stipulated range from PLN 60 if the amount in dispute is below PLN 500, to PLN 7,200 if the amount in dispute is PLN 200,000 or above.

2.2 Is the amount of recoverable costs fixed?
No.

With regard to the lawyers’ fees, although there are Ordinances setting minimum amounts recoverable, these can be increased depending on the complexity of the matter and the work done (see the response to question 2.1 above).

2.3 Is the amount of recoverable costs calculated by reference to the amount in dispute?
Yes.

See response to question 2.1 above.

2.4 What can be recovered as “costs”?

<table>
<thead>
<tr>
<th><strong>Lawyer – client fees</strong></th>
<th>Yes, but in limited circumstances.</th>
</tr>
</thead>
<tbody>
<tr>
<td>A party to proceedings might be awarded lawyer’s fees but only up to the amounts stipulated in the Ordinance on advocates’ fees and the Ordinance on legal counsels’ fees.</td>
<td></td>
</tr>
</tbody>
</table>

Additional lawyer fees (for example, counsel fees or trial advocate fees)

<table>
<thead>
<tr>
<th>Not applicable.</th>
</tr>
</thead>
</table>

Agency fees (for example, London agents, local agents, appellate lawyer, bailiff/process-server)

<table>
<thead>
<tr>
<th>Not applicable.</th>
</tr>
</thead>
</table>

Court fees

| Yes. |
Disbursements (including, but not limited to, photocopying, expert witness, travel, translation, notarial, witness attendance etc.) Some. Photocopying, travel expenses, accommodation and lost remuneration etc. are borne by the unsuccessful party.

Other expenses No.

3. Particular costs issues

3.1 Can a party agree with its own lawyer, a special costs arrangement?
Yes.

Legal counsel and advocates have professional codes of ethics which provide that they cannot charge a client an "exaggerated amount." They are also discouraged from concluding agreements with clients where success fees are the sole remuneration, however, success fees can be agreed as additional remuneration.

Regarding success fees, there are no limits on the amount or the percentage that can be agreed as a success fee.

3.2 Which tribunal resolves costs disputes and how?
The court decides on the costs between the parties in every decision which ends a stage of the proceedings.

3.3 Can a party be required to provide security for costs (or some other sum) in advance of costs being decided?
Yes.

In certain cases a defendant may apply for an order that a foreign claimant (including those from the EU) provide security for the costs which the defendant will incur in defending the action.

The court can request the parties pay in advance to cover the remuneration of any court appointed expert during the proceedings.

4. Costs awards

4.1 Can interim awards of costs be obtained?
No.

4.2 Can an award of costs be increased or decreased by reference to such matters as a party’s conduct of the case?
Yes.

Notwithstanding the outcome of the proceedings, the court can order any party to reimburse another party for costs incurred due to the former’s carelessness or apparently improper behaviour, such as avoiding providing explanations, providing false explanations and/or delays in providing evidence.

Any order to reimburse is not limited to the tariff scale only.

4.3 How are costs awards enforced?
Enforcement of costs awards is a court procedure. A final and binding judgment (including the costs order) is an enforcement title itself. A judgment creditor can enforce a judgment or order by filing a motion with the appropriate court or debt collector (enforcement authorities). In certain circumstances the court can commence the enforcement proceedings without a motion.

4.4 Can a costs award be set off against a monetary judgment?
No.

4.5 Is interest payable on unpaid costs?
No.

5. Costs of an appeal

5.1 Are costs of an appeal treated differently?
In general no. The lawyers’ fees which are recoverable from the losing party are smaller. They can amount to 50%, 75% or 100% of the statutory minimum lawyers’ fees (depending on whether the same counsel conducts the case and on whether the District Court or the Court of Appeal is the court of the second instance).

The Appeal Court takes decisions as to the costs at the appellate level. However, if the appellate court dismisses the challenged judgment and returns the case for further proceedings in the lower court it does not make a costs order. In such a case the lower court will then include the appellate court’s costs in its new judgment.

6. Funding of civil and commercial claims

6.1 Can costs be insured?
Yes.

Legal expenses insurance ("LEI") does exist in Polish civil proceedings but only in certain exceptional circumstances such as road traffic accidents or the professional activity of management board members.

6.2 Is legal aid available?
Yes.

In specific circumstances the law allows a party to obtain a complete or partial waiver from the court costs, as well as exemption from court costs. A party granted such a waiver or exemption can request legal aid. That is, it can ask the court to appoint an advocate or a legal counsel to act pro bono on the party’s behalf. The court’s decision on granting legal aid is discretionary.

Once the court has decided that a party’s request for legal aid is justified it asks the relevant Bar of Advocates or Regional Legal Counsel’s Chamber to nominate a lawyer to act in the case. Every practising lawyer is obliged to act in matters where he or she has been appointed to act pro bono.
Legal aid, as funded by the State, does not fund payments to lawyers of a party’s choice.

6.3 Is third party funding of claims available?
Yes.

Third party funding of claims is permitted under Polish law but, with some rare exceptions, is uncommon in practice.

Contributed by:
Lovells LLP (Warsaw).
1. **Recoverability of costs**

1.1 Can costs be recovered by a party to civil litigation?  
Yes.

1.2 Does the losing party usually pay the successful party’s costs?  
Yes.

According to the Portuguese Civil Procedure Code, Articles 446 and 446 – A, the claimant can recover its costs when it succeeds against the defendant. If the court grants the claimant’s application, the final decision will order the defendant to pay the costs. The defendant will pay a proportion of the claimant’s total costs that is the same as the proportion of the amount claimed in the dispute that is awarded in the court’s judgment.

If the claimant succeeds against multiple defendants, all of them will be liable for paying a particular proportion of the costs – the claimant can only recover costs from each defendant in proportion to that defendant’s share of the liability.

Liability for costs is only joint and several if the court finds multiple defendants jointly and severally liable in its judgment.

If multiple defendants are found jointly and severally liable, the claimant may recover all of its costs from any one of them. If a defendant pays all of the claimant’s costs, it can demand a contribution from the other defendants, under the general principles of joint liability.

If the claimant is unsuccessful, the defendant can recover costs. Its ability to do so is the same as that described for the claimant above.

If the party against whom a third party is called to intervene is unsuccessful, the third party can recover costs.

1.3 Can costs be ordered to be paid to, or by, a non-party?  
No.

Costs can only be paid or recovered where a party is called to intervene in an action as a third party (see question 1.2 above).

2. **Details of recoverability of costs**

2.1 On what basis are costs recoverable?  
The basis on which costs are recoverable depends on the type of cost:

- **legal tax** (the amount that the claimant must pay to start the action and the defendant must pay to file its defence): the losing party must pay a proportion of the successful party’s legal tax in line with the proportion of the amount claimed in the dispute that is awarded in the court’s judgment.
- **charges** (as described in Article 16th of Decree-Law 34/2008, of 26 February): the losing party must pay the successful party’s charges; some of these charges are fixed according to Article 17th and Scale IV of Decree-Law 34/2008, of 26 February.
- **party costs** (the amount each party spends on the dispute and for which the successful party has the right to be compensated by the losing party): the successful party can recover its lawyers’ and enforcement agent’s fees up to 50% of the total amount of legal tax paid by both parties.

Within five days of the judgment becoming final (no longer appealable), the successful party must send the losing party and court a statement of its costs, including the amounts paid for legal tax, charges and lawyer and enforcement agent fees.

2.2 Is the amount of recoverable costs fixed?  
Yes, in certain cases only.

Some charges, as mentioned in question 2.1, are fixed according to Scale IV of Decree-Law 34/2008, of 26 February.

In addition, party costs are limited to 50% of the total amount of legal tax paid by both parties – Article 26th, number 3.c of Decree-Law 34/2008, of 26 February.

2.3 Is the amount of recoverable costs calculated by reference to the amount in dispute?  
Yes.

Legal tax is calculated by reference to the amount in dispute, and the amount of party costs awarded depends on the total value of legal tax paid by both parties. Therefore, recoverable costs are calculated by reference to the amount in dispute.

Legal tax is currently paid in accordance within the following bands:

- for claims lower than €2,000.00 – €76.50
- for claims between €2,000.00 and €8,000.00 – €153.00
- for claims between €8,000.00 and €16,000.00 – €229.50.

The maximum legal tax payable is €1,530.00, for claims above €400,000.01.

2.4 What can be recovered as “costs”?  
“Costs” is a generic term used to refer to legal tax, charges associated with the action and party costs – Article 447th of the Civil Procedure Portuguese Code.

<table>
<thead>
<tr>
<th>Costs</th>
<th>Yes – Article 26, number 3 of the Decree-Law 34/2008, of 26 February.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lawyer – client fees</td>
<td></td>
</tr>
<tr>
<td>Additional lawyer fees (for example, counsel fees or trial advocate fees)</td>
<td>Yes – may be considered as party costs – Article 447 – C of the Civil Procedure Portuguese Code, and Article 26, number c) of the Decree-Law 34/2008, of 26 February.</td>
</tr>
</tbody>
</table>
3. Particular costs issues

3.1 Can a party agree with its own lawyer, a special costs arrangement?

No.

Whilst a party and its lawyers are free to agree a rate or a total amount for litigation fees, and the agreement does not have to be in a particular form, it is forbidden, according to Article 101° of the Portuguese Bar Association Rules, for them to make a costs arrangement that is based on the outcome of the dispute.

3.2 Which tribunal resolves costs disputes and how?

Upon receiving notice of the costs decision, the unsuccessful party has 10 days to challenge it – Article 31st of Decree-Law 34/2008, of 26 February. The challenge takes place in the same court that heard the dispute and issued the costs decision.

The statement of costs sent by the successful party to the losing party may also be challenged under the same circumstances – Article 33° of Order 419-A/2009, of 17 April. When the losing party challenges either a costs decision or the successful party’s statement of costs, it must provide a deposit of 50% of the value of the amount challenged.

3.3 Can a party be required to provide security for costs (or some other sum) in advance of costs being decided?

No.

4. Costs awards

4.1 Can interim awards of costs be obtained?

Yes, in certain cases.

The costs of most interim applications are set at the end of the main action.

However, in some cases, the judge issues an interim award of costs. The rejection of an inadmissible application by the judge and injunction costs are examples of procedures where this is the case.

In both cases, costs are exercised in favour of the party who was successful in the application.

4.2 Can an award of costs be increased or decreased by reference to such matters as a party's conduct of the case?

Yes.

The court can decide that a party is a vexatious litigant if, during the litigation process, it:

- produced an unfounded claim or objection without basis
- deliberately misrepresented or omitted facts considered relevant to the decision in the case
- seriously failed to uphold its duty to co-operate
- engaged in a clear and reprehensible abuse of process in order to achieve an unlawful objective, to prevent the discovery of truth, to obstruct the course of justice or delay, without serious grounds, the final judgment in the dispute.

A vexatious litigant may be required to reimburse the other party for:

- expenses which the vexatious litigant forced the other party to incur, including lawyers’, agents’ and experts’ fees
- other expenses and losses suffered by the other party as a direct or indirect consequence of the vexatious litigation.

The judge will decide the amount of compensation which it deems most appropriate in light of the vexatious litigant’s conduct. (Articles 456° and 457° of the Civil Procedure Portuguese Code.)

4.3 How are costs awards enforced?

When a losing party does not voluntarily pay court fees, a Public Prosecutor is given a certificate, for enforcement purposes.

The certificate, along with the final judgment, is enforceable in relation to all of the sums affixed in it. (Article 36 of the Decree-Law 34/2008, of 26 February.) The Public Prosecutor brings the enforcement action and can take such measures as selling certain of the unsuccessful party’s assets or requiring its employer to pay a proportion of its earnings.

4.4 Can a costs award be set off against a monetary judgment?

Yes. Parties can set off a costs award against a monetary judgment or another cost award, provided that the following requirements are met:
the debts being set off must be judicially required and indisputable (for example, not subject to security)
the two debts must relate to a fungible object of the same kind and quality (such as money).

If the two debts are not for the same amount, the debtor of the larger debt can compensate the other party for the remaining amount.

The fact that a debt is illiquid does not prevent compensation.

4.5 Is interest payable on unpaid costs?
Yes.

Interest is charged if court fees and charges are not voluntarily paid by the deadline.

For charges, interest is calculated at 25% of the total amount due, and, for regular court fees, at the minimum interest rate, which is set, since 1 May 2003, at four per cent per annum – Ordinance number 291/2003, of 8 April 2003.

(Articles 23 and 34 number 3 of Decree-Law 34/2008 of 26 February.)

5. Costs of an appeal

5.1 Are costs of an appeal treated differently?
No. (Article 446 of the Civil Procedure Portuguese Code.)

6. Funding of civil and commercial claims

6.1 Can costs be insured?
Yes.

Legal expenses insurance covers the costs related to legal services, as well as the expenses of an administrative or a judicial process.

The guarantee of legal protection must be included in a contract or be described in a separate chapter of an insurance policy – Articles 167th and 169th of Decree-Law 72/2008, of 16 April.

6.2 Is legal aid available?
Yes.

Legal aid is available in the form of legal advice and legal support.

Legal aid is provided to EU citizens and to foreign and stateless people with a valid residence permit in an EU Member State, who are proved to have limited financial resources.

Legal advice consists of the explanation of relevant law and legal support comprises:

- exemption from court fees and other charges
- appointment and payment of a lawyer
- payment of compensation for public defender
- staggered payment of court fees and other charges

(Articles 7th and 16th of Law 34/2004 of 29 July.)

6.3 Is third party funding of claims available?
No.

Contributed by:
Almeida & Athayde – Sociedade de Advogados, RL.
1. **Recoverability of costs**

1.1 **Can costs be recovered by a party to civil litigation?**
Yes.

1.2 **Does the losing party usually pay the successful party's costs?**
Yes.

Where the claimant is successful, the defendant, as the losing party, is obliged to reimburse the claimant's court fees incurred in bringing the claim. The court fee will either be a fixed amount for a non-monetary claim or a proportion of the value of a monetary claim.

The losing defendant will also bear the claimant's "judiciary expenses" which are any costs relating to the case and will include translation costs, lawyers' fees, experts' fees as well as costs associated with witnesses. The judge may only increase or decrease the amount of the lawyers' fees if he/she considers those fees to be unreasonably high or low. However, in practice, the courts usually only exercise these powers if they deem the lawyer's fees to be excessive.

Costs attached to enforcement proceedings are also usually refundable from the party against whom the enforcement takes place.

Where there are multiple defendants they will be compelled to pay the successful claimant's judiciary expenses equally, proportionately or jointly relative to their interest in the case. In such circumstances the judge's discretion applies.

In cases where the court decides that the defendants shall pay the costs equally or proportionately, each defendant shall be held liable only for the part of the costs allocated to them in the judgment. For example, if there are two defendants and the court decides that each defendant should pay an equal share of the costs, the claimant may enforce the costs decision against each defendant for one-half of the costs. However, should one defendant be unable to pay its half, the claimant will have to bear the risk of that defendant's insolvency.

In cases where the court decides that the defendants shall jointly pay the costs, the claimant can then recover costs against any one (or more) of the defendants. Any defendant paying such costs can then seek a contribution from the others under the provisions of the Civil Code and therefore said defendant(s) bear the risk in circumstances where any of their co-defendants are unable to pay their share of the costs.

The losing claimant will bear the successful defendant's judiciary expenses relative to their interest in the case (see above). In such circumstances the judge's discretion applies.

Third parties may enter proceedings brought by other individuals or entities in order to defend their interests or to defend the position of one of the parties. Also, a defendant may request that a third party be included in the proceedings if it has the right to recover from them all or part of the damages claimed by a successful plaintiff.

All these parties have the right to recover their costs as follows:

- in cases where the third party is entering the proceedings in order to defend its rights and interests, it may recover its costs from the plaintiff and/or the defendant only in cases where it is successful and its claims are awarded by the court
- in cases where the third party is entering the proceedings in order to defend the position of the plaintiff or of the defendant, it may recover all costs from the other party if the party it supported is successful
- in cases where the third party is included in the proceedings at the request of the defendant, said party may recover its costs from the plaintiff if the defendant is successful or from the defendant if the plaintiff is successful and the court dismisses the defendant's claims against it.

1.3 **Can costs be ordered to be paid to, or by, a non-party?**
No.

Non-parties cannot be ordered to pay costs or be the recipient of an order for costs.

2. **Details of recoverability of costs**

2.1 **On what basis are costs recoverable?**

The court is obligated to grant all costs incurred by the successful party in connection with the litigation as long as proper evidence attesting to the amount has been submitted. Only the lawyers' fees are in the discretion of the court which may increase or decrease their amount.

Where the claimant is only partially successful, the amount of costs which may be recovered shall be in the discretion of the judge. In such a case the judge may take into consideration:

- the manner in which the parties pursued or defended the action or particular allegations or issues
- whether the claimant exaggerated the value of the claim
- the costs incurred by the losing party.

2.2 **Is the amount of recoverable costs fixed?**
No.

2.3 **Is the amount of recoverable costs calculated by reference to the amount in dispute?**

Only some elements of the recoverable costs.
The court fee is calculated based on the amount in dispute assuming a value may be given to the actual object of the said dispute. If not, the court fee shall be of the amount provided for under the law.

The law which stipulates the court fee to be paid in a specific type of litigation is Law Number 146/1997 which sets out the judicial stamp tax. Provisions regarding exemptions from the payment of the court fee may also be found in other enactments.

### 2.4 What can be recovered as “costs”?

<table>
<thead>
<tr>
<th>Item</th>
<th>Recoverable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lawyer – client fees</td>
<td>Yes.</td>
</tr>
<tr>
<td>Additional lawyer fees (for example, counsel fees or trial advocate fees)</td>
<td>Yes.</td>
</tr>
<tr>
<td>Agency fees (for example, London agents, local agents, appellate lawyer, bailiff/process-server)</td>
<td>Yes.</td>
</tr>
<tr>
<td>Court fees</td>
<td>Yes.</td>
</tr>
<tr>
<td>Disbursements (including, but not limited to, photocopying, expert witness, travel, translation, notarial, witness attendance etc.)</td>
<td>Yes.</td>
</tr>
<tr>
<td>Other expenses</td>
<td>“Judiciary expenses” is widely defined. All costs incidental to the case may be claimed provided that the party claiming them can prove that they were linked to the case.</td>
</tr>
</tbody>
</table>

### 3. Particular costs issues

#### 3.1 Can a party agree with its own lawyer, a special costs arrangement?

Yes.

The remuneration of lawyers can be done by way of capped fees (paid as a whole or periodically) or hourly fees.

Success fees which depend exclusively on the success of the litigation and conditional fee arrangements are only permitted under the Bar’s regulations in specific circumstances. However, the court will not take into consideration such fees when deciding upon the costs to be paid by the losing party.

Under Romanian law, a success fee may be agreed only as a supplement to the capped fee or the fee payable according to hourly rates for a specific matter. The success fee can be agreed as a lump sum or as variable amount depending on the actual result of the litigation. However, it is forbidden to determine the amount of the success fee as a percentage of the benefits obtained by the winning party in the litigation. No other limitation is set on the success fee.

The successful party may only recover such fees through a new trial and subject to providing evidence that said fee was actually paid.

This new trial is concerned with the damages incurred by a party as a result of the proceedings in which it was successful. Part of these damages may be represented by the costs incurred by that party but not recovered in the decision issued in the previous litigation.

There are no minimum limits on fees.

#### 3.2 Which tribunal resolves costs disputes and how?

The costs issue is usually settled in the same judgment as the claim to which they relate.

The successful party may file an independent claim for damages against the losing party in order to recover the costs of litigation. In such a case the competent court shall be determined according to the general provisions regulating jurisdiction, irrespective of the court that settled the claim in connection to which the costs were incurred.

#### 3.3 Can a party be required to provide security for costs (or some other sum) in advance of costs being decided?

Yes.

In specific cases expressly provided for under Romanian civil law, the court may issue an order requiring the claimant or defendant to establish security for the payment of costs and/or damages that may be incurred by the other party following a specific request. For example, in the case of a seizure order issued against the defendant’s assets, the defendant would be able to reverse that order if an amount equal to the claimant’s claim – including costs – was deposited with a bank as collateral.

### 4. Costs awards

#### 4.1 Can interim awards of costs be obtained?

Yes.

According to Romanian law it is possible to submit interim applications in certain circumstances. Such applications form independent case files on the docket of the court and therefore at the end of such proceedings the judge shall decide which party shall pay the costs.

The court will decide upon the costs of the interim application based on the same rules which are applied to the main claim. However, there are cases in which the judge is able to rule that the costs of the interim application shall be borne by the claimant irrespective of whether or not it is successful.
4.2 Can an award of costs be increased or decreased by reference to such matters as a party's conduct of the case?

Yes.

Only in a case where the party is not entirely successful can the court, at its discretion, establish the amount of costs to be recovered by the successful party. The court will take into consideration, among other factors, the conduct of the parties during the proceedings.

Where the claimant is only partially successful, the amount of costs which may be recovered shall be in the discretion of the court. In such a case the judge may take into consideration:

- the manner in which the parties pursued or defended the action or particular allegations or issues
- whether the claimant exaggerated the value of the claim
- the costs incurred by the losing party.

4.3 How are costs awards enforced?

The methods of enforcing money judgments are contained in Book 5 of the Civil Proceedings Code. The creditor may enforce a judgment on costs by any of the following methods where the unsuccessful party does not freely comply:

- a warrant of execution (see Book 5 Chapters II, III and IV of the Civil Proceedings Code)
- a third party debt order (see Book 5 Chapter II Section V of the Civil Proceedings Code)
- an attachment of earnings order (see Book 5 Chapter II Section I of the Civil Proceedings Code).

4.4 Can a costs award be set off against a monetary judgment?

Where neither party is entirely successful, the court may off set the costs incurred by one party during the proceedings with the costs incurred by the other party.

Furthermore, during the enforcement proceedings of the judgment on costs, the debtor may request that the court off set said costs against a monetary judgment issued in its favour against the judgment creditor in a separate case.

4.5 Is interest payable on unpaid costs?

Yes.

The debtor shall be obligated to pay legal interest as of the date on which the judgment on costs is delivered by the court, irrespective of the date on which the debtor receives said judgment.

The legal interest for commercial and civil matters is calculated as follows:

- in commercial matters the legal interest is equal to the reference interest rate of the Romanian National Bank
- in civil matters the legal interest is equal to the reference interest rate of the Romanian National Bank reduced by 20%.

5. Costs of an appeal

5.1 Are costs of an appeal treated differently?

No.

6. Funding of civil and commercial claims

6.1 Can costs be insured?

Yes.

Legal expenses insurance (“LEI”) and after the event insurance (“ATE”) are available in Romania but not widely used.

6.2 Is legal aid available?

Yes.

Legal aid is organised in Romania at the level of every County Bar Association according to Law Number 51/1995.

Emergency Government Ordinance Number 51/2008 regulates legal aid for Romanian citizens and for citizens of other EU Member States who cannot sustain litigation or legal fees without endangering their or their family’s maintenance.

6.3 Is third party funding of claims available?

Yes.

There is no law that forbids the use of loans or grants from banks or trade associations etc. for the financing of claims.

Any individual can cover the expenses of another individual if the individual bringing the claim agrees to such funding.

Companies and other commercial organisations cannot cover the legal expenses of another entity unless such payment is designed to serve the business objectives of the paying organisation. Not-for-profit entities can finance other parties’ legal expenses if such financing is within their statutory scope of activity.

Contributed by:
Daniel Costea
Laurentiu Popescu
Voicu & Filipescu.
The Russian judicial system consists of the Constitutional Court, the courts of general jurisdiction, and the State Arbitrazh (commercial) courts. The Constitutional Court generally resolves issues relating to the compliance of federal and regional laws and regulations with the Russian Constitution. Courts of general jurisdiction hear criminal cases, civil disputes between individuals, and disputes arising from administrative relationships between individuals and state bodies. Disputes regarding business activity are heard before the State Arbitrazh courts.

1. Recoverability of costs

1.1 Can costs be recovered by a party to civil litigation?
Yes.

1.2 Does the losing party usually pay the successful party’s costs?
Yes.

Under Article 90 of the Civil Procedure Code and Article 110 of the Arbitrazh Procedural Code, the costs of the successful party are payable by the losing party.

If a claim has been partially allowed, the costs are divided between the parties in proportion to the allowed and disallowed amounts of the asserted claims.

1.3 Can costs be ordered to be paid to, or by, a non-party?
No.

2. Details of recoverability of costs

2.1 On what basis are costs recoverable?
The costs are assessed by the court on the basis of legal expenses incurred by the successful party and assessment of the reasonableness of such expenses by the court. In assessing whether the amount of legal costs is reasonable the court must take into account the complexity of the case, average legal costs for similar cases and other factors. In general, the court has a wide discretion in assessing the above factors and awarding costs from the losing party to the successful party.

2.2 Is the amount of recoverable costs fixed?
No.

2.3 Is the amount of recoverable costs calculated by reference to the amount in dispute?
No, but the amount of the dispute must be taken into account by the judge along with the other factors.

2.4 What can be recovered as “costs”?

<table>
<thead>
<tr>
<th>Item</th>
<th>Recoverable?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lawyer – client fees</td>
<td>Yes. In the absence of a comprehensive provision in an underlying agreement, a successful party can only be compensated by the losing party for reasonable legal fees.</td>
</tr>
<tr>
<td>Additional lawyer fees (for example, counsel fees or trial advocate fees)</td>
<td>Yes.</td>
</tr>
<tr>
<td>Agency fees (for example, London agents, local agents, appellate lawyer, bailiff/process-server)</td>
<td>No.</td>
</tr>
<tr>
<td>Court fees</td>
<td>Yes.</td>
</tr>
<tr>
<td>Disbursements (including, but not limited to, photocopying, expert witness, travel, translation, notarial, witness attendance etc.)</td>
<td>Yes.</td>
</tr>
<tr>
<td>Other expenses</td>
<td>A party who has paid expert fees can be reimbursed for those fees by the other party, under court order, if the instructing party is successful in the case.</td>
</tr>
</tbody>
</table>

3. Particular costs issues

3.1 Can a party agree with its own lawyer, a special costs arrangement?
Yes.

Russian law does not precisely prohibit contingency or conditional fees, but contingency/conditional fee arrangements (which are not distinguished in Russian law) have been held to be unenforceable by the Supreme Arbitrazh Court.

If a retainer agreement that provides for a contingency/conditional fee is brought to court, the court determines the fee amount by taking into account the average fee charged locally for comparable services and other similar factors.

3.2 Which tribunal resolves costs disputes and how?
There is no special tribunal for resolving costs disputes. The court dealing with the claim makes a ruling on costs. This ruling may be challenged at a higher court jointly with, or separately from, a challenge of the judgment on the merits.
3.3 Can a party be required to provide security for costs (or some other sum) in advance of costs being decided?
No.

There are no provisions in Russian law that entitle the defendant to request the claimant to provide security for the defendant’s costs for defending itself against the claims of the claimant.

4. Costs awards
4.1 Can interim awards of costs be obtained?
No.

4.2 Can an award of costs be increased or decreased by reference to such matters as a party’s conduct of the case?
No.

4.3 How are costs awards enforced?
In the same way as ordinary court’s judgments and rulings.

4.4 Can a costs award be set off against a monetary judgment?
No.

4.5 Is interest payable on unpaid costs?
Through a separate procedure.

Russian procedural legislation does not provide for the award of interest on costs incurred in legal proceedings. Interest can be claimed under the general provisions of the Russian Civil Code for a separate new claim brought for interest on costs. However, this is very rare, as the sums of potential interest are typically low.

5. Costs of an appeal
5.1 Are costs of an appeal treated differently?
No.

6. Funding of civil and commercial claims
6.1 Can costs be insured?
Yes.


It has not become usual for Russian entities to obtain such insurance.

6.2 Is legal aid available?
Yes, but only in very limited circumstances.

Legal aid is not widely available in Russia. Only certain categories of Russian citizens whose average per capita income is lower than the minimum for subsistence may be provided with free legal assistance.

6.3 Is third party funding of claims available?
Yes, in the manner set out below.

A representative acting per proxy from a claimant has the right to pay a state duty for bringing a claim. Equally a third party can pay legal costs for handling a case in court.

Contributed by:
Lovells CIS (Moscow).
## 1. Recoverability of costs

### 1.1 Can costs be recovered by a party to civil litigation?
Yes.

### 1.2 Does the losing party usually pay the successful party’s costs?
Yes.

An order for costs is entirely in the court’s discretion, however, it is usually the case that costs will “follow the event,” that is, that costs will be awarded to the successful party. Therefore where the claimant is successful it is likely that they will be awarded an order for costs against the defendant.

### 1.3 Can costs be ordered to be paid to, or by, a non-party?
Yes.

It is up to the court’s discretion.

## 2. Details of recoverability of costs

### 2.1 On what basis are costs recoverable?
The basis for recovery is entirely in the court’s discretion. In exercising its discretion the court is required to have regard to all the circumstances of the case.

### 2.2 Is the amount of recoverable costs fixed?
Yes, in certain cases only.

Fixed costs regime is contained in Order 59 of the Rules of Court.

### 2.3 Is the amount of recoverable costs calculated by reference to the amount in dispute?
This is considered as part of the court’s exercise of discretion.

Order 59 Appendix 1 states that the amount in dispute is a relevant factor to be considered.

### 2.4 What can be recovered as “costs”?

<table>
<thead>
<tr>
<th>Description</th>
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</tr>
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<tbody>
<tr>
<td>Lawyer – client fees</td>
<td>Yes</td>
</tr>
<tr>
<td>Additional lawyer fees (for example, counsel fees or trial advocate fees)</td>
<td>Subject to the court’s discretion.</td>
</tr>
<tr>
<td>Agency fees (for example, London agents, local agents, appellate lawyer, bailiff/process-server)</td>
<td>Subject to the court’s discretion.</td>
</tr>
<tr>
<td>Court fees</td>
<td>Yes</td>
</tr>
</tbody>
</table>

Disbursements (including, but not limited to, photocopying, expert witness, travel, translation, notarial, witness attendance etc.)

## 3. Particular costs issues

### 3.1 Can a party agree with its own lawyer, a special costs arrangement?
Yes.

Section 107 of the Legal Profession Act prohibits solicitors from entering “into any agreement by which he is retained or employed to prosecute any suit or action or other contentious proceeding which stipulates for or contemplates payment only in the event of success in that suit, action or proceeding.”

Pursuant to this section contingency fee arrangements are unlawful in Singapore.

Fixed fee agreements are allowed under Singaporean law.

### 3.2 Which tribunal resolves costs disputes and how?
Following judgment the successful party files a bill of costs. If the paying party wishes to dispute any of the amounts in the bill they file a notice of dispute. The bill is then determined by a taxing registrar who can hear arguments and objections from each party.

Following determination by the registrar if either party is unsatisfied with the amount allowed or disallowed an application may be filed for review by a judge of the High Court. Any such review must be within 14 days of the registrar’s hearing. If the parties are dissatisfied with the decision of the judge an appeal may subsequently be filed with the Court of Appeal if the Court of Appeal grants leave for the appeal.

### 3.3 Can a party be required to provide security for costs (or some other sum) in advance of costs being decided?
Yes, if order for security of costs is sought by the plaintiff.

This is covered by Order 23 of the Rules of Court.

## 4. Costs awards

### 4.1 Can interim awards of costs be obtained?
Yes.

At the end of almost every interim application and when almost any interim application is disposed of by consent, an order will be made, or agreed, declaring which party should pay the costs of the application.

Costs of interim applications are in the discretion of the court, but the discretion is usually (but not always) exercised in favour of the party who was successful in the application.
4.2 **Can an award of costs be increased or decreased by reference to such matters as a party’s conduct of the case?**

Yes.

It is in the court’s discretion.

4.3 **How are costs awards enforced?**

A judgment creditor may enforce a judgment or order for the payment of money by any of the following methods:

- a writ of seizure of sale; or
- garnishee order; or
- the appointment of a receiver.

4.4 **Can a costs award be set off against a monetary judgment?**

Yes.

4.5 **Is interest payable on unpaid costs?**

Yes.

A rate of 5.33% per annum is payable from the date of taxation, order, judgment or agreement.

5. **Costs of an appeal**

5.1 **Are costs of an appeal treated differently?**

At the court’s discretion.

A court dealing with a case on appeal can make orders relating to the costs of the proceedings giving rise to the appeal as well as the appeal itself.

If an appeal is successful, the appeal court may order the losing party to pay the costs “here and below”, or may make different orders relating to the proceedings at the two levels, or may leave the costs order of the court below undisturbed.

It may be appropriate to deprive a party of its costs:

- if the decision on the appeal turned on points not raised below; or
- if the decision on the appeal turned on points not raised in the notice of appeal; or
- where the appeal is only partly successful; or
- where the court’s time has been wasted.

6. **Funding of civil and commercial claims**

6.1 **Can costs be insured?**

This issue has not yet been decided by a court.

6.2 **Is legal aid available?**

Yes.

The Legal Aid Bureau, which is a government department, can provide external lawyers or its own lawyers to act for an individual in certain types of civil cases.

In order to qualify for the above the individual must be Singaporean and must pass a means test.

A lot of the cases handled by the Legal Aid Bureau tend to be matrimonial cases.

Please refer to the Legal Aid Bureau’s website at www.lab.gov.sg.

6.3 **Is third party funding of claims available?**

No.

**Contributed by:**

Lovells Lee & Lee.
1. **Recoverability of costs**

1.1 **Can costs be recovered by a party to civil litigation?**
Yes.

1.2 **Does the losing party usually pay the successful party’s costs?**
Yes.

The reimbursement of costs is awarded on the basis of the cost-allocation rule, that is, the losing party will bear the costs of the proceedings.

According to section 142 and subsections of the Civil Proceedings Act, No. 99/1963 Coll. as amended, there are some exemptions from this general rule:

- if one party is successful in respect of only part of the proceedings, the court will award the costs proportionately between the parties. The court may also decide that none of the parties has the right to have their costs reimbursed
- even if one party is successful only in part of the proceedings the court may award full reimbursement of costs if the unsuccessful part of the dispute was insignificant or if the decision depended on expert opinion or the discretion of the court
- the defendant who was not successful in the proceedings has the right to reimbursement of their costs from the claimant if the action was not filed as a result of the defendant’s conduct.

The reimbursement of legal costs is also limited by the Ministry Decree (please see question 2.1 below).

Joined parties to the proceedings have the same rights and duties as the main parties including the right to recover their costs from the unsuccessful party or parties.

1.3 **Can costs be ordered to be paid to, or by, a non-party?**
No, apart from the State.

Slovak law specifically states that the State (Slovak Republic) has the right to be reimbursed for the costs of the proceedings which it has paid unless the persons which are ordered to pay the costs fulfil the conditions for waiver of court fees. Other non-parties do not have the right to be reimbursed for the costs of the proceedings nor can they be ordered to pay such costs.

2. **Details of recoverability of costs**

2.1 **On what basis are costs recoverable?**

The amount of costs for legal representation are calculated on the basis of the tariff stipulated in the Decree of the Ministry of Justice of the Slovak Republic No. 655/2004 Coll. on the Fees and Compensation of Advocates for Provision of Legal Services.

The cost of legal representation is calculated pursuant to the tariff value of the claim and the number of legal acts undertaken by the advocate on behalf of the represented party in the proceedings (for example, participation at the hearing is considered to be one legal act). The Ministry Decree recognises five tariff zones and in each tariff zone one legal act has a different value.

The decision on the recoverability of costs is taken by the court which rules on the subject matter of the dispute and is usually given in the same judgment.

2.2 **Is the amount of recoverable costs fixed?**
No, except the costs of legal representation (see the tariff referred to in the answer to question 2.1 above).

2.3 **Is the amount of recoverable costs calculated by reference to the amount in dispute?**
This is considered as part of the court’s exercise of discretion.

The amount of costs for legal representation is calculated on the basis of the tariff value of the claim stipulated in the Ministry Decree No. 655/2004 Coll. on the Fees and Compensation of Advocates for Provision of Legal Services.

If the costs of a low value claim are considered unreasonably high, the court may refuse their reimbursement or reduce the amount of costs to be reimbursed (section 150(2) of the Civil Proceedings Act).

2.4 **What can be recovered as “costs”?**

<table>
<thead>
<tr>
<th>Item</th>
<th>Recoverable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lawyer – client fees</td>
<td>Yes.</td>
</tr>
<tr>
<td>Additional lawyer fees (for example, counsel fees or trial advocate fees)</td>
<td>If a party has more than one lawyer in the proceedings the recoverable costs for their legal representation will be limited to the amount of costs incurred for representation by one lawyer (section 149(3) of the Civil Proceedings Act).</td>
</tr>
<tr>
<td>Agency fees (for example, London agents, local agents, appellate lawyer, bailiff/process-server)</td>
<td>Agency fees are not defined in the Slovak legal system.</td>
</tr>
<tr>
<td>Court fees</td>
<td>Yes.</td>
</tr>
<tr>
<td>Disbursements (including, but not limited to, photocopying, expert witness, travel, translation, notarial, witness attendance etc.)</td>
<td>Yes.</td>
</tr>
</tbody>
</table>

3. **Particular costs issues**

3.1 **Can a party agree with its own lawyer, a special costs arrangement?**
Yes.
A client and their lawyer may come to an arrangement regarding payment for legal services. This might be done by way of hourly rates, fixed fees or a success fee, however, in cases where the remuneration has not been agreed it is calculated according to Decree No. 655/2004 Coll. (Fees and Compensation of Advocates for Provision of Legal Services).

Success fees may be agreed as a percentage of the value of the matter which is the subject of the court proceeding or proceedings before another body, if the outcome of such proceedings is uncertain. The maximum amount of the agreed success fee may not exceed 20% of the value of the subject matter of the proceedings.

The advocate shall be entitled to receive the agreed success fee provided that their client achieves complete success in the case. If the proceedings only result in partial success, the advocate shall be entitled to receive a proportion of the agreed success fee. If the client fails to achieve even a partial success in the case, the advocate shall be entitled to request the client to pay compensation for out-of-pocket expenses only.

Note that the amount of costs which can be awarded by the court for legal representation is limited by the tariff (please see the answer to question 2.1 above).

### 3.2 Which tribunal resolves costs disputes and how?

The costs award is usually given by the court in the same judgment which rules on the subject matter of the dispute (section 151(1) of the Civil Proceedings Act). In complex cases the court may decide on the reimbursement of costs following the conclusion of the proceedings (section 151(3) of the Civil Proceedings Act).

An appeal can be filed against the first instance judgment (including the part concerning costs) within 15 days of receipt of the judgment. The appeal will be decided by the appellate court.

### 3.3 Can a party be required to provide security for costs (or some other sum) in advance of costs being decided?

Yes.

The court may decide that a party to the proceedings (if not exempt from the obligation to pay costs) is obliged to make an advance payment for the costs of hearing any evidence which is demanded by him or ordered by the court to prove the facts alleged by him or made in his interests (section 141(1) of the Civil Proceedings Act).

Court fees are payable at the time the legal acts which are subject to those fees are executed (that is, the filing of the action, appeal, etc.). Consequently, these court fees are also payable in advance of the end of the litigation.

In addition, according to Slovak conflicts rules, Act No. 97/1963 Coll. on the private and procedural international law, a foreigner who initiates proceedings in Slovakia, may be ordered by the court upon the request of the defendant to provide security (most likely by way of advance payment) for the cost of proceedings. If the security is not provided, the proceedings will not continue against the defendant and will be discontinued. There are certain exceptions to this rule, for example, with respect to a foreigner from a country where a Slovak citizen or company would not be obliged to provide such security in a similar case (reciprocity).

### 4. Costs awards

#### 4.1 Can interim awards of costs be obtained?

Yes.

Under section 141(1) of the Civil Proceedings Act the court may decide that a party to the proceedings (if not exempt from the obligation to pay the costs) is obliged to make an advance payment for the costs of hearing any evidence which is demanded by him or ordered by the court to prove the facts alleged by him or made in his interests. This section implies that a party should not be bound to make an advance payment for the costs of any evidence requested by other party.

#### 4.2 Can an award of costs be increased or decreased by reference to such matters as a party’s conduct of the case?

Yes.

Pursuant to section 147(1) of the Civil Proceedings Act the court may decide that a party who is responsible for costs which would not otherwise have been incurred pay those unnecessary costs. In exceptional cases (not specified by law) the court might not (at its discretion) award the reimbursement of costs either in total or in part. The primary reason for such a decision will be where the court considers that the party receiving the reimbursement did not raise all the relevant facts and evidence during the first act in the proceedings.

The above does not apply if the party to be reimbursed could not have raised such facts and evidence at that time (section 150(1) of the Civil Proceedings Act).

#### 4.3 How are costs awards enforced?

Costs awards are enforced in the same way as any other monetary judgment. If the obligation to reimburse costs resulting from a valid and final decision is not duly fulfilled on time the entitled party may initiate execution proceedings.

#### 4.4 Can a costs award be set off against a monetary judgment?

Yes.

There is no provision in Slovak law which prevents such set off.

#### 4.5 Is interest payable on unpaid costs?

At the court’s discretion.
There is a growing trend in Slovak case law and legal theory that suggests delay interest cannot be demanded in cases of delayed reimbursement of costs and this trend is beginning to prevail in court practice.

5. Costs of an appeal

5.1 Are costs of an appeal treated differently?
No.

The provisions concerning costs in first instance proceedings are also applicable to appellate proceedings. If the appellate court changes the first instance decision, the costs award shall be a part of the appellate judgment (section 224 (1) of the Civil Proceedings Act). If the appellate court cancels the decision and returns it to the first instance court for further proceedings, the costs award shall be a part of new first instance judgment.

There is an exception made for cases with an extraordinary remedy against an already enforceable decision, for example, a second appeal or a renewal of the proceedings. These remedies (in Slovak called “dovolanie”) are not generally available and are limited to a number of specified cases. In these cases the amount of the court fee (being part of the costs) is doubled.

6. Funding of civil and commercial claims

6.1 Can costs be insured?
Yes.

The Slovak Civil Proceedings Act does not address this question but the use of costs insurance is not prohibited.

6.2 Is legal aid available?
Yes.

Slovak law regulates several institutions and tools that could be described as “legal aid.” In particular, a party to proceedings can be exempt from the obligation to pay the court fees if his financial conditions justify such exemption. Further, there exists a system by which the Legal Aid Centre may provide legal aid to destitute persons.

The Legal Aid Centre was established by Act No. 327/2005 Coll. It is a budget organisation (that is, its purpose is not to make a profit and it does not charge fees for legal services) providing legal aid through its employees and selected advocates to persons who, due to their poor financial situation, cannot afford legal services for the protection of their rights or for asylum matters. Legal aid is not provided by the Centre in cases of an obviously unsuccessful application of the law.

6.3 Is third party funding of claims available?
No.

Slovak law does not recognise the idea of “third party funding” but equally does not prohibit such an agreement being concluded between the claimant and a third person.

Contributed by:
Ján Šinkovic
ČERNEJOVÁ & HRBEK, s.r.o.
The answers in this section are based on the law currently in force in Slovenia on 30 September 2009. Slovenian legislation on costs in litigation is currently undergoing some changes. The Attorney Fees Act (Official Gazette of Republic of the Slovenia, No. 67/2008) ceased to be in force as of 9 May 2009 when the Act Amending the Attorney’s Act (Official Gazette of the Republic of Slovenia, No. 35/2009) was adopted. However, until the new Attorney’s tariff is adopted and approved by the Ministry of Justice the Attorney Fees Act shall still apply.

1. Recoverability of costs

1.1 Can costs be recovered by a party to civil litigation?
Yes.

1.2 Does the losing party usually pay the successful party’s costs?
Yes.

Recoverability of costs in civil litigation is governed by the Civil Procedure Act (Official Gazette of the Republic of Slovenia 26/1999, with amendments) (the “CPA”).

Where a party succeeds against the other party, it is usual for the successful party to be awarded an order for costs against the losing party.

Where a party only partly succeeds against the other party, the court may, on grounds of the success, order that each party covers its own costs or, taking into account all of the circumstances of the case, order one party to pay the reasonable costs of the other party and its litigation intervener (if applicable) (Article 154/2 of the CPA).

The court may also order a party to pay all of the costs incurred by the other party and its intervener if that party was unsuccessful in only a proportionately small part of its claim and no significant costs were incurred on grounds relating to that part (Article 154/3 of the CPA).

Regardless of the outcome of litigation, a party is under an obligation to cover the costs of any proceedings, or part thereof, that were incurred by its fault or accident (Article 156/1 of the CPA).

A third party (a litigation intervener) that enters the litigation on the side of the successful party can be awarded a costs order.

1.3 Can costs be ordered to be paid to, or by, a non-party?
No.

2. Details of recoverability of costs

2.1 On what basis are costs recoverable?

Before the end of proceedings each party has to submit to the court the amount of litigation costs incurred. The court will then take into account only the costs pursuant to the official attorney’s tariff which is currently governed by the Attorney Fees Act (Official Gazette of the Republic of Slovenia No. 67/2008).

This Act ceased to be in force as of 9 May 2009, but still applies until the new Attorney’s Tariff is adopted and approved by the Ministry of Justice (see introductory paragraph).

It is important to note that only costs pursuant to a tariff are recoverable. The court will not award any other costs (for example, fees agreed between client and lawyer).

The assessment will usually be based on the general rule that the losing party will reimburse the costs of the successful party (Article 154/1 of the CPA). The court will only decide on the recoverability of costs following a demand from a party and will not do so ex officio (Article 163/1 of the CPA).

The CPA defines litigation costs as expenses that occur during litigation or because of the litigation (Article 151/1 of the CPA).

Ligation costs include awards to lawyers and other persons that are given the right to an award by law (Article 151/2 of the CPA). If a tariff applies for the award of lawyer or other costs such costs are ordered on the grounds of that tariff (Article 155/2 of the CPA).

Persons that are given the right to an award by law include:

- lawyers (the tariff is included in The Attorney Fees Act, Official Gazette of the Republic of Slovenia, No. 67/2008, hereinafter referred to as the “AFA”)
- public notaries (the Notary Tariff Act, Official Gazette of the Republic of Slovenia, No. 94/2008)
- court sworn interpreters (the tariff is included in the Rules on court interpreters, Official Gazette of the Republic of Slovenia No. 49/2002, with amendments)
- enforcement officers (Rules on the tariff payable for the enforcement officers services and on the reimbursement of expenses relating to their services, Official Gazette of the republic of Slovenia, No. 18/2003)
- bankruptcy managers (Rules on the tariff for assessing remuneration of administrators of the insolvency proceedings and compulsory liquidations, and the costs to reimbursement of which the administrator is entitled, Official Gazette of the Republic of Slovenia, No 91/2008).

The amount of costs payable by one party to another is in the discretion of the court. The court will only take into account costs that were necessary for the litigation (Article 155/1 of the CPA).

2.2 Is the amount of recoverable costs fixed?
Yes.

The amount of recoverable costs is fixed in the sense that they may be predetermined by specific tariffs and that only costs that were necessary for the litigation are recoverable.

2.3 Is the amount of recoverable costs calculated by reference to the amount in dispute?
Yes.
The AFA, in connection with the Court Fees Act (Official Gazette of the Republic of Slovenia, No. 37/2008, the “CFA”), stipulates that lawyers’ fees are calculated according to the amount in dispute.

### 2.4 What can be recovered as “costs”?  
Costs are expenses that occur during litigation or because of the litigation (Article 151/1 of the CPA).

Only costs that were necessary for the litigation are recoverable. The law does not specify what can be recovered as “costs,” however, expenses that occur during litigation will include:

- expenses for obtaining evidence
- court fees
- expenses for procedural deeds performed outside of court premises
- travel expenses
- expenses incurred in the service of documents.

Expenses that occur because of litigation and are recognised as recoverable costs include:

- material expenses (photocopying, postal fees etc.)
- expenses for court sworn experts
- expenses for the preservation of evidence before the litigation.

<table>
<thead>
<tr>
<th>Lawyer – client fees</th>
<th>Yes.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Additional lawyer fees (for example, counsel fees or trial advocate fees)</td>
<td>No. A party to the proceedings can only recover the costs of one lawyer, irrespective of whether it was represented by several lawyers.</td>
</tr>
<tr>
<td>Agency fees (for example, London agents, local agents, appellate lawyer, bailiff/process-server)</td>
<td>Not applicable.</td>
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<tr>
<td>Court fees</td>
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</tr>
<tr>
<td>Disbursements (including, but not limited to, photocopying, expert witness, travel, translation, notarial, witness attendance etc.)</td>
<td>Yes.</td>
</tr>
<tr>
<td>Other expenses</td>
<td>Other expenses which were necessary for the litigation are recoverable. The court decides which expenses were necessary following a careful examination of the relevant circumstances.</td>
</tr>
</tbody>
</table>

### 3. Particular costs issues

#### 3.1 Can a party agree with its own lawyer, a special costs arrangement?

Yes.

A lawyer is entitled to receive payment for the services performed and to recover the costs connected to performing those services (in line with the provisions of the AFA).

Contingency fee arrangements are permitted (Article 17 of the Attorneys Act, Official Gazette of the Republic of Slovenia, No. 18/1993, with amendments) provided that they are:

- concluded in writing
- do not amount to more than 15% of the amount awarded to the client
- are separated from the power of attorney and other agreements with the client.

#### 3.2 Which tribunal resolves costs disputes and how?

The court which decides the case also decides on the costs of the proceedings within its final order (a judgment that includes a decision on costs) thereby ending the procedure in front of that court (Article 163/4 of the CPA).

The decision of the court on the costs of the proceedings is included in the final judgment and may be challenged only by way of an appeal against that final judgment (Article 166/1 of the CPA) as a whole. Costs disputes do not constitute any special form of appellate procedure.

An appeal against the judgment of the court of first instance and on the costs of the procedure is decided by the Court of Appeal (second instance). An appeal must be filed with the court of first instance within 15 days of the judgment unless otherwise provided by law (Article 333 of the CPA). A copy of a timely, complete and allowed appeal is served on the opposing party which in turn has 15 days to file an answer to the appeal (Article 344 of the CPA). Upon receiving the applications of both parties (or upon the lapse of the statutory periods of 15 days) the court of first instance forwards the applications to the appellate court (second instance) that will decide on the merits of the case.

As explained above, costs disputes are not regarded as a special procedure and are heard by the courts of appeal in the same way as an appeal against any other judgment of the court of first instance.

#### 3.3 Can a party be required to provide security for costs (or some other sum) in advance of costs being decided?

Yes.

According to the Private International Law and Procedure Act (Official Gazette of the Republic of Slovenia, No. 56/1999), a foreigner or a person that does not have Slovenian citizenship or a permanent place of residence in the Republic of Slovenia and who initiates litigation in the Republic of Slovenia, is
At what cost? A Lovells multi-jurisdictional guide to litigation costs

Demand of the other party) under an obligation to provide insurance for the litigation costs.

According to Article 153 of the CPA, each party that files a motion for specific evidence to be heard in court, is under an obligation to pay for the hearing of that evidence in advance.

According to Article 153/3 of the CPA, the court will not hear the requested evidence if the amount specified by the court is not paid in time. In such cases, the court takes into account all the circumstances and determines what meaning should be given to the fact that the requesting party did not pay in advance for the hearing of the evidence.

Following such assessment, the court decides whether or not to take the requested evidence into account.

4. Costs awards

4.1 Can interim awards of costs be obtained?
Yes, in specific cases only.

The court in front of which a specific case is heard decides on the costs of the proceedings within its final order (judgment or decision) thereby ending the proceedings in front of that court (Article 163/4 of the CPA).

Nevertheless, the court may issue a special decision on costs during the litigation, but only if the right to recover those costs is not dependent on the overall decision in the case (please refer to answer 1.2 above).

4.2 Can an award of costs be increased or decreased by reference to such matters as a party’s conduct of the case?
Yes.

Regardless of the outcome of the litigation, a party is under an obligation to cover the costs that were incurred by its fault or accident (Article 156/1 of the CPA).

Court fees, which also constitute litigation costs (that is, all costs and expenses that occur during the litigation or because of it (including court fees)), may be increased in cases where the court hearing was postponed due to inexcusable reasons attributable to one party or its attorney or if the litigation was delayed due to one party's statements not having been brought before the court as early as they could have been (Article 33 of the CPA).

4.3 How are costs awards enforced?
The court decides on the demand of a party to recover the costs in the judgment or on a resolution whereby the procedure in front of that court is ended (Article 163 of the CPA).

Once the judgment or the resolution becomes final, it is regarded as an execution title on the grounds of which the awarded party may initiate an execution procedure under the provisions of the Execution of Judgments in Civil Matters and Insurance of Claims Act (Article 17).

4.4 Can a costs award be set off against a monetary judgment?

Any claim (including costs awards) of a creditor may be set-off against a claim (a monetary judgment) of a debtor provided that both claims are monetary (genus), of the same quality and are due (Article 311 of the Obligations Code, Official Gazette of the Republic of Slovenia, No. 83/2001, with amendments).

4.5 Is interest payable on unpaid costs?

Yes.

The party that was awarded costs by a court order may claim interest from the other party once that court order becomes final.

Interest payable on unpaid costs is calculated according to the Legal Penalty Rate Act (Official Gazette of the Republic of Slovenia, No. 56/2003, with amendments) which states that default interest is calculated according to the leading interest rate plus eight percentage points. The leading interest rate is the interest rate used by the European Central Bank for the main operations of refinancing that were performed before the first calendar day of the applicable six-month period. According to the Legal Penalty Rate Act and the Legal Penalty Rate, as published in the Official Gazette of the Republic of Slovenia, No. 51/2009, the default interest rate for the period between 1 July 2009 and 31 December 2009 is nine per cent.

5. Costs of an appeal

5.1 Are costs of an appeal treated differently?

No.

6. Funding of civil and commercial claims

6.1 Can costs be insured?

Yes, but only in specific cases.

The law allows one party to demand costs insurance from the other in certain specified circumstances (see question 3.3).

Costs can be insured by way of liability insurance which is provided by a number of different companies.

6.2 Is legal aid available?

Yes.

Legal Aid in the Republic of Slovenia is governed by the Free Legal Aid Act (Official Gazette of the Republic of Slovenia, No. 48/2001, with amendments) (the “FLAA”).

The first piece of legal advice is available to individuals without prior assessment of the conditions that justify legal aid (Article 25 of the FLAA).
Pursuant to Article 26 of the FLAA, legal aid in an individual case is available in the form of:

- legal counselling that exceeds the first legal advice
- drafting, notarisation and confirmation of documents on legal relationships, facts and statements
- legal counselling and representation in out of court settlements
- legal counselling and representation in front of courts of first instance and appellate courts
- legal counselling and representation in relation to extraordinary judicial review
- legal counselling and representation in relation to constitutional complaint
- legal counselling and representation in front of international courts
- legal counselling and representation in relation to an initiative to test constitutionality
- relief of the obligation to pay litigation costs.

Pursuant to Article 30 of the FLAA, legal aid is performed by lawyers that are entered into the registry of attorneys and law firms established pursuant to the Attorneys Act. Legal Aid may also be performed by Public Notaries in cases dealing with subject matter covered by the Notary Act (Official Gazette of the Republic of Slovenia No. 13/1994 with amendments).

Pursuant to Article 8 of the FLAA, legal aid is not available in the following cases:

- disputes on lowering the amount of child support or maintenance, when the person liable fails to pay the amounts due, unless the failure is based on circumstances beyond his control
- in compensation claims for damage caused by spreading untrue statements or dishonour, unless the victim may be able to prove that the statements had an effect on their wealth, financial or social status.

Pursuant to Article 19 of the FLAA, legal aid is also not available to persons whose (or whose family’s) assets exceed the value of 20 minimum wages in the Republic of Slovenia.

### 6.3 Is third party funding of claims available?

Yes.

There is no legal restriction whatsoever as to who funds claims.

**Contributed by:** Rojs, Peljhan, Prelesnik & Partnerji.
1. **Recoverability of costs**

1.1 **Can costs be recovered by a party to civil litigation?**

Yes.

1.2 **Does the losing party usually pay the successful party’s costs?**

Yes.

This is at the court’s discretion but the usual rule is that costs follow the event, that is, the party who succeeds is entitled to costs. The court can show its disapproval of the conduct of a successful party and deprive that party of its costs because its conduct was vexatious or it was guilty of some misconduct, or where a party has achieved technical success only. This may be achieved by the court making no order as to costs.

Where there are multiple defendants and the claimant is successful against all such defendants then, subject to what has been stated above, it will recover costs against such defendants.

Where there are multiple defendants and a single defendant succeeds in its defence, the court has a discretion to award the defendant costs from the claimant if the court finds that the claimant should not have brought that defendant before the court. Alternatively if one of the defendants, in denying liability, pointed a finger at the successful defendant then the defendant who wrongfully pointed a finger at the successful defendant may have to pay the successful defendant its costs. Once again this is at the court’s discretion.

1.3 **Can costs be ordered to be paid to, or by, a non-party?**

No.

A third party which is not before the court cannot recover costs. South Africa does not have provisions similar to that of England allowing a party who is not before the court to recover costs.

There is however what is referred to as a “third party procedure.” Where in the initial litigation one of the parties brings a third party before the court, costs can be awarded to such third party because such third party is before the court.

2. **Details of recoverability of costs**

2.1 **On what basis are costs recoverable?**

The court has discretion in awarding costs as stated above, the general rule being that costs follow the event.

The level of costs awarded is subject to taxation by a taxing master, who will refer to a prescribed tariff when coming to his decision. It is necessary to understand that when a party is awarded costs those costs are deemed to be party and party costs. In Roos Taxation of Bills of Costs in the Superior Courts of South Africa 9, the following definition is given to distinguish between party and party costs and attorney and client costs:

> "An attorney is entitled to remuneration for his services where he succeeds in an action or not. If he succeeds in a case part of his costs are paid by the unsuccessful party and these are party and party costs. The balance constitute attorney and client costs payable by his client. If his client does not succeed in the action, etc, then all his costs are payable by his client and are therefore taxable as attorney and client costs."

Attorney and client costs are usually only awarded where the court wishes to show some disapproval towards the losing party.

There is a third category of costs where the court wishes to show some disapproval against the lawyer acting on behalf of a litigant where the costs are awarded against that lawyer because he has acted in a manner that has drawn the disapproval of the court. These are referred to as “costs de bonis propriis.” These are usually awarded against practitioners but can be awarded against curators, executors etc. for some form of misconduct.

It is usual for the amount recovered by the successful party to be substantially less than its actual costs, with awards often being less that 50% of the actual costs. The awards as made by the taxing master may be as little as 30% of the actual costs. They are usually the minimum costs that can be incurred in order to run a trial. Thus a taxing master can award only a portion of the advocate’s fees and a portion of consulting fees often regarding more than one consultation as excessive. This is because the tariff has not increased in line with lawyers’ fees and because the taxing master is bound strictly to the tariff. The taxing master’s decisions are however reviewable by the superior courts, that is the High Court and the Supreme Court of Appeal.

2.2 **Is the amount of recoverable costs fixed?**

No.

It is determined by a taxing master at his discretion based on a tariff but his decisions are reviewable.

2.3 **Is the amount of recoverable costs calculated by reference to the amount in dispute?**

Yes, to a limited extent.

The recoverable costs are determined mostly by the taxing master’s assessment of how difficult a case is and its complexity. This will determine the seniority of counsel that can be used, namely a senior counsel and a junior and in certain cases a number of seniors and a number of juniors. This is at the taxing master’s discretion but once again his decision is reviewable.

2.4 **What can be recovered as “costs”?**

| Lawyer – client fees | Yes, but subject to the distinction between party and party costs and attorney and client costs. |
3. Particular costs issues

3.1 Can a party agree with its own lawyer, a special costs arrangement?
Yes.

The Contingency Fees Act 1997 governs the extent to which lawyers may charge contingency fees. Contingency fee arrangements are permitted, although the agreed amount of the fee is limited to a 100% surcharge on the lawyer’s fees as calculated in terms of the tariff. For monetary claims, the amount agreed may not exceed 25% of the total amount awarded to the client.

3.2 Which tribunal resolves costs disputes and how?
There is no tribunal but the taxing master is the person who determines the costs subject to the tariff at his discretion but subject to a review procedure by the High Court or the Supreme Court of Appeal or the Constitutional Court depending on at which stage in the proceedings the costs have been incurred.

3.3 Can a party be required to provide security for costs (or some other sum) in advance of costs being decided?
Yes, if an order for security of costs is granted in favour of the defendant.

The court may order the claimant to pay security for costs in the following circumstances:

- a South African defendant is usually entitled to security for costs when it is defending proceedings initiated by a foreign entity, unless the foreign claimant can prove that it owns non-mortgaged immovable property in South Africa
- when the claim is made by a limited company, it can be ordered to provide security for costs, if there is reason to believe that the company or its liquidators will be unable to pay the defendant’s costs in the event that it is successful.

4. Costs awards

4.1 Can interim awards of costs be obtained?
Yes.

At the end of almost every interlocutory application and when almost any interlocutory application is disposed of by consent an order will be made or agreed declaring which party should pay the costs of the application. Costs of interlocutory applications are in the discretion of the court but the discretion is usually (but not always) exercised in favour of the party who was successful in the application. The court can also reserve costs to be determined in the main action.

4.2 Can an award of costs be increased or decreased by reference to such matters as a party’s conduct of the case?
Yes.

Where an offer made by a defendant that was not accepted by the claimant is more than the amount awarded, the defendant only needs to pay the claimant’s costs up to the date of the offer and the claimant pays the defendant’s costs thereafter. This is because such offers are not revealed to the court. Appeal courts can always alter the award of the initial court. One of the aspects that the Appeal Court will look at will be the conduct of the parties.

4.3 How are costs awards enforced?
Costs awards are enforced by obtaining a writ of execution from the Registrar of the Court and having it served on the losing party. The writ of execution is first against money then against movables and only where there is a writ that reflects there being no other assets available does the court then consider a writ against immovable property.

4.4 Can a costs award be set off against a monetary judgment?
The cost award can only be set off against a monetary judgment when the award has been taxed and the taxing master has allocated an actual amount which has not been taken on review. This taxed amount is then referred to as an “allocatur” and this amount, as determined by the taxing master, can then be set off against a monetary judgment.

4.5 Is interest payable on unpaid costs?
Yes, if costs are taxed.
Where costs are taxed, interest can be claimed on the taxed amount from the date upon which the amount has so been taxed at the prescribed interest rate which appears in the Government Gazette and at present is 15.5% per annum.

5. Costs of an appeal

5.1 Are costs of an appeal treated differently?
No.

They are at the Appeal Court's discretion. The Appeal Court can obviously alter the lower court's decision with regard to costs.

6. Funding of civil and commercial claims

6.1 Can costs be insured?
Yes.

Insurance can be used to cover litigation costs in certain situations.

After the event insurance is available.

6.2 Is legal aid available?
Yes.

Various institutions such as the Legal Aid Board, the Legal Resource Centre and certain Legal Aid Clinics provide legal aid.

Applicants for aid are means tested. In respect of civil matters the income and assets of the applicant are taken into account.

Aid is often not provided for monetary claims for damages based on contract and delict.

6.3 Is third party funding of claims available?
Yes.

A recent Supreme Court of Appeal ruling held that third party funding is not contrary to public policy. (Price Waterhouse Coopers Inc & Others v National Potato Co-operative Ltd (2005) JOL 12757 (SCA), 2004 (6) SA 66 (SCA)).

Contributed by:
Deneys Reitz Inc.
Spain

The legal profession in Spain is composed of individual bar associations for each region. There are 83 Bar Associations.

1. **Recoverability of costs**

1.1 **Can costs be recovered by a party to civil litigation?**
Yes – see question 3.2 for the general rule on costs.

1.2 **Does the losing party usually pay the successful party’s costs?**
Yes.

The losing party will pay a wholly successful party’s costs unless the judge considers the case “dubious”, in which case each of the parties will bear its own costs.

1.3 **Can costs be ordered to be paid to, or by, a non-party?**
No.

2. **Details of recoverability of costs**

2.1 **On what basis are costs recoverable?**
The party whose costs must be paid by the other party must file an assessment of such costs with the court, together with the invoices or documents that certify the cost incurred.

Both the lawyer and the “procurador” costs are calculated using a tariff (which varies depending on the Bar Association of the territory where the litigation takes place; for instance, if the litigation takes place in Barcelona, the lawyer and “procurador” costs are calculated using the tariff of the Barcelona Bar Association). The tariff is not compulsory but just a mere reference. A party may propose higher lawyer costs than those set out in the tariff, as long as he explains why they are higher.

The Judicial Secretary will examine the assessment filed by the party whose costs are to be reimbursed. If it is correct, he will issue the final costs order. If the assessment filed is wrong, the Judicial Secretary will calculate the costs and issue a final costs order (in practice it is usual for the Judicial Secretary to change the assessment proposed by the claimant even if it is wrongly calculated).

The party that has to pay the costs may challenge the costs order if he considers that the amount is undue or excessive. The party whose costs must be paid may also challenge the costs order (if, for example, the Judicial Secretary has reduced the total amount because he considers that the costs are not sufficiently proved).

The Judicial Secretary, after considering the arguments of the parties, will decide whether or not to modify the costs order. Once decided, the costs order will be submitted to the court, which will issue a definitive costs order. Such costs order cannot be appealed.

2.2 **Is the amount of recoverable costs fixed?**
No.

2.3 **Is the amount of recoverable costs calculated by reference to the amount in dispute?**
Yes.

The tariff used to calculate the lawyer and the “procurador” costs takes into consideration the amount in dispute.

2.4 **What can be recovered as “costs”?**
Article 241.1 of the Spanish Civil Procedure Act sets out those expenses that fall into the term “costs” (“costas”):

- lawyer and “procurador” fees
- costs of publication of any announcement or edict required by law
- deposits required for lodging certain appeals
- expert fees
- costs of any copies, certificates, notes, testimonies or similar documents which any of the parties might be legally required to request
- any “customs right” that any of the parties may have to pay for the correct development of the proceedings.

<table>
<thead>
<tr>
<th>Description</th>
<th>Recoverable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lawyer – client fees</td>
<td>Yes</td>
</tr>
<tr>
<td>Additional lawyer fees (for example, counsel fees or trial advocate fees)</td>
<td>Yes</td>
</tr>
<tr>
<td>Agency fees (for example, London agents, local agents, appellate lawyer, bailiff/process-server)</td>
<td>Yes</td>
</tr>
<tr>
<td>Court fees</td>
<td>No, according to recent case law.</td>
</tr>
<tr>
<td>Disbursements (including, but not limited to, photocopying, expert witness, travel, translation, notarial, witness attendance etc.)</td>
<td>Expert fees can be recovered. As for the costs incurred due to the attendance of a witness, the party that has paid for the witness’s travel, accommodation, etc. is entitled to request the court to order the party that requested the attendance of the witness to reimburse the amounts paid. However, such expenses do not fall into the category “costs” “strictu sensu”.</td>
</tr>
</tbody>
</table>

United Kingdom
Therefore, the reimbursement is requested in an independent application addressed to the court (and not in the same document where the parties assess the lawyer, “procurador” and expert costs as explained above).

Other expenses
As mentioned above, any “customs right” that any of the parties may have to pay for the correct development of the proceedings are recoverable.

3. Particular costs issues

3.1 Can a party agree with its own lawyer, a special costs arrangement?
Yes.

A party can agree with its own lawyer special arrangements regarding fees in general. For instance, they might agree that in the event they lose, the lawyer will only be paid a minimum amount. “No win, no fee” deals are not permitted; the lawyer must be paid a minimum amount.

As regards costs, a party may also agree special arrangements with its own lawyer. For example, it is very usual to agree that the client will keep the costs recovered whatever happens (for example, if the client agreed to pay fixed fees to the lawyer, but he obtains a more generous costs award, the client is nevertheless entitled to keep the difference).

3.2 Which tribunal resolves costs disputes and how?
The same tribunal that has tried the dispute.

The general rule on costs is the following:

- if one of the parties wholly succeeds, all costs (including lawyer, “procurador” and expert fees) must be paid by the losing party, who will be obliged to bear the costs of his own lawyer and “procurador” and experts (if any), in addition to the costs incurred by the other party
- if the claimant only succeeds partially, each of the parties must bear its own costs.

However, there are several exceptions to this general rule:

- even if the claimant only succeeds partially, the court may oblige one of the parties to pay all costs when such party has litigated “recklessly”.

Nevertheless, this rule does not apply to criminal, labour and administrative cases. In these cases, the general rule is that each party is responsible for its own costs.

3.3 Can a party be required to provide security for costs (or some other sum) in advance of costs being decided?
No.

4. Costs awards

4.1 Can interim awards of costs be obtained?
No.

4.2 Can an award of costs be increased or decreased by reference to such matters as a party’s conduct of the case?
Yes.

A party may be forced to pay costs due to its “reckless” behaviour (see question 3.2 above).

4.3 How are costs awards enforced?
Generally, once the court passes judgment on a dispute and such judgment becomes binding and final (in other words, neither the claimant nor the defendant decide to appeal or it cannot be appealed), and the losing party fails to pay the costs voluntarily, the successful party may request the enforcement of the judgment and the enforcement of the costs award. The same procedure is used for the enforcement of costs award as for the enforcement of judgments.

4.4 Can a costs award be set off against a monetary judgment?
No.

4.5 Is interest payable on unpaid costs?
Yes.

As established in Article 576 of the Civil Procedure Act, interest on costs accrues at a statutory rate of interest (legal interest rate plus 2 per cent) from the date of the costs order (and not from the day the expense is incurred by the litigant).

5. Costs of an appeal

5.1 Are costs of an appeal treated differently?
Yes.

Article 398 of the Spanish Civil Procedure Act provides for the payment of costs of an appeal.

This Article states that if the appellant succeeds (either totally or partially), each of the parties must bear its own costs in relation to the appeal. On the other hand, if the appellant’s claims are
entirely rejected, he will have to bear all the costs of the other party, except in “dubious cases”, where the court may decide that each of the parties pay its own costs.

The Appeal Court may also vary the costs order issued by the First Instance Court. For example, even if a judgment in favour of the claimant is upheld on appeal, the Appeal Court may vary the costs order (of the First Instance Court) and order each party to bear its own costs on the grounds that the case is deemed to be “dubious” from a factual or legal point of view.

6. Funding of civil and commercial claims

6.1 Can costs be insured?
Yes.

Insurance is available to cover a party’s own litigation expenses or legal costs imposed by the courts on the losing party. This is not prohibited by Spanish Civil Procedure Rules.

The Insurance Contract Act (Ley 50/1980, de Contrato de Seguro) regulates legal defence insurance (Articles 73 and 74). Legal defence insurance can include coverage of costs.

6.2 Is legal aid available?
Yes.

In Spain legal aid (“asistencia jurídica gratuita”) is available for members of the public who cannot afford the costs of a trial.

People who lack the resources to bear the costs of litigation may apply for legal aid to the Bar Association of the place of litigation or the court where the litigant is domiciled. The court then submits the application to the Bar Association of the place of litigation. Evidence of lack of resources must be filed with the application.

People granted legal aid do not have to pay the following costs:

- pre-trial legal advice
- lawyer’s fees
- costs of publishing announcements in official journals
- deposits required for lodging certain appeals
- experts’ fees.

In addition, and solely for cross-border disputes, following the reform of the Legal Aid Act by Law 16/2005 of 18 July 2005 to bring it into line with Directive 2002/8/EC, recipients of legal aid do not have to pay the following costs:

- interpretation services
- translation of documents
- travel expenses if the applicant has to appear in person
- defence by a lawyer and representation by a prosecutor even where a personal appearance is not necessary, if this is ordered by the court to guarantee the “equality” of the parties.

Legal aid is available for all cases, whether or not contentious, involving sums of over €900 and it covers all proceedings, appeals and enforcement of judgments. In cases involving smaller sums, for which the services of a lawyer and a procurador are not compulsory, legal aid may be granted where the other party does have legal representation or where explicitly called for by the judge or court to ensure that the two parties are on an equal footing.

6.3 Is third party funding of claims available?
Yes.

Third parties can fund other parties’ claims under private agreements between themselves. These agreements would normally be considered a loan or private law agreement according to its terms.

Contributed by:
Lovells LLP (Madrid).

1 “Procurador” is the person who represents each of the parties before the court. The procurador receives two types of fees: (i) Variable fees depending on the amount of the claim (which fall under Article 241.1.2). These fees are calculated using a tariff (the same as the lawyer fees). (ii) Fixed fees or “customs rights”, when they carry out specific activities on behalf of their client.
2 When the lawyer that defends the successful party belongs to a bar association other than that of the place where the litigation takes place, the lawyer costs should be calculated using the tariff of the bar association of the region where the litigation is taking place.
3 The person who assists the judge and carries out administrative activities.
4 Customs rights are fixed fees paid to the procurador who carries out certain activities during the proceedings (for example, the filing of certain requests).
1. **Recoverability of costs**

1.1 **Can costs be recovered by a party to civil litigation?**
Yes.

1.2 **Does the losing party usually pay the successful party’s costs?**
Yes.

The successful party to the litigation is entitled to be reimbursed for his litigation costs. See also question 2.1.

1.3 **Can costs be ordered to be paid to, or by, a non-party?**
Yes.

Should a third party join or intervene in the proceedings, such third party may under certain circumstances be regarded as a formal independent party in the proceedings. Thus, the general cost distribution rules apply. But even if such third party is not given the status of an independent party in the proceeding, the third party may recover its litigation costs if it has success with its case. If the third party is not a formal “independent party” in the proceeding it only risks liability for the extra costs that this intervention might have caused.

2. **Details of recoverability of costs**

2.1 **On what basis are costs recoverable?**

The successful party is entitled to be reimbursed for his litigation costs if he wins in full. If he wins in part only, recovery will only be in relation to the specific issues on which he won. Both the quantum of costs sought, and the complexity of different issues arising in the litigation, are considered when the court decides which party shall bear what litigation costs.

In principle no tariffs are applied in civil cases. Recoverable costs are assessed and awarded at the court’s discretion. See also question 2.2.

Compensation should cover all costs for trial and preparation of the case (to the extent that they have been reasonably incurred). See also question 4.2.

2.2 **Is the amount of recoverable costs fixed?**
No.

Costs must have been reasonably incurred.

2.3 **Is the amount of recoverable costs calculated by reference to the amount in dispute?**
No, not in principle – however the amount in dispute may not be completely disregarded when assessing which costs are reasonable.

2.4 **What can be recovered as “costs”?**
All reasonable trial and preparation costs for the case, including advocates’ fees are recoverable.

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### Lawyer – client fees
Yes.

### Additional lawyer fees (for example, counsel fees or trial advocate fees)
Yes.

### Agency fees (for example, London agents, local agents, appellate lawyer, bailiff/process-server)
Yes, if local counsel is necessary.

### Court fees
Yes.

### Disbursements (including, but not limited to, photocopying, expert witness, travel, translation, notarial, witness attendance etc.)
Cost of witnesses is recoverable. The actual cost of the witness is decisive in this respect.

### Other expenses
Costs may be requested for the party’s “management time”. The court is usually reluctant to consider large claims for “management time” as reasonable – and therefore recoverable – costs, than is the case with lawyer fees.

3. **Particular costs issues**

3.1 **Can a party agree with its own lawyer, a special costs arrangement?**
Strictly, from a formal point of view, yes.

Special cost arrangements are in practice rarely agreed. As the distribution of costs is decided when the award is given there is little room for “contingent” deals. A court would probably also find contingent deals to be unreasonable in some respect.

“No win, no fee” deals are prohibited.

3.2 **Which tribunal resolves costs disputes and how?**
If the losing party challenges the amount of the winner’s costs, the question of whether or not these have been reasonably incurred will be determined by the court.

3.3 **Can a party be required to provide security for costs (or some other sum) in advance of costs being decided?**
No.

4. **Costs awards**

4.1 **Can interim awards of costs be obtained?**
Yes.

No interim awards of costs as such may be obtained – the costs are distributed only in connection with the final award. However, if an interim award is tried in a court of appeal – and the specific
issue thereby is finally resolved by the court of appeal – the winning party will be entitled to recover its costs relating to the specific issue prior to the case being pursued again in the court of first instance.

4.2 Can an award of costs be increased or decreased by reference to such matters as a party’s conduct of the case?
Yes.

A party’s conduct of the case such as unreasonable delay in the procedure, can affect the distribution of costs.

4.3 How are costs awards enforced?
In the same way as the award on the merits – there is no distinction.

4.4 Can a costs award be set off against a monetary judgment?
If applicable, this is done in the award.

4.5 Is interest payable on unpaid costs?
Yes.

Interest (reference rate, as set by the Swedish Central Bank, plus eight per cent) is payable on recoverable costs.

5. Costs of an appeal

5.1 Are costs of an appeal treated differently?
No.

6. Funding of civil and commercial claims

6.1 Can costs be insured?
Yes.

Legal Expense Insurance (“LEI”) is included in all household insurance policy terms and conditions currently offered on the Swedish market as well as in most commercial insurance policy terms and conditions. It is not possible to take out a separate LEI insurance. The specific conditions of the LEI vary however between the insurance companies offering them. The majority of LEIs require that the insurance holder has had the insurance for at least two years before the holder can claim. LEI does not normally cover disputes handled by the “administrative courts”.

Often LEI stipulates that the policy holder pays 20% of the costs and at least SEK 1,500. In addition, LEI is often capped and the cap for individuals is usually SEK 125,000-200,000. However, for commercial insurance policies the cap is often much higher. A person’s financial situation does not influence the remuneration paid under LEI.

After the event (“ATE”) insurance is not available in Sweden.

6.2 Is legal aid available?
Yes.

Legal aid in Sweden, as regards civil disputes, is categorised as state funding of the lawyer chosen by the party. The lawyer does not have to accept legal aid work.

The rules that regulate legal aid are found in the Legal Aid Act. Legal aid is in principal only awarded to natural persons. A precondition for legal aid is that the person’s disposable gross income (calculated as a person’s total assets and wealth minus liabilities and support commitments) does not exceed SEK 260,000 per year. In addition, in certain cases legal aid is not awarded unless there are special reasons. For example, a person is not as a general rule entitled to legal aid if the value of the dispute is less than half of the base amount.

6.3 Is third party funding of claims available?
In principal, yes.

If a third party is paying the litigation costs of a party, this cost may not be recovered even if the party should win the case, as the party itself has not incurred any costs. If at all existing, third party funding, is very rare in Sweden.

Contributed by:
Mannheimer Swartling Advokatbyrå AB.
Switzerland

Switzerland consists of 26 cantons, each of which has its own civil procedure rules. This questionnaire provides answers that are general to all the cantons, although a number of significant differences that exist in Zürich, Bern and Basel have been noted.

1. Recoverability of costs

1.1 Can costs be recovered by a party to civil litigation?
Yes.

1.2 Does the losing party usually pay the successful party’s costs?
Yes.

The losing party will usually be ordered to pay the successful party’s costs.

Claimants with a similar case against a defendant may proceed jointly, provided that certain conditions are met. All of these joint litigants are entitled to lead the proceeding independent of each other. The court can decide the share of each joint litigant in the costs depending on the individual amount in dispute in respect of the joint litigants.

1.3 Can costs be ordered to be paid to, or by, a non-party?
Not in principle. However, witnesses and court-appointed expert witnesses may claim their expenses and costs.

2. Details of recoverability of costs

2.1 On what basis are costs recoverable?
The courts usually award costs by reference to a cantonal tariff. It is common for the costs awarded to be less than the successful party’s actual costs. The courts have discretion to vary the amount payable under the tariff by reference to a number of factors such as:

● the complexity of the case
● the number of hearings
● the number of documents processed.

2.2 Is the amount of recoverable costs fixed?
Normally, yes.

According to the applicable cantonal tariff.

2.3 Is the amount of recoverable costs calculated by reference to the amount in dispute?
Yes.

The court will have regard to the amount in dispute when applying the tariff.

2.4 What can be recovered as “costs”?

<table>
<thead>
<tr>
<th>Category</th>
<th>Recoverable?</th>
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<tbody>
<tr>
<td>Lawyer – client fees</td>
<td>Yes.</td>
</tr>
<tr>
<td>Additional lawyer fees (for example, counsel fees or trial advocate fees)</td>
<td>No.</td>
</tr>
<tr>
<td>Agency fees (for example, London agents, local agents, appellate lawyer, bailiff/process-server)</td>
<td>No.</td>
</tr>
<tr>
<td>Court fees</td>
<td>Yes.</td>
</tr>
<tr>
<td>Disbursements (including, but not limited to, photocopying, expert witness, travel, translation, notarial, witness attendance etc.)</td>
<td>Yes.</td>
</tr>
</tbody>
</table>

3. Particular costs issues

3.1 Can a party agree with its own lawyer, a special costs arrangement?
Yes.

The fee agreement between clients and lawyer can be made without regard to the cantonal tariffs and provisions. It is most common to agree on an hourly rate.

Clients and their lawyer are permitted to agree on a lump-sum fee as long as such fee is in line with the estimated services being rendered by the lawyer.

Lawyers are prohibited from agreeing fees which do not cover their own actual costs.

Pure “no win, no fee” arrangements are also not permitted.

Success fees are only permitted if there is an agreed hourly fee (which must cover at least the lawyer’s costs) and an incentive payment in addition to the hourly rate.

The lawyer is not permitted to act on the basis that he or she will waive his or her fees in the event that he or she is unsuccessful.

3.2 Which tribunal resolves costs disputes and how?

In principle, the court which decides the case also decides on costs issues. Final judgments normally contain (besides the judgment on the merits) a decision on the costs of the court and an indemnity for the opposing counsel.

Basel, however, has a different regime. Although the court, in rendering judgment on the merits, also decide on the costs of the court, they only decide on the indemnity for legal fees if the requesting party submits an invoice (based on the cantonal tariff) at least 14 days prior to the final hearing.
If the parties do not submit their invoices in advance, the competent court only decides in principle which party has to indemnify the other for its own legal fees.

If the parties cannot agree on the exact amount, the court of first instance is competent to resolve cost disputes in an informal procedure.

3.3 Can a party be required to provide security for costs (or some other sum) in advance of costs being decided?

Yes.

Each canton has its own regime but it is common to oblige the claimant to provide security for costs:

- if it is not domiciled in Switzerland (or in a country that is party to the Hague Convention on Civil Procedure or to a treaty with Switzerland which requires its residents to be treated in the same way as Swiss residents); or
- if there is reason to believe that the claimant is in financial difficulties and might not be able to pay the court costs and the defendant’s costs.

In the Canton of Zurich the following additional rule applies: If the defendant is abroad, the claimant usually has to provide security for the costs of the court (but not for the defendant’s costs).

The courts in Basel always require the claimant (irrespective of its domicile or its financial status) to establish a bond as security for the costs of the court. The defendant can request security only if the claimant is based abroad and not in a Hague Convention country or in a country that has a treaty with Switzerland which requires its residents to be treated in the same way as Swiss residents.

Bern has the very unusual rule that both claimant and defendant have to establish a security for the costs of the court. The defendant can request the claimant to establish security in the above-mentioned circumstances.

A party relying on a witness of fact or an expert witness usually has to post security for the witness’s expenses and/or fees. The losing party will be ordered to reimburse those costs.

4. Costs awards

4.1 Can interim awards of costs be obtained?

Yes.

There is no general rule. Costs may be awarded for interim applications, but if the interim application is being made during a pending procedure, many cantonal courts postpone their judgments on costs for their interim awards to the end of the proceedings on the merits.

4.2 Can an award of costs be increased or decreased by reference to such matters as a party’s conduct of the case?

Yes.

If a party unnecessarily incurs costs the court may oblige such party to pay for those costs irrespective of the outcome of the case.

If a party loses the case the courts are also entitled to deviate from the general principles (as explained in question 1.2 above) if such party honestly and reasonably felt compelled to initiate such proceedings or challenge any action.

4.3 How are costs awards enforced?

Costs awards are part of the judgment and enforceable in the same manner as a monetary judgment. Monetary judgments are enforced through debt enforcement proceedings based on the Swiss Federal Debt Enforcement and Bankruptcy Act.

Foreign awards must be declared enforceable (by debt enforcement procedures or in advance) by a judgment in summary proceedings. The Lugano Convention and the Swiss Private Law Act also need to be considered.

4.4 Can a costs award be set off against a monetary judgment?

Yes.

4.5 Is interest payable on unpaid costs?

Normally not on court costs, but yes, on the lawyer’s indemnity.

In Swiss debt enforcement proceedings, unpaid claims are subject to statutory interest of five per cent per annum. Such rate is normally calculated as of the day when the award becomes final.

5. Costs of an appeal

5.1 Are costs of an appeal treated differently?

No.

6. Funding of civil and commercial claims

6.1 Can costs be insured?

Yes.

Before the event insurance (BTE) is permitted and available. After the event insurance (ATE) is not permitted. In addition, legal protection insurance in Switzerland usually provides a waiting period of three months or more.

6.2 Is legal aid available?

Yes.

Aid to cover court fees and legal representation may be available if:
- the case of the party seeking the aid is “not without merit”
- the party does not have sufficient means to pay for the court fees as well as his or her personal upkeep.

If the person seeking aid wins, the losing party pays the successful party’s legal fees. If the person seeking aid loses, his legal fees will be paid by the canton. An indemnity for the opposing party, if any, still has to be paid by the person seeking aid.

Companies have not been entitled to legal aid to date. The Supreme Court of Switzerland held recently in an obiter dictum, however, that exceptions may be made where the company is unable to pay for the court and/or the legal fees and the only asset of the company is the subject matter of the proceedings.

Partnerships (“associations”) may be entitled to legal aid if both the association and all unlimited liable partners are unable to pay for the court and/or legal fees.

6.3 Is third party funding of claims available?
Yes.

The Supreme Court of Switzerland held in 2004 that third party funding is not unlawful.

Third party funding is not regulated in Switzerland as such but, depending on the contractual agreement, might be regarded as “insurance” and would thus fall under the Swiss Insurance Supervision Act.

Contributed by:
gbf Attorneys-at-law.
Taiwan

1. Recoverability of costs

1.1 Can costs be recovered by a party to civil litigation?
Yes.

1.2 Does the losing party usually pay the successful party’s costs?
No.

However, where the claimant succeeds against the defendant, the successful claimant is usually awarded recovery of limited costs against the defendant (Article 78 I of the Taiwan Code of Civil Procedure, “TCCP”).

Multiple defendants shall bear the litigation expenses in equal proportions when the claimant succeeds against them. However, where there is a major difference between the individual defendants’ gains and losses from the action, the court may take such difference into consideration and decide that the litigation expenses shall be borne proportionately by each of the defendants (Article 85 I of the TCCP).

When multiple defendants/claimants lose an action over a joint or indivisible debt they shall bear the litigation expenses jointly and severally (Article 85 II of the TCCP).

When one of multiple defendants/claimants participates in the litigation solely for his/her own interests the expenses incurred thereby shall be borne by that party (Article 85 III of the TCCP).

Where the defendant succeeds against the claimant the successful defendant is usually awarded recovery for certain costs against the unsuccessful claimant.

Furthermore, when a defendant has admitted a claim filed by a claimant and it has been established that the litigation action was unnecessary, the claimant shall bear the litigation expenses (Article 80 of the TCCP).

An intervener shall bear the expenses incurred for their intervention, however, the opposing party shall still bear the litigation expenses imposed in accordance with the other requirements specified in the TCCP (Article 86 of the TCCP).

1.3 Can costs be ordered to be paid to, or by, a non-party?
No.

According to Article 78 of the TCCP, the court costs will be borne only by the losing party to the action.

2. Details of recoverability of costs

2.1 On what basis are costs recoverable?
The costs payable by one party to another are imposed by the court pursuant to a tariff in the Code of Civil Procedure (Articles 77-1, 77-13, 77-14 of the TCCP).

Article 77-1:
The court shall determine the value of a claim which will be based on its transaction value at the time the action is initiated or, absent such transaction value, on the interests in the claim as owned by the claimant.

Articles 77-13:
In matters arising from property and/or monetary claims, the court cost shall be NT$1,000 on the first NT$100,000 of the price or the value of the claim, and an additional amount shall be paid for each NT$10,000 thereafter in accordance with the following rates:

<table>
<thead>
<tr>
<th>Portion of claim value</th>
<th>Court cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Between NT$100,001 and NT$1,000,000</td>
<td>NT$100</td>
</tr>
<tr>
<td>Between NT$1,000,001 and NT$10,000,000</td>
<td>NT$90</td>
</tr>
<tr>
<td>Between NT$10,000,001 and NT$100,000,000</td>
<td>NT$80</td>
</tr>
<tr>
<td>Between NT$100,000,001 and NT$1,000,000,000</td>
<td>NT$60</td>
</tr>
</tbody>
</table>

An amount less than NT$10,000 shall be rounded up to NT$10,000 for the purposes of assessing court costs.

2.2 Is the amount of recoverable costs fixed?
Yes, in certain cases in civil procedure.

In matters arising from non-monetary claims the costs are fixed at NT$3,000. (Article 77-14 of the TCCP).

Court costs of NT$500 or NT$1,000 are incurred in certain motions (for example, a motion for issuance of a payment order, a motion for preliminary injunction, etc.).

2.3 Is the amount of recoverable costs calculated by reference to the amount in dispute?
Yes, in certain cases.

Answer to question 2.1 above provides the detailed tariff of court fees.

The rules for calculating the court fees under the tariff are based on the value of the claim. The concept of the “value of a claim” is similar to that of the amount in dispute.
2.4 What can be recovered as “costs”?
See Articles 77-13 – 77-25 of the TCCP.

<table>
<thead>
<tr>
<th>Item</th>
<th>Recoverable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lawyer – client fees</td>
<td>Only when the lawyer is appointed by the court or at the court of third instance can the lawyers’ fees be recovered. The maximum amount recoverable for lawyers’ fees in the court of third instance is NT$500,000.</td>
</tr>
<tr>
<td>Additional lawyer fees (for example, counsel fees or trial advocate fees)</td>
<td>No.</td>
</tr>
<tr>
<td>Agency fees (for example, London agents, local agents, appellate lawyer, bailiff/process-server)</td>
<td>No.</td>
</tr>
<tr>
<td>Court fees</td>
<td>Yes.</td>
</tr>
<tr>
<td>Disbursements (including, but not limited to, photocopying, expert witness, travel, translation, notarial, witness attendance etc.)</td>
<td>Yes.</td>
</tr>
<tr>
<td>Other expenses</td>
<td>Yes, such as the application fee for certain motions.</td>
</tr>
</tbody>
</table>

3. Particular costs issues

3.1 Can a party agree with its own lawyer, a special costs arrangement?
Yes.

There is no statutory limitation under local laws on cost/fee arrangements for legal services. In principle, a client is allowed to agree on a cost arrangement with its lawyers, which can either be a fixed fee arrangement, an hourly charge arrangement or a contingency fee arrangement (a fixed fee plus success fee). Such arrangements are acceptable under local ethical rules. However, a “no win, no deal” arrangement might be deemed contrary to ethical rules to the extent that it may violate the restriction on solicitation for business.

Local bar associations have promulgated a set of service fee guidelines listing the maximum amount for every kind of legal service that may be charged to a client.

Furthermore, the Judicial Yuan of Taiwan has also promulgated restrictions on lawyers’ fees at the third instance when the lawyer is appointed by the court in accordance with Article 77-25 of the TCCP.

3.2 Which tribunal resolves costs disputes and how?
Upon entering a final judgment the court shall also decide who bears the responsibility for paying litigation expenses. Where the amount of litigation expenses is not fixed by the decision on responsibility, the court of first instance shall, upon motion, fix the amount by a ruling after that decision becomes enforceable. (Articles 87 and 91 of the TCCP).

3.3 Can a party be required to provide security for costs (or some other sum) in advance of costs being decided? Yes.

According to the TCCP, the presiding judge may order a party to advance the court fees within a designated period of time. When a party fails to advance the fees the court may elect not to hear the case. Absent such advance payment of fees, where the proceedings will be prevented from continuing and the opposing party has refused to pay such fees after being requested to do so within a designated period of time, the proceedings shall be deemed stayed by the parties’ mutual agreement (Article 94 – 1 of the TCCP).

For a plaintiff who is a foreigner or a foreign company without any presence or establishment in Taiwan, the district court may issue a ruling (on motion from the defendant) ordering it to furnish a bond for the court fees of the second and third instances and the attorney fees (under NT$500,000) for the third instance (Article 96 of the TCCP).

4. Costs awards

4.1 Can interim awards of costs be obtained?
Yes.

The concept of interim application is similar to a “preliminary injunction” under Taiwanese law and the court fee for filing a motion for preliminary injunction is provided above (see question 2.2 above).

4.2 Can an award of costs be increased or decreased by reference to such matters as a party’s conduct of the case?
Yes.

The court may, at its discretion, order the prevailing party to bear the litigation expenses incurred in full or in part for the following acts:
- an act performed by the prevailing party which is unnecessary for asserting or defending its rights; or
- an act performed by the unsuccessful party which is necessary for asserting or defending its rights (Article 81 of the TCCP).

Where a party has failed to present its means of attack or defence in good time, or failed to meet or observe a specified date or period, or otherwise has delayed the proceedings by a reason imputable to the party itself, the court may order such
party to bear the litigation expenses incurred from the delay in full or in part, regardless of whether or not that party has won the lawsuit (Article 82 of the TCCP).

Where a defendant has admitted a claim presented by a claimant and it has been established that the litigation was unnecessary the claimant shall bear the litigation expenses (Article 80 of the TCCP).

4.3 How are costs awards enforced?
Where the defendant is liable for litigation expenses in line with the court’s judgment the costs are enforced along with the judgment and can be realised by compulsory execution procedure.

4.4 Can a costs award be set off against a monetary judgment?
When the motion for fixing the amount of court fee is filed the court must consider the actual expenses of both parties during the litigation and determine the amount via an offset.

In the case of a judgment ordering that the court fees be borne by the parties in a certain proportion, the court, when fixing the amount of court fees payable by each party, will, in principle, decide the amount based on the amount of court fees each party has paid. For instance, if both parties are ordered to bear the court fees equally, and the total court fees to be paid by both parties are NT$1,000, NT$300 of which has been paid by the plaintiff and NT$700 of which has been paid by the defendant, the court will order the plaintiff (who should bear NT$500 but has paid NT$300 only) to pay NT$200 to the defendant (who should bear NT$500 but has already paid NT$700).

4.5 Is interest payable on unpaid costs?
Yes.

The amount of litigation expenses payable shall be the amount fixed plus interest accrued at the statutory interest rate from the day following the service of the ruling. (Article 91 III of the TCCP).

Pursuant to Article 203 of the Taiwan Civil Code the statutory interest rate is currently five per cent per annum.

5. Costs of an appeal

5.1 Are costs of an appeal treated differently?
Yes.

According to the TCCP, in matters of appeal to a court of second or third instance, an additional one-half of the court cost shall be assessed in accordance with the provisions of Article 77-13 and Article 77-14 (Article 77-16 of the TCCP).

6. Funding of civil and commercial claims

6.1 Can costs be insured?
Yes, but not common practice.

It is a local practice not to procure an insurance policy for potential expenditure of court costs. Nonetheless, the TCCP does not prohibit the parties from insuring their liability for court costs associated with any dispute in connection with business operations. An insurer can indemnify, on the basis of their insurance coverage, the insured party for the court costs incurred in defending an insured claim.

6.2 Is legal aid available?
Yes.

The Legal Aid Foundation provides legal aid under the Legal Aid Act. Legal aid includes legal consultation, mediation and settlement, drafting legal documents, acting as a representative or defender for litigation or arbitration, necessary assistance for services and fees incurred in respect of other legal matters, and other resolutions (see below) reached by the Foundation.

In general, the Foundation has the discretion to select which case qualifies for legal aid by examining each case’s qualification in accordance with the Legal Aid Act. Moreover, the Board of the Foundation would sometimes reach resolutions to provide legal services for specific projects or events such as working with the Government to help underprivileged workers make use of the subsidy provided by the Government and assisting debtors to undergo reorganisation and liquidation under the Consumer Insolvency Law.

Underprivileged people may apply for legal aid.

An applicant may apply for legal aid irrespective of his or her financial capability provided he or she meets one of the following three conditions:

- the defendant is on trial for a crime which is punishable by more than three years in prison or the case is being heard by the High Court as the court of first instance and the defendant is without an attorney or representative
- a defendant (without an attorney or representative) is on criminal trial and is unable to express himself or herself clearly because of a mental disability and the chief presiding judge considers it necessary to retain an attorney or representative for the defendant
- the applicant qualifies as a low-income citizen under the Social Relief Act.

6.3 Is third party funding of claims available?
No.

Contributed by:
Jill Niu
Lee & Li.
## Turkey

1. **Recoverability of costs**

1.1 Can costs be recovered by a party to civil litigation?
Yes.

The party who wins the lawsuit can recover the costs.

1.2 Does the losing party usually pay the successful party’s costs?
Yes.

The court orders the losing party to pay the costs of the party that wins the lawsuit.

1.3 Can costs be ordered to be paid to, or by, a non-party?
No.

2. **Details of recoverability of costs**

2.1 On what basis are costs recoverable?
The recoverable costs are established by law, in a tariff. The postal costs and court fees are defined by law, at the beginning of each year.

There are also costs, ordered by a court pursuant to a tariff, on a percentage basis.

The costs to be paid in relation to experts, witnesses, newspaper publications, investigation etc. are under the discretion of the court.

2.2 Is the amount of recoverable costs fixed?
Some recoverable costs are fixed.

There is fixed fee and proportional fee. The law defines where to apply which type of fee.

2.3 Is the amount of recoverable costs calculated by reference to the amount in dispute?
Some recoverable costs are proportional.

The application fee to file a lawsuit requires the payment of a proportional fee, which is calculated based on the claimed amount that constitutes the subject matter of the case.

2.4 What can be recovered as “costs”?

<table>
<thead>
<tr>
<th>Category</th>
<th>Recoverable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lawyer – client fees</td>
<td>Yes, but not the actual fee that the client and the lawyer agreed upon. The court would award a lawyer fee, based on the tariff issued by the related Bar Association, at the beginning of each year.</td>
</tr>
<tr>
<td>Additional lawyer fees (for example, counsel fees or trial advocate fees)</td>
<td>No.</td>
</tr>
<tr>
<td>Agency fees (for example, London agents, local agents, appellate lawyer, bailiff/process-server)</td>
<td>No.</td>
</tr>
<tr>
<td>Court fees</td>
<td>Yes.</td>
</tr>
<tr>
<td>Disbursements (including, but not limited to, photocopying, expert witness, travel, translation, notarial, witness attendance etc.)</td>
<td>Yes (however translation and notarial expenses can be recovered only if they have been ordered by the court).</td>
</tr>
</tbody>
</table>

3. **Particular costs issues**

3.1 Can a party agree with its own lawyer, a special costs arrangement?
Yes.

The lawyer can agree with his client to have a special fee arrangement. However, this arrangement would not affect the lawyer fee awarded by the court (see question 2.4 above).

3.2 Which tribunal resolves costs disputes and how?
The court, which deals with the main dispute, would decide on the cost issues.

3.3 Can a party be required to provide security for costs (or some other sum) in advance of costs being decided?
Yes.

If the claimant is the national of a country that is not party to the Hague Convention or any other bilateral agreement with Turkey, then this person would be requested to deposit what is called a “foreigner’s security”. The amount to be deposited is under the discretion of the judge. It is usually 10% to 15% of the claim.

At the end of the proceedings, the party who decides to appeal against the judgment, is requested to deposit the full amount decided in the judgment, together with all other expenses, prior to filing his appeal.

4. **Costs awards**

4.1 Can interim awards of costs be obtained?
Yes, in limited circumstances.

Normally, interim awards of costs cannot be obtained. Nevertheless, if the expert or/witness refuses to work for/appear before the court, or the necessary investigation would not take place, the related prepaid costs can be recovered while the proceedings are still pending.

4.2 Can an award of costs be increased or decreased by reference to such matters as a party’s conduct of the case?
No.
4.3 **How are costs awards enforced?**
The party who has the right to recover the costs must initiate enforcement proceedings against the other party.

4.4 **Can a costs award be set off against a monetary judgment?**
The court would not decide to set off a costs award against a monetary judgment. However, under specific conditions, parties may decide to do so, during the enforcement procedure.

4.5 **Is interest payable on unpaid costs?**
Yes.
The interest is calculated in accordance with enforcement procedure rules.

5. **Costs of an appeal**

5.1 **Are costs of an appeal treated differently?**
No.

6. **Funding of civil and commercial claims**

6.1 **Can costs be insured?**
Yes.
This is a private matter that depends on the context of the agreement executed with the insurance company. If the agreement contains explicit provisions regarding the inclusion of legal costs, then they could be covered by the insurance scheme.

6.2 **Is legal aid available?**
Yes.
Legal aid is rarely awarded. The party who requests legal aid must prove that he has no income and obtain a “poverty certificate” from the highest officer in his neighbourhood. After the submission of this document, awarding of legal aid is still at the discretion of the judge.

6.3 **Is third party funding of claims available?**
Yes.
The third party may agree to pay the costs, which are normally requested from the party, who is on the same side. It is not official. It is merely voluntary.

**Contributed by:**
Yarsuvat & Yarsuvat Law Firm.
1. Recoverability of costs

1.1 Can costs be recovered by a party to civil litigation? 
The party who wins the lawsuit can recover the costs.

1.2 Does the losing party usually pay the successful party’s costs? 
Yes.

According to Article 88 of the Civil Procedure Code of Ukraine (the “CPCU”), generally, the losing party pays the successful party’s costs. If a claim is only partially awarded, expenses are paid pro rata (subject to other adjustments).

If a claimant or defendant is exempted (see question 2.1 below) from payment of costs, the losing party pays costs to the persons that incurred them. If both claimant and defendant are exempted from payment of costs, such costs should be compensated by the State. If the claimant is exempted from payment of costs, such costs should be compensated to the defendant by the State. The maximum limits of such compensation are set by the Cabinet of Ministers of Ukraine.

If costs are awarded against multiple defendants, the court will usually order each of the defendants to pay a proportion of such costs.

1.3 Can costs be ordered to be paid to, or by, a non-party? 
No.

2. Details of recoverability of costs

2.1 On what basis are costs recoverable? 
Established by law. The court has a discretion in reducing the amount of costs of any party or exempting any party from payment of its own costs taking into account the financial condition of such party (except for court fees and IT costs the payment of which may only be deferred for certain period of time). The court does not have discretion to decide the amount of fees to be reimbursed to a winning party. Instead, the CPCU provides for mandatory maximum limits of costs which could be reimbursed to a winning party, including in the event that such costs are compensated by the State.

Pursuant to Article 84 of the CPCU, legal fees of advocates licensed in Ukraine and legal fees of other “legal professionals” can be reimbursed. Under Ukrainian law any person is entitled to represent the clients before the courts of all levels and the parties regularly instruct in litigation before Ukrainian courts lawyers who are not advocates. As to “legal professionals” referred to in Article 84 of the CPCU, such persons have very limited procedural rights and the parties prefer engaging lawyers acting on the basis of power of attorney instead. The CPCU does not allow reimbursement of legal fees of lawyers acting on the basis of power of attorney.

Under established court practice, a claim for reimbursement of legal and other fees must be filed with the same court where the proceedings are taking place. There are no separate tribunals dealing with costs.

2.2 Is the amount of recoverable costs fixed? 
Yes.

The amount of court fees and IT costs is fixed by legislation. There are types of cases in which claimants are exempted from payment of court fees and IT costs.

The maximum limits of all other recoverable costs are fixed by the Resolution of the Cabinet of Ministers of Ukraine No. 590 “On Maximum Limits of Compensation of Costs Arising in Civil and Administrative Cases and Procedure of Their Compensation by the State” dated 27 April 2006.

2.3 Is the amount of recoverable costs calculated by reference to the amount in dispute? 
No.

2.4 What can be recovered as “costs”? 
Article 79 of the CPCU contains an exhaustive list of costs which include: court fees, IT costs, legal fees, travel expenses, expert fees, translation expenses, witness expenses, expenses for the on-site inspection and evaluation of evidence.

<table>
<thead>
<tr>
<th>Lawyer – client fees</th>
<th>Yes.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Additional lawyer fees (for example, counsel fees or trial advocate fees)</td>
<td>This type of fee is not typical for Ukrainian court proceedings since usually the same advocate/lawyer deals with the case at all its stages.</td>
</tr>
<tr>
<td>Agency fees (for example, London agents, local agents, appellate lawyer, bailiff/process-server)</td>
<td>This type of fee is not typical for Ukrainian court proceedings since usually the same advocate/lawyer deals with the case at all its stages.</td>
</tr>
<tr>
<td>Court fees</td>
<td>Yes.</td>
</tr>
<tr>
<td>Disbursements (including, but not limited to, photocopying, expert witness, travel, translation, notarial, witness attendance etc.)</td>
<td>Yes. The CPCU does not expressly allow recovery of photocopying costs and notarial costs. Such costs, however, could be included in the legal fees.</td>
</tr>
</tbody>
</table>
3. Particular costs issues

3.1 Can a party agree with its own lawyer, a special costs arrangement?
Yes.

A number of fixed and contingent fees are possible. Bonuses can be contingent on results.

At the same time, only expenses that were actually incurred by a party before rendering by the court of a judgment are deemed to be recoverable. A party should submit to the court supporting financial documents to confirm that it has incurred respective expenses.

3.2 Which tribunal resolves costs disputes and how?
The court that delivers a final judgment should deal with costs in such final judgment. If any party disagrees with the calculation or distribution of costs, it has a right to appeal the judgment to the respective appeal court.

In some cases the successful parties initiate follow-up proceedings in order to recover their litigation costs. It is however preferable to apply to the court that dealt with original claim and ask it to issue an “additional judgment” on costs, as will be described below.

3.3 Can a party be required to provide security for costs (or some other sum) in advance of costs being decided?
No.

Ukrainian law does not recognise the concept of security for costs.

4. Costs awards

4.1 Can interim awards of costs be obtained?
No.

All awards of costs are included in the final judgment on the merits. If the issue of distribution of costs was not addressed in the final judgment on the merits, a party may request the court to issue an “additional judgment” dealing with costs.

4.2 Can an award of costs be increased or decreased by reference to such matters as a party’s conduct of the case?
No.

At the same time, Article 89 of the CPCU provides that if the court terminates the proceedings or “leaves the statement of claim without consideration,” the defendant can request the court to recover its costs against the claimant due to frivolous actions of the claimant.

4.3 How are costs awards enforced?
As the costs award is part of the final court judgment on the merits, it could be enforced in the same way as the court judgment.

4.4 Can a costs award be set off against a monetary judgment?
Under Ukrainian law a costs award is part of a monetary judgment.

4.5 Is interest payable on unpaid costs?
No.

Ukrainian courts do not have power to award interest on monetary judgments, including interest on costs.

5. Costs of an appeal

5.1 Are costs of an appeal treated differently?
Yes.

It is not clear from the CPCU whether any recovery of costs of an appeal is possible at all. The CPCU provides that if the appeal court amends the judgment of the court of first instance or renders a new judgment, then the appeal court should respectively amend the distribution of costs but not award new costs.

There is no settled court practice on this issue.

6. Funding of civil and commercial claims

6.1 Can costs be insured?
Yes.

There are no restrictions on insuring litigation costs. However, in practice, insurance is not used.

6.2 Is legal aid available?
Yes.

Public funding of litigation is provided in accordance with the Law of Ukraine “On Social Services” dated 19 June 2003 (the “Social Services Law”). Such funding is provided to clients with “difficult living conditions”.

At the same time, the Social Services Law governs a wide array of different issues and does not establish a streamlined procedure for obtaining funding of litigation. Currently, the Parliament of Ukraine is considering the draft Law of Ukraine “On Free Legal Aid” which aims to provide detailed rules for public funding of litigation in Ukraine.
6.3 Is third party funding of claims available?

Yes.

Third party funding has never been regulated under Ukrainian law. Please note that third party funding is not deemed to be a part of party’s costs and, therefore, it is not recoverable.

Contributed by:
Sayenko Kharenko.


1. **Recoverability of costs**

1.1 **Can costs be recovered by a party to civil litigation?**

Yes.

1.2 **Does the losing party usually pay the successful party’s costs?**

Yes.

According to Article 49 of the Commercial Procedure Code of Ukraine (the "CPCU"), generally, the losing party pays the successful party’s costs. If a claim is only partially awarded, expenses are paid pro rata (subject to other adjustments).

If costs are awarded against multiple defendants, the court will usually order each of the defendants to pay a proportion of such costs.

1.3 **Can costs be ordered to be paid to, or by, a non-party?**

No.

2. **Details of recoverability of costs**

2.1 **On what basis are costs recoverable?**

The recovery of costs is mainly discretionary. The court decides, at its own discretion, the amount of fees to be reimbursed to a successful party. Only the legal fees of advocates licensed in Ukraine can be reimbursed. Under Ukrainian law any person is entitled to represent clients before the courts of all levels and the parties regularly instruct in litigations before Ukrainian courts lawyers who are not advocates.

Recently, the Higher Commercial Court indicated in its information letter that it might be possible for a successful party also to recover the legal fees of non-advocate lawyers or its in-house lawyers. At the same time, this position is not supported by the court practice of the Supreme Court of Ukraine and is not in line with provisions of the CPCU.

Under established court practice, a claim for reimbursement of legal fees must be filed with the court where the proceedings are taking place. There are no separate tribunals dealing with costs.

The court does not have discretion in relation to the recovery of court fees (which amount to one per cent of the amount in dispute and are capped). The court fees are normally awarded to the successful party in the action (or pro rata if a claim is only partially awarded). However, the court can order the successful party to pay court fees if the dispute arose out of unlawful actions of such party.

2.2 **Is the amount of recoverable costs fixed?**

No.

Please note that the amount of court fees and IT costs is fixed by legislation.

2.3 **Is the amount of recoverable costs calculated by reference to the amount in dispute?**

This is considered as part of the court’s discretion.

The CPCU does not expressly address this issue. At the same time, the Higher Commercial Court of Ukraine issued clarification to the effect that the amount of recoverable costs should not be disproportionate and that the court is entitled to take into account the circumstances of a given case, including the amount in dispute, to limit the amount of recoverable costs at a reasonable level.

As noted above, the court cannot adjust the amount of court fees.

2.4 **What can be recovered as “costs”?**

Article 44 of the CPCU contains an exhaustive list of costs which include: court fees, expert fees, expenses for on-site inspection and evaluation of evidence, translation expenses, legal fees, IT costs and other expenses relating to the court proceedings (according to clarifications of the Higher Commercial Court of Ukraine, such “other expenses” include travel expenses).

<table>
<thead>
<tr>
<th>Lawyer – client fees</th>
<th>Yes.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Additional lawyer fees (for example, counsel fees or trial advocate fees)</td>
<td>This type of fee is not typical for Ukrainian court proceedings since usually the same advocate/lawyer deals with the case at all its stages.</td>
</tr>
<tr>
<td>Agency fees (for example, London agents, local agents, appellate lawyer, bailiff/process-server)</td>
<td>This type of fee is not typical for Ukrainian court proceedings since usually the same advocate/lawyer deals with the case at all its stages.</td>
</tr>
<tr>
<td>Court fees</td>
<td>Yes.</td>
</tr>
<tr>
<td>Disbursements (including, but not limited to, photocopying, expert witness, travel, translation, notarial, witness attendance etc.)</td>
<td>Yes. The CPCU does not expressly allow recovery of photocopying costs and notarial costs. Such costs, however, could be included in the legal fees.</td>
</tr>
</tbody>
</table>

3. **Particular costs issues**

3.1 **Can a party agree with its own lawyer, a special costs arrangement?**

Yes.

Various fixed and contingent fees are possible. Bonuses can be contingent on results.

At the same time, only expenses that were actually incurred by a party before rendering by the court of a judgment are deemed to be recoverable. A party should submit to the court...
supporting financial documents to confirm that it has incurred respective expenses.

3.2 Which tribunal resolves costs disputes and how?
The court that delivers a final judgment should deal with costs in such final judgment. If any party disagrees with the calculation or distribution of costs, it has a right to appeal the judgment to the respective appeal court.

In some cases the successful parties initiate follow-up proceedings in order to recover their litigation costs. It is however preferable to apply to the court that dealt with the original claim and ask it to issue an “additional judgment” on costs, as described below.

3.3 Can a party be required to provide security for costs (or some other sum) in advance of costs being decided?
No.

Ukrainian law does not recognise the concept of security for costs.

4. Costs awards
4.1 Can interim awards of costs be obtained?
No.

All awards of costs are included in the final judgment on the merits. If the issue of distribution of costs was not addressed in the final judgment on the merits, a party may request the court to issue an “additional judgment” dealing with costs.

4.2 Can an award of costs be increased or decreased by reference to such matters as a party’s conduct of the case?
No.

Under the CPCU, the court can order the successful party to pay court fees if the dispute arose out of unlawful actions of such party. However, this rule does not affect any other costs and is not directly related to a party’s conduct of the case.

4.3 How are costs awards enforced?
As the costs award is part of the final court judgment on the merits, it can be enforced in the same way as the court judgment.

4.4 Can a costs award be set off against a monetary judgment?
Under Ukrainian law a costs award is part of a monetary judgment.

4.5 Is interest payable on unpaid costs?
No.

Ukrainian courts do not have power to award interest on monetary judgments, including interest on costs.

5. Costs of an appeal
5.1 Are costs of an appeal treated differently?
Yes.

It is not clear from the CPCU whether any recovery of costs of an appeal is possible at all. The CPCU provides that the appeal court shall have similar powers to that of the court of first instance. At the same time, the CPCU further provides that the appeal court may only amend the distribution of costs if the judgment of the court of first instance is reversed or amended.

There is no settled court practice on this issue.

6. Funding of civil and commercial claims
6.1 Can costs be insured?
Yes.

There are no restrictions on insuring litigation costs. However, in practice, insurance is not used.

6.2 Is legal aid available?
No.

6.3 Is third party funding of claims available?
Yes.

Third party funding has never been regulated under Ukrainian law. Third party funding is not deemed to be a part of party’s costs and, therefore, it is not recoverable.

Contributed by:
Sayenko Kharenko.
United States of America
California

With respect to the shifting of attorneys’ fees between parties, most, if not all, jurisdictions in the United States apply the traditional “American Rule” holding that attorneys’ fees are not awardable to the winning party (that is, each litigant must pay its own attorneys’ fees) unless statutorily or contractually authorised. There are only certain, limited exceptions to this rule, for example, attorneys’ fees may be awarded to a party if its opponent has acted in bad faith, and awards of attorneys’ fees are quite rare. Although in most US jurisdictions (including the federal courts) prevailing parties in civil litigation are awarded “costs” as part of the judgment, such awards generally do not include attorneys’ fees and are small in amount, usually less than US$1,000, and are not meant to fully compensate the successful party for its litigation expenses.

1. Recoverability of costs

1.1 Can costs be recovered by a party to civil litigation?
Yes.

Under California law, generally speaking “costs” are statutory allowances made to a successful party litigant to reimburse it for the expenses it incurred in the litigation. They are mere incidents of the judgment on the merits and cannot be awarded without such a judgment, or before such a judgment is entered. Attorneys’ fees, the major expense incurred by litigants, are generally not included and generally not recoverable under California law. 16 Cal. Jur. 3d Costs I.A.1 (2009) (“Costs”).

1.2 Does the losing party usually pay the successful party’s costs?
No.

Generally, a plaintiff who recovers a judgment in its favour is not entitled to recover legal fees, but can, however, recover certain costs as a matter of right (Costs Section 30).

Similarly, a prevailing defendant is generally entitled to an award of limited costs. The defendant is the prevailing party when a dismissal is entered in the defendant’s favour or when the plaintiff does not recover any relief as against the defendant (Costs Section 32).

1.3 Can costs be ordered to be paid to, or by, a non-party?
No.

2. Details of recoverability of costs

2.1 On what basis are costs recoverable?
The general rule is that the prevailing party is entitled as a matter of right to recover costs in any action or proceeding, except as otherwise expressly provided by statute. In cases in which money damages are awarded, the prevailing party is the party that obtains a net monetary recovery (thus, to be “prevailing,” it is not necessary for the party to succeed on all of its claims). When any party recovers other than monetary relief, the court will determine the prevailing party and may allow costs in its discretion or apportion costs between the parties on the same or adverse sides (Costs Section 29).

While a successful party is never required to pay the costs incurred by the unsuccessful party, a defendant may be required to pay the plaintiff costs when each has prevailed on one or more causes of action even though ordinarily a plaintiff will not be liable in costs to the defendant if the plaintiff prevails on any of the causes of action (Costs Section 38).

In addition to the general statutory right of a prevailing party to an award for costs, additional awards of costs may be prescribed in particular circumstances, including motions to strike in actions arising from the exercise of free speech or the right of petition, the withholding or augmentation of costs incurred subsequent to an unaccepted offer of judgment where the plaintiff fails to obtain a more favourable judgment or award, and the imposition of costs for bad faith actions or tactics. Costs Section 12. In exceptional circumstances, courts may award costs in their sound discretion (California Civil Practice Procedure Section 33:1 (2009)).

2.2 Is the amount of recoverable costs fixed?
No.

2.3 Is the amount of recoverable costs calculated by reference to the amount in dispute?
No.

2.4 What can be recovered as “costs”?
The right of a successful litigant to recover from its adversary the amount of any given item of costs depends upon four essential conditions:

- there must be a valid judgment awarding costs to the party claiming them
- the item must be one allowed by rule or statute
- the amount claimed must have been actually incurred
- the amount claimed must be reasonable.

Costs Section 60.

The items allowable as costs are enumerated by statute (Cal. Civ. Proc. Code Section 1033.5), and include:

- filing, motion, and jury fees
- juror meals and lodging
- taking, videotaping, and transcribing necessary depositions and travel costs to attend depositions
- service of process
- expenses of attachment or costs of enforcing a judgment
- premiums on necessary surety bonds
- ordinary witness fees
- fees on expert witnesses ordered by the court
- transcripts of court proceedings ordered by the court
- attorneys’ fees when authorised by contract, statute or other law
- court reporters’ fees
- costs of models and blowups of exhibits
- other items within the trial court’s sound discretion. 
  Costs Section 66.

Certain items generally not allowable as costs are also enumerated by statute, including:
- fees of experts not ordered by the court
- investigation expenses in preparing a case for trial
- postage, telephone, and photocopying charges
- costs in investigating jurors or in preparation for voir dire
- transcripts of court proceedings not ordered by the court. 
  Costs Section 68.

Lawyer – client fees
Generally not recoverable. The general rule is that each litigant is required to absorb the expense of his or her own attorneys’ fees. Attorneys’ fees cannot be imposed on the opposite party in the absence of some contract or agreement or a statute authorising such fee shifting.

Exceptions to this general rule apply (and courts may award attorneys’ fees) in situations where litigation creates a benefit to others or the public, awards of attorneys’ fees are expressly provided for by statute or an agreement between the parties, or when one party acts frivolously or maliciously in litigation, causing the other party to spend attorneys’ fees that otherwise would have been unnecessary. Cf. Cal. Civ. Proc. Code Section 1033.5(a)(10) (permitting shifting of attorneys’ fees when authorised by contract, statute, or law).

<table>
<thead>
<tr>
<th>Costs award category</th>
<th>Recoverable?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Additional lawyer fees (for example, counsel fees or trial advocate fees)</td>
<td>No.</td>
</tr>
<tr>
<td>Agency fees (for example, London agents, local agents, appellate lawyer, bailiff/process-server)</td>
<td>No.</td>
</tr>
<tr>
<td>Court fees</td>
<td>Yes, see above.</td>
</tr>
</tbody>
</table>

Disbursements (including, but not limited to, photocopying, expert witness, travel, translation, notarial, witness attendance etc.)

Other expenses
Within the discretion of the court, see above.

3. Particular costs issues

3.1 Can a party agree with its own lawyer, a special costs arrangement?
Yes.

Generally, written contingent fee agreements are valid and enforceable, unless induced by fraud, prohibited by public policy, or the fees are so excessive as to be unconscionable (for example, the prohibition against contingent fee agreements in divorce cases) (7 Cal. Jur. 3d Attorneys at Law Sections 219-221 (2009)).

3.2 Which tribunal resolves costs disputes and how?
The court that rendered the judgment will decide, on motion, challenges to a successful party’s application for costs (Costs Section 90).

3.3 Can a party be required to provide security for costs (or some other sum) in advance of costs being decided?
Yes, if a defendant successfully demands that a plaintiff provide security for costs.

Generally, a defendant in California must proceed without any assurance of the plaintiff’s ability to pay costs at the end of the lawsuit, but there are various statutes covering situations under which plaintiffs may be required to give security for costs, including where the plaintiff is not a California resident or corporation (Costs Section 44), the plaintiff is a “vexatious” litigant (Costs Section 44), malpractice actions against specified medical professionals and hospitals (Costs Section 45) and malpractice actions against other specified licensed professionals such as architects and engineers (Costs Section 46).

4. Costs awards

4.1 Can interim awards of costs be obtained?
No.

4.2 Can an award of costs be increased or decreased by reference to such matters as a party’s conduct of the case?
Yes.

As discussed above, sanctions of attorneys’ fees and litigation costs may be awarded against parties that act in bad faith, maliciously, or frivolously (knowing that their claims or defences lack merit).
4.3 How are costs awards enforced?
A prevailing party that claims costs must serve and file, within time limits specified by the court rules, a memorandum of costs, which must be verified by a statement that the items of cost are correct and were necessarily incurred in the case. Costs Sections 81-82. An adverse party may make a motion with the court to challenge the memorandum of costs or individual items listed in it (Costs Section 89).

After the time has passed for a motion to challenge the memorandum of costs, the court clerk will enter the costs on the judgment. Trial court costs are a mere incident of the main judgment and are not separately enforceable. Costs Section 92. The amount of costs, upon being entered in the judgment by the Clerk, is of the same force and effect as any other part of the judgment (Costs Section 94).

4.4 Can a costs award be set off against a monetary judgment?
No.

4.5 Is interest payable on unpaid costs?
Yes.

Under California law, every money judgment bears interest from the date of its entry. The statutory rate of interest is generally 10% per year (Cal. Civ. Proc. Code Section 685.010 (2009)).

5. Costs of an appeal

5.1 Are costs of an appeal treated differently?
No (generally, the prevailing party is entitled to costs on appeal).

6. Funding of civil and commercial claims

6.1 Can costs be insured?
Possibly.

There does not seem to be any prohibition against insurance coverage for litigation costs. Nevertheless, given the “American Rule” holding that each party is liable to pay its own attorneys’ fees, there is no real market for this type of insurance in the United States, and “litigation risk” policies seems to be quite rare in the United States (except that general commercial liability, D&O, and errors and omissions policies often may contain provisions or carve outs for adverse awards of litigation costs, punitive damages, or the shifting of attorneys’ fees).

6.2 Is legal aid available?
Yes.

Legal aid for civil cases is available in the United States and is provided by a variety of public interest law firms and community legal clinics. Such entities generally will not represent clients whose incomes or resources exceed certain thresholds, and they usually handle only cases involving claims of denial or deprivation of government benefits, evictions, domestic violence, immigration, or discrimination. Charities, private donors, and the federal government are the primary sources of funding.

6.3 Is third party funding of claims available?
Yes, under certain circumstances.

Lenders can be found in the United States that will fund plaintiffs’ litigation costs and even living expenses during the pendency of a lawsuit. These kinds of arrangements are most commonly associated with personal injury lawsuits. Although the common law doctrines of champerty and maintenance are seldom applied in most jurisdictions in the United States, care should be taken when entering into any sort of third party funding arrangement to make sure that applicable laws and regulations are not violated.

Contributed by:
Lovells LLP (New York).
United States of America
Delaware

With respect to the shifting of attorneys’ fees between parties, most, if not all, jurisdictions in the United States apply the traditional “American Rule” holding that attorneys’ fees are not awardable to the winning party (that is, each litigant must pay its own attorneys’ fees) unless statutorily or contractually authorised. There are only certain, limited exceptions to this rule, for example, attorneys’ fees may be awarded to a party if its opponent has acted in bad faith, and awards of attorneys’ fees are quite rare. Although in most US jurisdictions (including the federal courts) prevailing parties in civil litigation are awarded “costs” as part of the judgment, such awards generally do not include attorneys’ fees and are small in amount, usually less than US$1,000, and are not meant to fully compensate the successful party for its litigation expenses.

1. Recoverability of costs

1.1 Can costs be recovered by a party to civil litigation? Yes.

Under Delaware law, the party prevailing on the merits of an action is generally entitled to recover the “costs” of the suit from the non-prevailing party as a matter of right (10 Delaware Code (“Del. C.”) Section 5101 (2009); Delaware Supreme Court Rules (“Del. Sup. Ct. R.”) 54(d). Furthermore, in actions before the Delaware Court of Chancery (an equity court in Delaware that handles most matters involving corporate law, trusts, estates and other fiduciary matters), the Court of Chancery has broad discretion regarding the shifting of costs (Del. Ch. Ct. R’s 54(d)-(f)).

As in other states, “costs” refers to certain allowances, authorised by statute, made to reimburse a successful party for the expenses incurred in prosecuting or defending an action. They are in the nature of incidental damages to indemnify a party against the expense of successfully asserting that party’s rights or position in court but are usually relatively marginal in amount. Although these costs are sums allowed to a successful litigant as compensation for the expenses incurred in litigation, they bear little relation to the actual expenses incurred because under the American system each party, during the course of the litigation, should bear the expense of prosecuting or defending its own case. Attorneys’ fees, the major expense incurred by litigants, are not generally recoverable under Delaware law. See Corporate and Commercial Practice in the Delaware Court of Chancery Section 13.03 (2009) (“Corp. & Comm. Prac.”).

1.2 Does the losing party usually pay the successful party’s costs? No.

In general, a party will not be entitled to recover lawyers’ fees, but can, however, recover certain costs if it “prevails” and a judgment is entered in its favour in the litigation (Del. Sup. Ct. R. 54(d); Del. Ch. Ct. R. 54(d)).

1.3 Can costs be ordered to be paid to, or by, a non-party? No.

2. Details of recoverability of costs

2.1 On what basis are costs recoverable? For purposes of determining the proper allocation of costs, the “prevailing party” ordinarily is considered the party who successfully prosecutes or defends against the action, prevailing on the merits of the main issue. A party need not prevail on all issues to justify a full award of costs, however. Where one party prevails on affirmative claims and the other on counterclaims, the court may award costs to the party with the net positive judgment or may exercise discretion in allocating costs as equity requires. See Corp. & Comm. Prac. Section 13.02.

Delaware courts may depart from the general rule allowing costs to the prevailing party – and tax costs to a party irrespective of the outcome of the action – if at any time during the progress of the action it appears that the amount claimed in suit is exorbitant so that the opposite party is put to unnecessary expense in giving bond, or if any party unnecessarily swells the record or otherwise causes unnecessary expense (Del. Ch. Ct. R. 54(e); Del. Sup. Ct. R. 54(e)).

2.2 Is the amount of recoverable costs fixed? No.

2.3 Is the amount of recoverable costs calculated by reference to the amount in dispute? No.

2.4 What can be recovered as “costs”? The “costs” that may be recovered are limited to those that may be considered “allowances in the nature of incidental damages” awarded by the court to reimburse a party for expenditures “necessarily incurred in the assertion of his rights in court.” The award of costs is not an attempt to compensate a litigant fully for all expenses incurred in connection with litigation.

The types of costs that are typically recoverable consist of court costs (including sums payable to a public official, such as the Register of Chancery, filing fees, and fees in connection with the issuance of summonses, subpoenas, and other writs), witness fees, expert fees, and statutorily delineated charges.

In appropriate circumstances, the court may also award as costs the premium required to secure a bond furnished to effectuate a temporary restraining order or preliminary injunction.

Other types of costs and expenses incurred in the course of litigation, as a general rule, are not recoverable absent a statute or a determination by the Court of Chancery that the equities of the particular case favour the taxing of such costs to one party or the other. Absent a sufficiently inclusive contractual provision, Delaware courts generally will not award costs for photocopying, travel, telephone, express mail, courier services, computerised legal research, or the like.

Corp. & Comm. Prac. Section 13.02.
Most Delaware courts generally will not shift attorneys’ fees in the absence of a statutory or contractual provision requiring such shifting. Although the Delaware Court of Chancery has broader discretion to award attorneys’ fees, pursuant to a statutory grant (10 Del. C. Section 5106), the Court of Chancery generally will consider awarding attorneys’ fees only if:

- recovery of fees is provided by statute or court rule; or
- there is a contractual provision regarding entitlement to attorneys’ fees; or
- a party has acted in bad faith in connection with the prosecution or defence of an action; or
- the action results in the creation, protection, or distribution of a common fund or confers a corporate benefit. Corp. & Comm. Prac. Section 13.03.

### 3. Particular costs issues

#### 3.1 Can a party agree with its own lawyer, a special costs arrangement?
Yes.

Generally, written contingent fee agreements are valid and enforceable, unless induced by fraud, the fees are so excessive so as to be unconscionable, or prohibited by public policy (for example, the prohibition against contingent fee agreements in divorce and child custody cases) (Delaware Rules of Professional Conduct 1.5(c)).

#### 3.2 Which tribunal resolves costs disputes and how?
In most courts in Delaware, within 20 days after the rendering of a judgment, the clerk of the court will enter on the docket a full bill of the costs therein, setting out each item of the fees of every officer and person (10 Del. C Section 5112). A party can challenge the entry of costs by applying to the court and notifying the adverse party. The court can revise or correct the bill of costs as entered on the docket (10 Del. C Section 5115).

#### 3.3 Can a party be required to provide security for costs (or some other sum) in advance of costs being decided?
Yes, if a defendant successfully demands that a plaintiff provide security for costs.

In cases in which a non-resident (non-Delaware) plaintiff brings a lawsuit in Delaware (or ceases to reside in Delaware during the pendency of a lawsuit), the non-resident plaintiff may be required to provide security for costs to ensure that if it loses the case it cannot return home and leave the defendant with a costs judgment that can be enforced only in the non-resident plaintiff’s home state. (Del. Sup. Ct. R 3(f); Del. Ch. Ct. R 3(c)).

### 4. Costs awards

#### 4.1 Can interim awards of costs be obtained?
No.

#### 4.2 Can an award of costs be increased or decreased by reference to such matters as a party’s conduct of the case?
Yes.

As discussed above, sanctions of attorneys’ fees and litigation costs may be awarded against parties that act in bad faith, maliciously, or frivolously (knowing that their claims or defences lack merit).

#### 4.3 How are costs awards enforced?
The costs of an action are included in the final judgment and are collected with the judgment at the same time and in the same manner.

#### 4.4 Can a costs award be set off against a monetary judgment?
No.
4.5 Is interest payable on unpaid costs?
Yes.

Under Delaware law, every money judgment bears interest from the date of its entry. The statutory rate of interest is generally the Federal Reserve discount rate plus five per cent (6 Del. Code 2301(a)).

5. Costs of an appeal

5.1 Are costs of an appeal treated differently?
Not in principle, but a different fee schedule applies.

- If an appeal is dismissed, costs are taxed against the appellant
- If a judgment is affirmed, costs are taxed against the appellant
- If a judgment is reversed, costs are taxed against the appellee
- If a judgment is affirmed in part and reversed in part, costs shall be allowed as ordered by the court (Del. Sup. Ct. R 20).

6. Funding of civil and commercial claims

6.1 Can costs be insured?
Possibly.

There does not seem to be any prohibition against insurance coverage for litigation costs or litigation cost shifting. Nevertheless, given the “American Rule” holding that each party is liable to pay its own attorneys’ fees, there is no real market for this type of insurance in the United States, and “litigation risk” policies seems to be quite rare in the United States (except that general commercial liability, D&O, and errors and omissions policies often may contain provisions or carve outs for adverse awards of litigation costs, punitive damages, or the shifting of attorneys’ fees).

6.2 Is legal aid available?
Yes.

Legal aid for civil cases is available in the United States and is provided by a variety of public interest law firms and community legal clinics. Such entities generally will not represent clients whose incomes or resources exceed certain thresholds, and they usually handle only cases involving claims of denial or deprivation of government benefits, evictions, domestic violence, immigration, or discrimination. Charities, private donors, and the federal government are the primary sources of funding.

6.3 Is third party funding of claims available?
Yes, under certain circumstances.

Lenders can be found in the United States that will fund plaintiffs’ litigation costs and even living expenses during the pendency of a lawsuit. These kinds of arrangements are most commonly associated with personal injury lawsuits. Although the common law doctrines of champerty and maintenance are seldom applied in most jurisdictions in the United States, care should be taken when entering into any sort of third party funding arrangement to make sure that applicable laws and regulations are not violated.

Contributed by:
Lovells LLP (New York).

With respect to the shifting of attorneys’ fees between parties, most, if not all, jurisdictions in the United States apply the traditional “American Rule” holding that attorneys’ fees are not awardable to the winning party (that is, each litigant must pay its own attorneys’ fees) unless statutorily or contractually authorised. There are only certain, limited exceptions to this rule, for example, attorneys’ fees may be awarded to a party if its opponent has acted in bad faith, and awards of attorneys’ fees are quite rare. Although in most US jurisdictions (including the federal courts) prevailing parties in civil litigation are awarded “costs” as part of the judgment, such awards generally do not include attorneys’ fees and are small in amount, usually less than US$1,000, and are not meant to fully compensate the successful party for its litigation expenses.

1. **Recoverability of costs**

1.1 **Can costs be recovered by a party to civil litigation?**

Yes.

Under New York law, “costs” and “disbursements” are certain arbitrary allowances, authorised by statute, to reimburse a successful party for the expenses incurred in prosecuting or defending an action or special proceeding. They are in the nature of incidental damages to indemnify a party against the expense of successfully asserting that party’s rights or position in court but are usually relatively marginal in amount. They bear no relation to the actual expenses incurred because under the American system each party, during the course of the litigation, is expected to bear the expense of prosecuting or defending its own case. Attorneys’ fees, the major expense incurred by litigants, are generally not recoverable under New York law (24 N.Y. Jur. 2d Costs Section 1 (2009) “Costs”).

1.2 **Does the losing party usually pay the successful party’s costs?**

No.

In general, a plaintiff will not be entitled to recover lawyers’ fees, but can, however, recover certain costs if it “prevails” and a judgment is entered in its favour in the litigation (Costs Section 21).

A defendant may recover its costs in situations where a plaintiff brings a lawsuit that is dismissed on jurisdictional grounds (Costs Section 8), where a plaintiff voluntarily dismisses a lawsuit (Costs Section 9), or where a defendant is the “prevailing party” (Costs Section 14).

1.3 **Can costs be ordered to be paid to, or by, a non-party?**

No.

2. **Details of recoverability of costs**

2.1 **On what basis are costs recoverable?**

Costs are allowed as a matter of statutory law and are generally awarded under a court’s broad discretion (Costs Section 21). The Civil Practice Law and Rules contain provisions governing the amounts of statutory fees (N.Y. C.P.L.R. 8001-8021), rules for determining whether a party is entitled to statutory costs and how costs are awarded (N.Y. C.P.L.R. 8101-8110), provisions dealing with the amount of costs that a party entitled to costs will receive (N.Y. C.P.L.R. 8201-8204), rules governing disbursements and additional allowances (N.Y. C.P.L.R. 8301-8303), provisions prescribing the methods of taxation and retaxation of costs (N.Y. C.P.L.R. 8401-8404), and rules relating to security for costs (N.Y. C.P.L.R. 8501-8503) (Costs Section 5).

Various equitable considerations may impel a court to deny costs to a prevailing party; for example, a court will not impose costs on a defendant who, though judgment is rendered against him or her, is merely a nominal party or unresisting stakeholder. Where the conduct of a defeated party is innocent or in good faith, and not willful, a court may decide not to penalize him or her by a cost award to the prevailing party, as in the case of an unintentional trespass. A court may deny costs to a prevailing party where the party’s success is fortuitous and not the result of the party’s own diligence or intelligent investigation and presentation of pertinent facts (Costs Section 22).

Costs may be apportioned as between various claims and as between various plaintiffs and defendants; thus, the same party may be considered to be a “prevailing party” with respect to some claims while at the same time it may considered to be a losing party with respect to other claims (see Costs Sections 17-20).

2.2 **Is the amount of recoverable costs fixed?**

No.

When a party is entitled to costs, the statutes expressly provide for the various items and amounts allowable. Even though a court has discretion in making or denying an award of costs, it has no discretion as to the amount or items included in the award and cannot, under any circumstances, impose extra “costs” not provided for by statute as a penalty against the opposing party. Nevertheless, the amounts fixed by the statute merely represent the maximum amounts allowable, so that a court has discretion to award a lesser amount (Costs Section 141).

In general, the amount of costs a court may award in an action are set in the amount of US$200 for all proceedings before a note of issue is filed (the document informing the court that a case is ready for trial), plus US$200 for all proceedings after a note of issue is filed and before trial, plus US$300 for each trial, inquest or assessment of damages. N.Y. C.P.L.R. Art. 82 (Costs Section 143).

Additional “taxable disbursements” that may be awarded to a prevailing party in the court’s discretion are set out in N.Y. C.P.L.R. Article 83.

2.3 **Is the amount of recoverable costs calculated by reference to the amount in dispute?**

No.

2.4 **What can be recovered as “costs”?**

See N.Y. C.P.L.R. Articles 82 and 83.
At what cost? A Lovells multi-jurisdictional guide to litigation costs

USA – New York

Lawyer – client fees

Generally not recoverable.

The general rule is that each litigant is required to absorb the expense of his or her own attorneys’ fees. Attorneys’ fees cannot be imposed on the opposite party in the absence of some contract or agreement or statute authorising such fee shifting, Costs Section 192.

Exceptions to this general rule apply (and courts may award attorneys’ fees) in situations where litigation creates a benefit to the public, awards of attorneys’ fees are expressly provided for by statute or an agreement between the parties, or when one party acts frivolously or maliciously in litigation, causing the other party to spend attorneys’ fees that otherwise would have been unnecessary.

Costs Section 193.

Additional lawyer fees (for example, counsel fees or trial advocate fees)

No.

Agency fees (for example, London agents, local agents, appellate lawyer, bailiff/process-server)

No.

Court fees

No (the general award of costs under N.Y. C.P.L.R. Article 82 is deemed to include “court fees”).

Disbursements (including, but not limited to, photocopying, expert witness, travel, translation, notarial, witness attendance etc.)

Yes. N.Y. C.P.L.R. Article 83 permits the taxation of disbursements for:

- legal fees of witnesses, “referees and other officers”
- reasonable compensation of commissioners taking depositions
- legal fees for publication
- legal fees to obtain certified copies of papers necessarily obtained for use at trial
- expenses of securing copies of opinions and charges of judges
- reasonable expenses of printing the papers for a hearing
- prospective charges for entering and docketing the judgment
- sheriff’s fees for receiving and returning one execution
- reasonable expenses of taking and making two transcripts of depositions (but not exceeding US$250 in any one action)
- expenses of searches made by title insurance, abstract or searching companies
- reasonable expenses actually incurred in securing an undertaking to stay enforcement of a judgment
- costs to foreclose a mortgage or partition property – among others.

Other expenses

Within the discretion of the court. N.Y. C.P.L.R. 8303.

3. Particular costs issues

3.1 Can a party agree with its own lawyer, a special costs arrangement?

Yes.

Generally, written contingent fee agreements are valid and enforceable, unless induced by fraud, the fees are so excessive so as to be unconscionable, or prohibited by public policy (for example, the prohibition against contingent fee agreements in divorce and child custody cases) (7 N.Y. Jur. 2d Attorneys at Law Section 252 (2009)).

3.2 Which tribunal resolves costs disputes and how?

The general practice with respect to the taxation of costs and disbursements is for the winning party to draw up a “bill of costs”, including all disbursements to which it deems itself entitled, and to present the bill to the clerk of the court when presenting a judgment for entry. The bill of costs should be supported by affidavits. If satisfied that the claimed expenses are
permissible, the clerk will include their total in the judgment as “costs and disbursements”. After the judgment is served on the losing side, the losing side is permitted a limited period of time in which to contest or demand a “retaxation” of the claimed costs and disbursements.

Any party that is dissatisfied with a cost or disbursement that is taxed, or refused taxation, by the clerk may apply to the court to review the item and decide the issue (N.Y. C.P.L.R. 8404).

3.3 Can a party be required to provide security for costs (or some other sum) in advance of costs being decided?
Yes, if a defendant successfully demands that a plaintiff provide security for costs.

Generally, a party’s right of recourse to the courts is unconditional, but, in some instances, a defendant can require the plaintiff to establish its ability to pay costs if defeated. The right to demand that a plaintiff give security for costs is governed by N.Y. C.P.L.R. Article 85. In cases in which a non-resident (non-New York) plaintiff brings a lawsuit in New York, the non-resident plaintiff may be required to provide security for costs to ensure that if it loses the case it cannot return home and leave the defendant with a costs judgment that can be enforced only in the non-resident plaintiff’s home state. In general, if ordered to provide security for costs, a plaintiff must furnish a bond in the amount of US$250 to US$500.

Miscellaneous statutes may stipulate that a plaintiff must provide security for costs in certain other, less usual situations (See Costs Section 95).

4. Costs awards

4.1 Can interim awards of costs be obtained?
No.

4.2 Can an award of costs be increased or decreased by reference to such matters as a party’s conduct of the case?
Yes.

As discussed above, sanctions of attorneys’ fees and litigation costs may be awarded against parties that act in bad faith, maliciously, or frivolously (knowing that their claims or defences lack merit).

4.3 How are costs awards enforced?
The costs of an action are included in the final judgment and are collected with the judgment at the same time and in the same manner. A money judgment or an order directing the payment of money may be enforced as prescribed in Article 52 of the Civil Practice Law and Rules.

4.4 Can a costs award be set off against a monetary judgment?
No.

4.5 Is interest payable on unpaid costs?
Yes.

Under New York law, every money judgment bears interest from the date of its entry. The statutory rate of interest is generally nine per cent per year (N.Y. C.P.L.R. 5003-5004).

5. Costs of an appeal

5.1 Are costs of an appeal treated differently?
No.

6. Funding of civil and commercial claims

6.1 Can costs be insured?
Possibly.

There does not seem to be any prohibition against insurance coverage for litigation costs. Nevertheless, given the “American Rule” holding that each party is liable to pay its own attorneys’ fees, there is no real market for this type of insurance in the United States, and “litigation risk” policies seems to be rare in the United States (except that general commercial liability, D&O, and errors and omissions policies often may contain provisions or carve outs for adverse awards of litigation costs, punitive damages, or the shifting of attorneys’ fees).

6.2 Is legal aid available?
Yes.

Legal aid for civil cases is available in the United States and is provided by a variety of public interest law firms and community legal clinics. Such entities generally will not represent clients whose incomes or resources exceed certain thresholds, and they usually handle only cases involving claims of denial or deprivation of government benefits, evictions, domestic violence, immigration, or discrimination. Charities, private donors, and the federal government are the primary sources of funding.

6.3 Is third party funding of claims available?
Yes, under certain circumstances.

Lenders can be found in the United States that will fund plaintiffs’ litigation costs and even living expenses during the pendency of a lawsuit. These kinds of arrangements are most commonly associated with personal injury lawsuits. Although the common law doctrines of champerty and maintenance are seldom applied in most jurisdictions in the United States, care should be taken when entering into any sort of third party funding arrangement to make sure that applicable laws and regulations are not violated.

Contributed by:
Lovells LLP (New York).
With respect to the shifting of attorneys’ fees between parties, most, if not all, jurisdictions in the United States apply the traditional “American Rule” holding that attorneys’ fees are not awardable to the winning party (that is, each litigant must pay its own attorneys’ fees) unless statutorily or contractually authorised. There are only certain, limited exceptions to this rule, for example, attorneys’ fees may be awarded to a party if its opponent has acted in bad faith, and awards of attorneys’ fees are quite rare. Although in most US jurisdictions (including the federal courts) prevailing parties in civil litigation are awarded “costs” as part of the judgment, such awards generally do not include attorneys’ fees and are small in amount, usually less than US$1,000, and are not meant to fully compensate the successful party for its litigation expenses.

1. Recoverability of costs

1.1 Can costs be recovered by a party to civil litigation?
Yes. Under Texas law, the successful party to a civil action may recover all “costs” incurred in the action (Tex. R. Civ. Proc. 131). Costs are defined as the fees and charges required by law to be paid to courts or some of their officers, the amount of which is fixed by statute or court rules. Thus, costs do not include attorney’s fees, which may generally not be recovered unless provided for by statute or by contract between the parties. In addition to the general principle of cost recovery under Tex. R. Civ. Proc. 131, certain statues also provide for the recovery of costs (Tex. Civ. Prac. & Rem. Code Ann. Sections 37.009, 105.002) That said, a court may, for good cause stated on the record, adjudge costs otherwise than as provided by law or by the procedural rules (Tex. R. Civ. Proc. 141).

1.2 Does the losing party usually pay the successful party’s costs?
No.

In general, the successful party to a suit is not entitled to recover lawyers’ fees but can recover all other costs incurred from its adversary, “unless otherwise provided” (Tex. R. Civ. Proc. 131), that is, by statute, equity or contract. A “successful party” is one who successfully prosecutes the action or successfully defends against it, prevailing on the main issue, even though not necessarily to the extent of the original contention.

Costs may also be awarded to a defendant prevailing in a cross-action. Furthermore, one defendant may recover against another costs incurred in defending a cross-action (16 Tex. Jur. 3d Costs (2008) – Section 9 “Costs”).

1.3 Can costs be ordered to be paid to, or by, a non-party?
No.

2. Details of recoverability of costs

2.1 On what basis are costs recoverable?
Costs are allowed as a matter of statutory law and are subject to the court’s discretion (Tex. R. Civ. Proc’s. 131 and 141). The Texas Rules of Civil Procedure (Tex. R. Civ. Proc.), Section 6, Rules 125 – 149 contain some specific provisions governing the calculation of recoverable costs, security for costs, etc.

The recoverable amount is not fixed by law in a tariff. Rather, the court has discretion to award or to deny costs to the successful party. For example, a court through its decision on the costs may sanction parties to the extent necessary to deter, alleviate, and counteract bad-faith abuse of the judicial process (Costs Section 32). Likewise, a trial court may impose sanctions for violation of the procedural rule prohibiting pleadings that are groundless and brought for purposes of harassment, (Tex. R. Civ. Proc. 13), even if the defendant has not yet pleaded such a defense (Costs Section 40).

2.2 Is the amount of recoverable costs fixed?
No.

2.3 Is the amount of recoverable costs calculated by reference to the amount in dispute?
No.

2.4 What can be recovered as “costs”?
All costs incurred, whatever they may be, are assessed against the losing party (unless, for good cause shown, they are awarded against another party). A party incurs items of cost if they are the necessary and contemplated result of the proceeding (Costs Section 47).

Lawyer – client fees
Generally not recoverable.

The term “costs” does not ordinarily include attorney fees. Thus, attorney fees incurred by a party to litigation are not recoverable against an adversary unless provided by statute or by contract between parties, except by way of punitive damages (Costs Section 59).

Under Texas case law, attorney fees are not recoverable in a negligence action, a suit in trespass to try title, or a breach of fiduciary duty claim.
Attorney fees may not be assessed against a person not a party to the lawsuit in which the fees were incurred and who had no advance knowledge of that suit, and where there is no evidence that the assessed person’s conduct caused the damages.

Nor should attorney fees be assessed against a prevailing party who did not initiate or benefit from the proceedings and did nothing to increase the cost (Costs Section 59).

Disbursements (including, but not limited to, photocopying, expert witness, travel, translation, notarial, witness attendance etc.) Yes: Photocopying only if required by law (Tex. R. Civ. Proc. 140); fees of witnesses (US$10 per day of court attendance, but no reimbursement of travel costs); costs of experts are merely incidental expenses in preparation for trial and are not recoverable (Costs Section 51); on the other hand, the fees of surveyors appointed by the court are recoverable.

Other expenses Yes: Within the discretion of the court (Tex. R. Civ. Proc. 141).

### 3. Particular costs issues

#### 3.1 Can a party agree with its own lawyer, a special costs arrangement?

Yes.

Generally, written contingent fee agreements are valid and enforceable, unless induced by fraud, the fees are so excessive so as to be unconscionable, or prohibited by public policy (for example, the prohibition against contingent fee agreements in divorce and child custody cases).

#### 3.2 Which tribunal resolves costs disputes and how?

The clerk of the district or county court or the justice of the peace must tax the costs in every case in which a final judgment has been rendered (Tex. R. Civ. Proc. 622), normally before execution is issued. An error by the clerk in taxing costs may be corrected by the court on a motion filed for that purpose (Costs Section 104). The motion must be filed in the court where the item of costs accrued, by the party against whom the costs are taxed (Costs Section 106). The motion to retax may be filed at any time, provided it is reasonable, before a judgment on an appeal becomes final (Costs Section 107). A court of appeals may not relax the costs incurred in the trial court (Costs Section 106).

#### 3.3 Can a party be required to provide security for costs (or some other sum) in advance of costs being decided?

Yes.

A party seeking affirmative relief may be required to give security for costs at any time before final judgment, on motion of any party or officer of the court interested in the costs, or by the court on its own motion (Tex. R. Civ. Proc. 143). The Clerk will require from the plaintiff security for costs before issuing any process, except where the proceeding is in forma pauperis (Tex. R. Civ. Proc. 142).
4. Costs awards

4.1 Can interim awards of costs be obtained?
No.

4.2 Can an award of costs be increased or decreased by reference to such matters as a party’s conduct of the case?
Yes.

As discussed above, sanctions of attorneys’ fees and litigation costs may be awarded against parties that act in bad faith, maliciously, or frivolously (knowing that their claims or defences lack merit).

4.3 How are costs awards enforced?
After the items have been properly taxed by the clerk and entered in the bill of costs, at any time before the issuance of execution, the amount taxed stands as a judgment against the party liable for the costs.

When costs have been adjudged against a party and are not paid, the Clerk or Justice of the Court in which the suit was determined may issue execution, accompanied by an itemised bill of costs, against the party liable, to be levied and collected against persons, property (Tex. R. Civ. Procs. 129, 130 and 149) or sureties, insofar the judgment expressly recites the liability of the sureties (Costs Section 113-116).

4.4 Can a costs award be set off against a monetary judgment?
No.

4.5 Is interest payable on unpaid costs?
Yes.

Under Texas law, every money judgment bears post judgment interest (Tex. Fin. Ann. Code Section 301.002(a) 48 Tex. Jur. Judgments Section 597). Generally, post judgment interest on a money judgment accrues during the period beginning when the judgment is rendered and ending when the judgment is satisfied (48 Tex. Jur. Judgments Section 598).

A money judgment of a court in the state of Texas must specify the post judgment interest rate applicable to that judgment, as published in the Texas Register by the Secretary of State (Tex. Fin. Ann. Code Section 304.001, Section 304.004, 48 Tex. Jur. Judgments Section 598).

5. Costs of an appeal

5.1 Are costs of an appeal treated differently?
No, the general rules of recovery are the same (Tex. R. Civ. Procs. 131 and 141). However, there is one special additional provision, Tex. R. Civ. Proc. 139.

Under Tex. R. Civ. Proc. 139, the costs of the lower court and the Appellate Court may be split between the parties if the decision of the Appellate Court differs from that of the lower court.

6. Funding of civil and commercial claims

6.1 Can costs be insured?
Possibly.

There does not seem to be any prohibition against insurance coverage for litigation costs. Nevertheless, given the “American Rule” holding that each party is liable to pay its own attorneys’ fees, there is no real market for this type of insurance in the United States, and “litigation risk” policies seems to be rare in the United States (except that general commercial liability, D&O, and errors and omissions policies often may contain provisions or carve outs for adverse awards of litigation costs, punitive damages, or the shifting of attorneys’ fees).

6.2 Is legal aid available?
Yes.

Legal aid for civil cases is available in the United States and is provided by a variety of public interest law firms and community legal clinics. Such entities generally will not represent clients whose incomes or resources exceed certain thresholds, and they usually handle only cases involving claims of denial or deprivation of government benefits, evictions, domestic violence, immigration, or discrimination. Charities, private donors, and the federal government are the primary sources of funding.

6.3 Is third party funding of claims available?
Yes, under certain circumstances.

Lenders can be found in the United States that will fund plaintiffs’ litigation costs and even living expenses during the pendency of a lawsuit. These kinds of arrangements are most commonly associated with personal injury lawsuits. Although the common law doctrines of champerty and maintenance are seldom applied in most jurisdictions in the United States, care should be taken when entering into any sort of third party funding arrangement to make sure that applicable laws and regulations are not violated.

Contributed by:
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1 Texas Rules of Civil Procedure (Tex. R. Civ. Proc.)
Vietnam

1. **Recoverability of costs**

1.1 **Can costs be recovered by a party to civil litigation?**
Yes.

1.2 **Does the losing party usually pay the successful party’s costs?**
No, except for limited disbursements.

A claimant who has deposited the court fee with the court is entitled to a refund of all or part of the amount deposited to the extent the court accepts the claims averred in the complaint. The refund is made by the civil enforcement authority.

If a claimant requests that the court arrange an examination of any evidence to determine its authenticity or an evaluation of property to determine its value, the claimant must pay the expenses associated with such examination/evaluation. If the examination/evaluation establishes that the claimant’s request was well-grounded, the court may decide who is responsible for paying the examination/evaluation expenses and, if it is the defendant, the claimant can recover such expenses from the defendant.

If the claimant requests the court to summon a witness to testify and if the testimony of the witness is truthful and supports the claimant’s claim, the claimant, to the extent they have paid the expenses of such testimony in advance, can in some cases recover all or part of these costs from another party in the litigation, including a party who has asserted a claim independent of the claimant’s claim if the court decides that the responsibility for these costs should be so allocated.

In lawsuits alleging infringement of intellectual property rights, the claimant (as the owner of the intellectual property rights in question) may request the court to issue judgment compelling the infringing party to pay the claimant’s reasonable costs of engaging a lawyer.

A defendant who has asserted a counterclaim against the claimant and deposited the court fee with the court in respect of his counterclaim is entitled to a refund of all or part of the amount deposited to the court to the extent the courts accepts the claims averred in the counterclaim(s).

The refund is made by the civil enforcement authority.

If a party has related rights and/or obligations in the lawsuit (“related party”) and such related party asserts an independent claim in connection with which he deposits the court fee with the court, they are entitled to a refund of all or part of the amount deposited to the extent the court accepts their independent claim(s). The refund is made by the civil enforcement authority.

If the related party requests that the court order the testimony of a witness, or the related party engages a lawyer to defend himself in intellectual property litigation, the same rules as described above will apply.

1.3 **Can costs be ordered to be paid to, or by, a non-party?**
No.

2. **Details of recoverability of costs**

2.1 **On what basis are costs recoverable?**

The court fee is determined in accordance with a prescribed tariff and based on the amount in dispute. The court that presides over the dispute also decides the court fee amount each party (that is, the claimant, defendant, related parties) must pay or can recover to the extent his/her respective claim(s) are not accepted/accepted by the court. (See tariff schedule in the Ordinance on Court Fees and Expenses).

As for other costs mentioned at question 2.4 below, to the extent such costs are recoverable, there are no specific guidelines for calculation. In practice, they are not based on a prescribed tariff or on the amount in dispute (witness costs are based on the actual expenses incurred; costs for examination/evaluation are based on the amounts charged by the service provider in question). In intellectual property cases where lawyer fees are recoverable by the prevailing party, such lawyer fees are based on the lawyer-client agreement, as long as it is deemed reasonable by the court, otherwise, the court may decide in its discretion. These costs will also be determined by the court presiding over the dispute.

2.2 **Is the amount of recoverable costs fixed?**
No. Vietnamese laws do not fix any recoverable costs.

2.3 **Is the amount of recoverable costs calculated by reference to the amount in dispute?**
Yes (as to court fee).

The court fee is determined in accordance with a prescribed tariff and is based on the amount in dispute. Therefore, the recoverable court fee will also be decided by the court with reference to the amount in dispute. See the tariff under Ordinance on Court Fees and Expenses.

2.4 **What can be recovered as “costs”?**

See Chapter IX of the Civil Proceedings Code.

<table>
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<tr>
<th>Lawyer – client fees</th>
<th>No (except for lawsuits involving infringement of intellectual property rights).</th>
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</table>

**Vietnam**
Additional lawyer fees (for example, counsel fees or trial advocate fees) | No.
---|---
Agency fees (for example, London agents, local agents, appellate lawyer, bailiff/process-server) | Fees for an appellate lawyer are not recoverable (except for lawsuits regarding infringement of intellectual property rights). Other agency fees are also not recoverable.
Court fees | Yes.
Disbursements (including, but not limited to, photocopying, expert witness, travel, translation, notarial, witness attendance etc.) | Yes (witness attendance, valuation, examination, expert witnesses). No (photocopying, travel, notarial or translation).
Other expenses | Vietnamese laws are silent as to any other expenses.

3. Particular costs issues

3.1 Can a party agree with its own lawyer, a special costs arrangement?

Yes.

In Vietnam, payment for legal services can be based on:

- hourly charge; or
- flat or package fees; or
- percentage of the value of a case or of a contract or a project; or
- retainer fee for long term contract.

Vietnamese laws are silent as to any other special fee/costs arrangements between a lawyer and his client. This means that special fee/costs arrangement between a lawyer and his client (for example, contingent deals, conditional deals, “no win, no fee” deals) are not specifically prohibited. Therefore, in theory, any such arrangement should be accepted provided it is not contrary to Vietnamese laws and social ethics (including ethical rules for lawyers) based on the principle of free and voluntary undertaking and agreement, and the principle of bearing civil liability. However, such a special arrangement must not involve any promise by the lawyer about the successful possibility/outcome of the case in order to attract the client or increase the lawyer’s fee.

3.2 Which tribunal resolves costs disputes and how?

Before judgment in the case, the recoverable costs (as mentioned in question 2.4) relevant to the dispute will be paid/deposited in accordance with the notice of the court. Any objection to such notice (except for the court fee) can be submitted within 15 days from the receipt of the notice. The Chief Justice of the same court is obliged to resolve the objection within 15 days. If the complainant disagrees with the resolution, he/she can lodge a further objection with the next highest court which is obliged to finally rule on the objection within 15 days of the court’s receipt of the objection. However, if a notice of expense is decided by the Chief Justice of the court, then the protest must be submitted to the next highest court which is obliged to rule on the objection within 15 days from the date it received the objection.

An objection to a notice of court fee deposit follows a different rule, that is, the objection must be submitted within three working days from receipt of the notice and the Chief Justice of the court must make a final resolution of the objection within three working days of receipt thereof.

If the costs issue has been decided by the court together with the dispute itself in the same judgment/decision, the objection to the cost award follows common appellate procedure.

3.3 Can a party be required to provide security for costs (or some other sum) in advance of costs being decided?

Yes.

A party to a civil dispute must pay a court fee deposit for his/her respective claim. A party who requests examination must pay an advance deposit to cover the expenses of that examination. The party who requests a valuation must pay an advance deposit to cover the expenses of that valuation.

There is no procedure for one litigant to request the court to require another litigant to post a bond or guarantee to secure payment of any costs that might be awarded in connection with the litigation. However, a litigant may petition the court to provisionally (i) order the freezing of the the bank account(s) of the potential obligor or (ii) order attachment of the property of the potential obligor. The bank accounts or property of the potential obligor will be frozen or attached only to the extent necessary to cover the obligation of the potential obligor. Moreover, the party seeking such provisional relief will himself/herself/itself be required to deposit a sum of money or other property equivalent in value to the amount of the potential obligation that the petitioning party wants secured, which money or property must be deposited into an escrow account at a bank in the same locality as the court. The court will decide whether to order such provisional relief within three days after the receipt of the petition and the payment of the deposit.

The party who petitions the court for such provisional relief is responsible for the merits of the petition. If the request is improper and causes damage to the other party or to a third person, the petitioner must pay compensation to the damaged party.
4. Costs awards

4.1 Can interim awards of costs be obtained?

No.

Vietnamese laws are silent on the issue of interim awards of costs. However, in consideration of the recoverable costs as mentioned in question 2.4 above, the allocation of costs depends on how much of the claim of the relevant party is accepted by the court and/or how much the result of the examination/valuation and/or the witness’ testimony can justify the claim. All of these can only be decided after a hearing and deliberation of the Council of Adjudicators. So, in practice, interim decisions of courts regarding costs incidental to the case seem impossible.

4.2 Can an award of costs be increased or decreased by reference to such matters as a party’s conduct of the case?

No.

In principle, an award of costs can only be modified pursuant to appellate procedure. Within 15 days from the date the judgment is pronounced by the court of first instance, the dissatisfied party is entitled to lodge an appeal against the judgment to the higher court. An award of costs can thereby be increased or decreased with reference to the judgment of the Appellate Court.

4.3 How are costs awards enforced?

Where costs awards are not paid voluntarily, they can be enforced by the civil enforcement agency pursuant to a petition of the judgment creditor.

4.4 Can a costs award be set off against a monetary judgment?

Where parties have mutual monetary payment obligations, when both obligations fall due, the parties are not required to perform their obligations to each other, and the obligations shall be deemed to have terminated, unless otherwise provided by law. If the value of the parties’ respective obligations are not equivalent, the parties may offset their respective obligations and settle with each other based on the difference. Objects having monetary value may be used to offset an obligation to pay money.

A civil obligation may not be offset in the following cases:

- the civil obligation is in dispute
- the obligation is to compensate for harm to life, health, dignity, honour or reputation
- the obligation is to support others
- as otherwise provided by law.

4.5 Is interest payable on unpaid costs?

Yes.

If payment of money by the obligor is late, the obligor must pay interest on the late amount during postponement of execution of civil judgment only upon receipt of the successful party’s written consent.

5. Costs of an appeal

5.1 Are costs of an appeal treated differently?

Yes (as to court fee); no (as to other expenses).

If an appeal is successful or leads to the first instance judgment/decision being set aside, no costs of the proceedings giving rise to the appeal will be imposed on the parties. In addition, the costs for the first instance hearings allocated to the relevant parties must be adjusted in accordance with the appellate result or redetermined upon retrial of the case.

The appellant must bear the costs of appeal if they fail entirely. In such cases, the appellate court fee is VND 200,000 (approximately US$11).

6. Funding of civil and commercial claims

6.1 Can costs be insured?

Yes.

Legal expenses insurance may be categorised as civil liability insurance. It usually takes the form of a subsidiary add-on to other insurance or services. Note, however, that legal expenses insurance may take the form of a stand-alone policy or form a substantial part of an insurance policy.

6.2 Is legal aid available?

Yes.

A Legal Aid Fund with a non-profit purpose has been set up by the Government. The Fund is aimed at facilitating legal aid activities generated by provincial legal aid centres and law firms/offices registered for legal aid activities.

However, legal aid is only made available to a limited range of applicants, including:

- the poor
- senior citizens living alone, disabled persons, and shelterless children
- persons having contributed to the revolution
- ethnic minority people living in areas with specially difficult socio-economic conditions.

In addition, the cases subject to legal aid must be non-business in nature.

The applicants will be provided with the following services free of charge: legal advice, off-litigation representative, litigation, mediation etc.
An “off-litigation representative” refers to legal representation outside of formal litigation, such as negotiations to resolve a dispute before a formal lawsuit has been commenced.

Note that the Legal Aid Fund does not cover court fees. However, almost all applicants who qualify for legal aid are also exempt from paying court fees.

**6.3 Is third party funding of claims available?**

No. Vietnamese law is silent on third party funding activities and there have not been any restrictions/prohibitions on such activities. In theory, funding of claims is subject to agreement between the relevant parties and such agreement should be valid.

In practice, certain law firms have been funding claims for their clients in exchange for success fees.

As the legal system of Vietnam is still developing, it remains uncertain whether applicants would be issued licenses to engage in the business of funding the prosecution of claims.

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