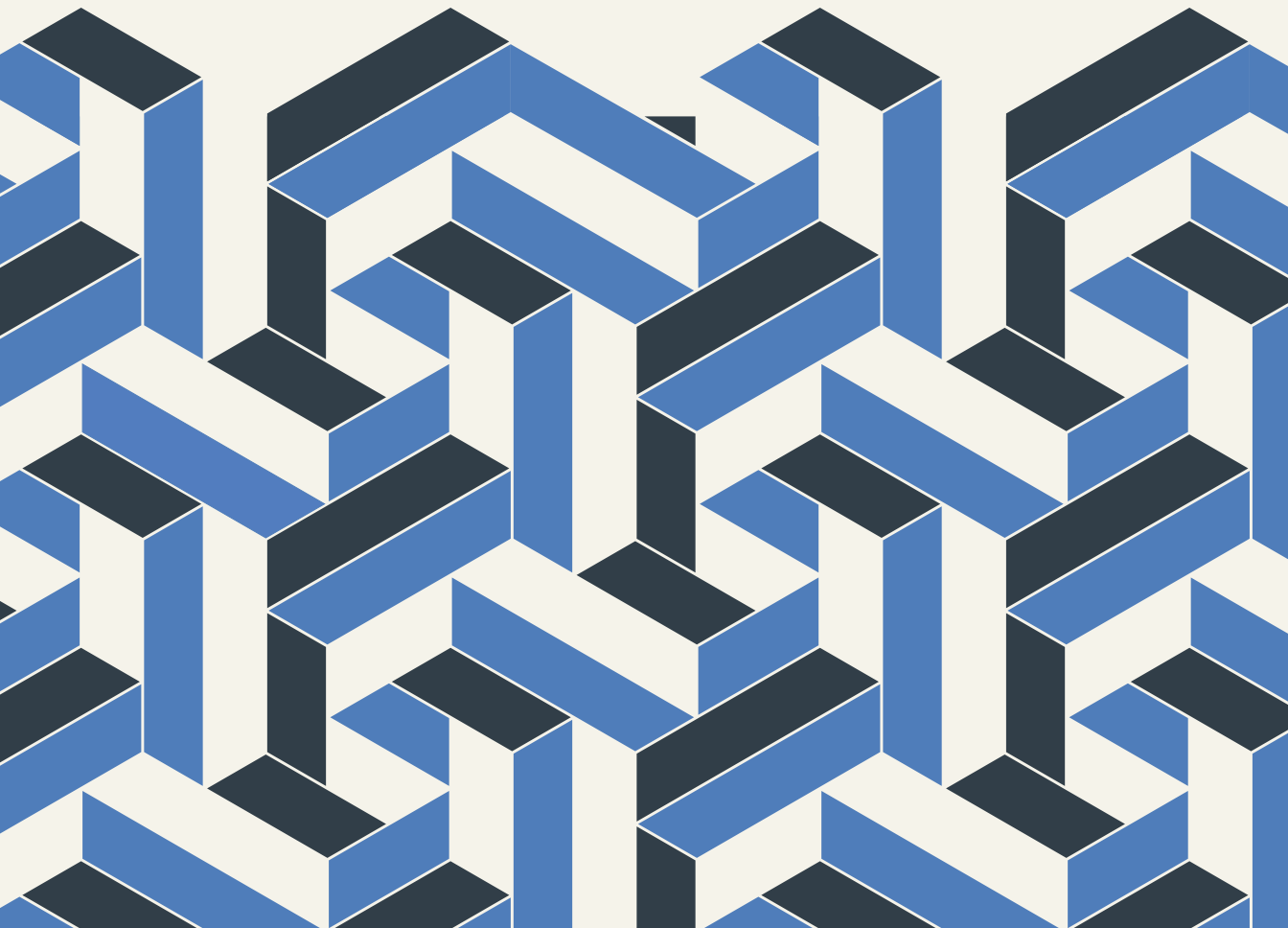


Burford

Introduction to Portfolio Finance

*An overview of capital facilities backing
multiple commercial disputes*



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Burford is the leading global finance and asset management firm focused on law. Its businesses include litigation finance and risk management, asset recovery and a wide range of legal finance and advisory activities. Burford is publicly traded on the New York Stock Exchange (NYSE: BUR) and the London Stock Exchange (LSE: BUR), and it works with companies and law firms around the world from its principal offices in New York, London, Chicago, Washington, Singapore, Sydney, Hong Kong and Dubai. For more information, please visit burfordcapital.com.

In 2010, recognizing the benefit to clients of financing multiple matters in one arrangement, Burford funded its first legal finance portfolio deal. This first portfolio arrangement for Burford was also a first for the legal finance industry.

In the decade since that first portfolio, Burford has financed almost 100 portfolios and has rightly earned a reputation for being uniquely adept at portfolio-based financing. Burford's reputation reflects not only the scale necessary to finance portfolios but also the sophistication and expertise needed to craft terms and structures that meet evolving client needs.

As more law firms are seeking to understand the benefits of portfolio finance to their organizations, we have collected some of our introductory materials on portfolio finance in the pages that follow. You can find more articles, case studies and other materials on Burford's website—and we stand ready to help.

Law firm portfolio finance 101

KEY CONCEPTS

“Portfolio finance gathers multiple litigation or arbitration matters in a single funding vehicle.”

While single-case financing remains the manner in which most lawyers first experience legal finance, portfolio finance is an area of growing interest and opportunity for law firms.

Yet despite clear demand for portfolio finance, many law firm lawyers are still unfamiliar with what it is, how it works and why they should be using it.

| What is portfolio finance?

Think of a portfolio as a capital facility backed by legal assets. Portfolio finance gathers multiple litigation or arbitration matters in a single funding vehicle. Capital can be used to fund legal costs associated with the underlying matters or for operating capital for the firm. The matters within the portfolio can be unrelated—indeed it is better if they are.

Capital is typically provided on a non-recourse basis, meaning that Burford assumes downside risk and earns its investment back and a return only in the event of the successful resolution of the disputes.

| How does portfolio finance work?

Portfolios are structured to meet the capital needs and risk tolerance of an organization and can be built around an identified pool of matters or on a going-forward basis. There are three typical structures:

- **Monetization portfolio:** Monetization portfolios are suited to law firms that are seeking substantial upfront capital to be used either to pay legal fees and expenses or for other operating purposes, and that have substantial existing books of litigation at a variety of stages in the litigation process, with additional cases of varying sizes and profiles. The portfolio is built around several “anchor cases” that are particularly large or that are close to maturation.
- **Risk-share portfolio:** Risk-share portfolios are suited to law firms that want to invest in new business or expand their portfolios of at-risk matters. The portfolio typically consists of at least four or five large cases which can either be all identified at the outset or added on a going-forward basis, with capital being used to pay a portion of fees or expenses as they are incurred.
- **Expenses-only portfolio:** Expenses-only portfolios address the financial burden that paying case expenses out of pocket can place on law firms that take on high-stakes commercial litigation on a contingency basis. Although many firms are willing to take the risk on fees, they may want to hedge on the out-of-pocket expenses, which can account for 25% of case costs and do not generate a return. Portfolio finance alleviates the burden of expenses increasing dramatically over the duration of the case, helping law firms manage risk and cash flow.

| Why use portfolio finance?

ACCESS FLEXIBLE CAPITAL AT A LOWER COST OF CAPITAL

Portfolio finance gives law firms access to capital that can be used to finance matters within the portfolio or for broader business purposes—flexibility that would be unusual in single-case financing. In addition, because risk is diversified across multiple claims, a portfolio arrangement may deliver a lower cost of capital.

MANAGE RISK EXPOSURE

Portfolio finance enables law firms to invest resources in building out a practice or to increase the proportion of at-risk or contingency matters while also managing risk exposure by paying a portion of fees or expenses as they are incurred, in a similar manner to traditional legal finance.

HOW HAS PORTFOLIO FINANCE EVOLVED?

Burford pioneered portfolio finance in 2010. Given steadily mounting budget pressure and an uncertain economic climate, law firms that want to manage cost and risk have embraced portfolio finance, and in the years since Burford’s first portfolio, it has grown to become a significant portion of Burford’s investment portfolio. Portfolio matters accounted for 68% of Burford’s \$4.2 billion portfolio as of December 31, 2019.

Single case financing vs. portfolio financing

COMPARING FUNDING OPTIONS

How does portfolio finance differ from single case finance? Portfolio finance gathers multiple matters into a single capital facility.

	SINGLE CASE - FEES & EXPENSES	SINGLE CASE - MONETIZATION	PORTFOLIO FINANCE
DEFINITION	Burford provides capital to pay legal fees and expenses at any stage of litigation or arbitration	Burford advances capital tied to a pending litigation or arbitration claim	Burford creates capital facility backed by multiple commercial disputes
TYPICAL TERMS	<ul style="list-style-type: none"> • Non-recourse • Client retains control of funded litigation • Capital is used to pay case-related fees and expenses as they are incurred 	<ul style="list-style-type: none"> • Non-recourse • Client retains control of ongoing litigation • Capital is advanced upon deal close 	<ul style="list-style-type: none"> • Non-recourse • Client retains control of all matters in the portfolio
KEY BENEFITS	<ul style="list-style-type: none"> • Create a “hybrid contingency” for firms under pressure for alternative or reduced fees • De-risk pending high-value claims 	<ul style="list-style-type: none"> • Provide immediate liquidity • Unlock value of legal asset according to preferred timing • De-risk pending high-value claims 	<ul style="list-style-type: none"> • Create significant capital facility • Provide more flexible and lower-cost capital than single-case finance • Equip firms to pitch and win new business or expand risk-sharing



How portfolio finance works

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Matt Lee is a Principal at Burford with responsibility for leading its business in Australia. An Australian and US-qualified lawyer with trial, arbitration and appellate experience around the world, he works with companies, funds, investors and law firms engaged in complex commercial litigation and arbitration in Australia and in multi-jurisdictional disputes.

The legal finance industry began as a claimant-focused financing solution in David-versus-Goliath-style litigation scenarios. For the past decade, however, Burford Capital has been at the forefront of the maturation of the industry, having expanded offerings to include innovative financing arrangements for law firms to solve challenges such as managing risk, smoothing cash flow and easing year-end partnership draws. One of the most versatile offerings for law firms is portfolio finance

Given the downturn, portfolio finance is a key tool for law firms

With the steep downturn in the global economy, law firms will face more pressure to do more for less with their existing clients and will also need to be ready to compete to win new business in highly relevant practices like litigation and bankruptcy. Portfolio finance is a key tool for law firms in this new normal, giving firms the flexibility to offer their current clients creative pricing solutions and the capital to invest in profitable growth opportunities. Still, many lawyers remain unfamiliar with how portfolio finance can benefit their firms. Below, we define portfolio finance and describe how law firms in the US and Australia put it to use.

Demystifying portfolio finance

Portfolio finance is simply this: The provision of capital tied to a pool of existing or future cases. Unlike with single-case finance, where a finance provider works with a client to pay part or all of the related fees and expenses related to a single matter, under a portfolio agreement, the law firm gains access to

capital directly from the finance provider—allowing the firm to continue to get paid partially by the hour, but still maintain upside. Capital typically is provided on a non-recourse basis, meaning the financier assumes the downside risk and earns back its investment and a return only in the event of a successful resolution.

When building a portfolio, the law firm and finance provider agree on a set of parameters (e.g., matters relating to a practice area, cases of a certain size, matters coming from a specific office) and the firm brings all cases matching those conditions to the finance provider for potential inclusion in the portfolio. Portfolios typically include a mix of higher-and lower-risk matters and those across practice areas. Because portfolios are cross-collateralized—where each case serves as collateral for the others in the portfolio—the risk to the finance provider is lower than financing a single case. As a result, the cost of capital is likewise generally lower than when capital is provided on a single-case basis.

Portfolio finance gives law firms access to capital to grow—without taking on additional risk.

| Why law firms use portfolio finance

Lawyers at boutiques and Global 100 law firms alike use portfolio finance for a variety of purposes beyond simply paying for legal fees and expenses:

Financing operating costs.

Portfolio finance functions like any other corporate capital source and may be used to fund law firm activity unrelated to the underlying matters in the portfolio, adding certainty in uncertain times.

Developing new business.

More than half of lawyers (52.8%) cite competition as a significant business challenge. This is particularly poignant during times of economic uncertainty, when clients are looking to their firms to do more with less. Portfolios enable lawyers to approach new and existing clients with attractive fee arrangements, without having to individually negotiate the terms of each matter.

Preparing partners for success.

Legal finance can arm emerging partners with tools to give them a competitive edge even in a downturn and gain the internal approval needed to pursue strong cases.

Transitioning billing models.

Whether a firm wishes to actively pursue more matters on a contingent basis or simply needs to accommodate individual clients' desired fee structures, portfolio arrangements enable the firm to transition to new billing structures without increasing the firm's risk exposure.

Managing partner compensation.

Legal finance helps firms manage the perennial challenge of compensating partners who work on multi-year contingency matters without a "robbing Peter to pay Paul" impact on other firm partners.

“

Law firms increasingly recognize that the best way to increase profit is to find new ways of generating revenue, rather than cutting costs.

”

| How portfolios work

Because there is no one-size-fits-all approach to portfolio finance, there are a number of factors law firms should consider when working with a finance provider.

PORTFOLIOS CAN BE STRUCTURED TO MEET FIRM NEEDS

Capital provided under a portfolio arrangement can be used flexibly and need not be reserved solely for paying lawyers' fees or for the immediate costs and expenses of the underlying disputes. If the law firm needs an immediate influx of capital or seeks to smooth out revenue, Burford can structure solutions accordingly.

MATTERS MAY BE RELATED OR UNRELATED

A diverse portfolio of unrelated and uncorrelated matters presents the lowest risk and is generally preferred, but Burford considers portfolios of similar cases as well.

MATTERS MAY BE SELECTED IN THE FUTURE

Portfolios can either be built around a group of existing cases or in anticipation of future cases to be added over time. In the latter instance, Burford partners with a law firm with a proven track record of success to commit capital at closing towards future new matters, which the firm will vet and put forward for financing. Burford and the law firm negotiate terms in advance and agree on the criteria for the types of cases the firm will propose for inclusion in the portfolio.

PORTFOLIO ARRANGEMENTS CAN RELATE TO A SINGLE DEPARTMENT OR PRACTICE AREA

While portfolios can span entire firms, they can also be tailored to apply only to a particular department or practice area that requires capital for growth. For instance, a portfolio may be tied to a firm's international arbitration practice, where even cash-rich clients increasingly expect firms to share risk.



| Regional focus

LAW FIRM PORTFOLIOS IN THE US

In the US, firms that take matters on contingency and firms that bill on an hourly basis use and benefit from portfolio finance differently.

Contingency fee firms typically use portfolio finance to increase the number of matters they are able to take on by removing the downside of taking new cases on risk—thereby increasing revenue without increasing risk proportionally.

Law firms increasingly recognize that the best way to increase profit is to find new ways of generating revenue, rather than cutting costs. To that end, hourly fee firms often use portfolio finance to expand plaintiff practices without adding risk to the firm. In fact, it is becoming increasingly rare to find a Big Law firm that doesn't have some form of plaintiff-side offering, as even the most traditional defense firms understand the need to diversify their offerings and be ahead of the curve if they want to compete.

LAW FIRM PORTFOLIOS IN ENGLAND

In England, law firms may use portfolio arrangements to expand their ability to offer client-friendly risk-sharing terms. In 2017, Burford created the first such law firm portfolio arrangement for a leading UK law firm.

Such portfolio financing arrangements provide flexible capital that firms may use to expand their ability to offer alternative fee arrangements to clients and to grow their reach in lucrative commercial litigation and arbitration practice areas. They enable law firms to manage cash flow better, reduce risk exposure and provide a competitive advantage in attracting new business.

LAW FIRM PORTFOLIOS IN AUSTRALIA

In Australia the concept of portfolio finance is still in its infancy. Historically, law firms have been unable to charge damages-based contingency fees and thus they simply have not required solutions to remove contingent risk.

With Burford's entry into Australia, however, the portfolio finance concept has already begun to gain traction, and we have worked with law firms there to explore applications of this concept in the class action context. As legal finance becomes increasingly common among Australian firms working on high-stakes commercial matters, we expect to continue to lead the evolution of portfolio-based legal finance in the region.

In the near term, we expect further demand for portfolio financing on the back of proposed legislation in the state of Victoria, which seeks to permit law firms to charge damages-based contingency fees instead of hourly fees in class actions. Many Australian firms will see this as an opportunity to undertake more plaintiff-side cases and will naturally look to legal finance as a way to mitigate the inherent risks associated with taking on such cases.

| Conclusion

Portfolio finance is on the rise both in old and new markets and will continue to become key to the international growth of the legal finance industry. Burford's depth of experience, particularly working with law firms in the US, ideally situates us to work with Australian law firms to explore a variety of options for law firm portfolio funding. To that end, we will be a key partner in the growth plans of a number of high-profile Australian law firms who are looking to do more plaintiff-side work.

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Portfolio finance gives law firms access to capital to grow—without taking on additional risk.

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Sharing risk and generating revenue: Portfolio finance in a downturn

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Alyx Pattison is Vice President with responsibility for originating new business with law firms and companies in the US. She was a partner in the litigation departments of Akerman and Katten, where she focused on defense of publicly traded companies in securities class actions, M&A litigation and shareholder derivative suits.

As the world experiences a potentially drawn out economic downturn, law firms and their clients will face increased pressure to do more with less. Ahead of this downturn, according to the 2019 Managing Legal Risk report, 67% of CFOs and finance professionals said they would advocate for the reduction of legal budgets if the economy entered a recession.

With that downturn now assured, and with legal departments now facing difficult decisions on legal spend and resource allocation, they will look to their external counsel to be proactive in offering innovative solutions.

In the last recession, despite ample grounds for affirmative litigation by businesses that had been harmed, dispute activity was limited as potential litigants shied away from heading to court due to the inherent and significant cost of litigation. This lag in activity had a knock-on effect in the legal sector, and many law firms resorted to downsizing or scaling back their litigation teams. However, when the litigation boom eventually materialized and clients needed help, those cuts left law firms less prepared to serve clients and generate revenue at a time when clients were seeking ever more creative solutions to their own business pressures.

There are lessons to be learned from the last recession. Among them, law firms should now be looking for alternative ways of managing costs, cash flow and revenue generation to better align their clients' needs and their own business imperatives. Legal finance offers solutions, both to clients and the law firms that serve them.

More firms will share more risk with clients

With client facing increased capital constraints, law firms are increasingly being asked to share risk through alternative fee or contingency arrangements. In-house legal teams will look for ways to recover value for their organizations through meritorious litigation or arbitration without shelling out millions of dollars in legal fees and expenses. This corporate mindset will result in increasing pressure on firms

to recognize and respond to their clients' growing demand for risk sharing.

Indeed, it has been almost one year since Kirkland & Ellis, the largest “big law” firm in the US by revenue, made the well-publicized announcement that they would be taking on plaintiff matters and self-funding them through contingency arrangements. This announcement was a striking example of an historically hourly fee defense firm recognizing the demand in the market and adapting to meet client needs.

While Kirkland's announcement generated headlines in the legal world, it is far from an isolated example. Before the announcement, several AmLaw 100 firms had already been representing their corporate clients in affirmative recovery matters for years. For example, Covington & Burling has had a well-established insurance recovery practice representing corporate policyholders in coverage lawsuits against insurance companies for more than 30 years.

But competitor firms took note, and in the year since Kirkland's announcement Burford has received a significant increase in interest from “traditional” firms that want to take on more plaintiff side matters. It's entirely understandable why: Firms see expanded opportunity in being the go-to firm for corporate clients, no matter what side of the “v” their clients are on. Clients value working with firms that know their business well, and as the downturn becomes our new economic reality, and government-injected liquidity abates, even traditionally defense-side firms will want to expand as much as possible the most profitable work they can do with clients—which must include plaintiff side work.

We already see an uptick in firms following Kirkland's example, and legal finance is an important tool for firms that make this move. When law firms take on risk in order to expand their client base, they face the problem of managing their capital flows as they incur the significant costs of lawyer hours and litigation expenses while waiting for positive litigation outcomes. This challenge is an acute one for law firms, which operate on a cash-in, cash-out basis, with limited retained capital. A legal financier such as Burford can partner with the law firm on the risk and provide portfolio-based facilities on a non-recourse basis. Portfolio finance provides law firms the working capital and liquidity to seek out and land meritorious plaintiff-side work on contingency, maintaining upside potential without assuming all the downside risk should the cases eventually lose at trial.

Legal finance solves the partner compensation problem

One challenge that firms face as they take on more work on risk—and a problem that legal finance solves—is the partner compensation problem.

The hourly fee law firm compensation model is typically based on how much revenue a partner brings into the firm. Hourly fee law firms that have cases on contingency, often find it challenging to compensate lawyers for their work when it isn't generating real-time revenue.

While contingency cases present the opportunity for huge upside upon the successful resolution of case, they present a big risk of expense and cash loss to the firm if the case loses. In good years there may be enough revenue and cash from billable hour work to cover for those working on contingency. However, in a downturn when

transactional and other work slows, the number of hours billed decreases and the likelihood of clients paying late increases, pinching both revenue and cash flow. The cash based partnership model means that many law firms face challenges paying lawyers who are not currently generating revenue, even though in a couple of years their work may produce a windfall for the firm—and to do so without reducing profits paid to other partners still working on an hourly basis.

Portfolio finance provides law firms with an effective way to manage compensation for partners working on contingency by paying a portion of attorneys' hourly rates on contingency matters in real-time and as billed thus creating a pool of capital from which to pay partners now. Using legal finance, law firms are able to generate revenue for the entire time a case in

pending but because the finance is non-recourse, if the case loses the law firm faces no downside risk.

Meet client demand for value and partnership

It is inevitable that law firms will have to adapt to better serve their clients in a capital constrained world. Legal finance equips firms to build and expand contingency practices to meet client demand, solve the partner compensation problem, weather the cost and risk of such an undertaking and reap the financial rewards upon resolution of the matters in a portfolio. By entering into a portfolio financing arrangement with a legal finance provider, law firms have access to a large pool of capital when they need it most. Doing so leaves them more strongly positioned to be the firm of choice for their clients.

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Firms see expanded opportunity in being to go-to firm for corporate clients, no matter what side of the ‘v’ their clients are on.

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Getting to “yes”: How to secure legal finance

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Emily Slater is a Managing Director with responsibility for assessing and underwriting legal risk across a broad range of practice areas and for identifying high-value investments in the marketplace. Prior to joining Burford, she was a litigator at Debevoise & Plimpton, where she specialized in complex securities and other bet-the-company litigation and regulatory investigations involving billions in damages.

It's human nature to want to start a journey knowing where you're going, how you'll get there and when you'll arrive. And this line of inquiry is typical of our initial conversations with clients and law firms about legal finance, when we are often asked:

1. What are Burford's investment criteria?
2. What do I need to do to secure financing?
3. How long will it take?

The journey to legal finance is more straightforward than it may seem to those who are new to the practice. We work hard to make that journey clear, even as we recognize that securing non-recourse financing for multi-million-dollar, high-stakes commercial litigation requires expertise and effort. But we strive to create clarity around the process because, as our experience and research confirm, its absence can frustrate clients and firms seeking external capital.

Burford is unique in conducting the entirety of our diligence and investment process in-house. Our goal is always to complete the process as efficiently as possible. And regardless of the outcome, we strive in every interaction to create an understanding on which we can build in the future. In that spirit we offer this guidance that we hope will be useful in "demystifying diligence" for both new and seasoned users of legal finance.

Confidentiality

- Because we execute a confidentiality agreement as the first step of our diligence process, our communications with lawyers and their clients generally are protected from discovery by the work product doctrine
- Out of an abundance of caution, despite the strong caselaw, we are circumspect about what we request in the diligence process to avoid any risk of waiver
- We do not request materials that are protected only by the attorney-client privilege

What are Burford's investment criteria?

The best candidates for legal finance meet the following criteria:

Type of matter: We invest in complex commercial litigation at any stage, including antitrust, securities, fraud, contract, patent and intellectual property, trade secret and other business tort matters, as well as international arbitration and asset recovery.

Strong merits: We receive returns only when cases succeed, so we will carefully assess the facts and legal merits of a claim, starting with an operative complaint or written summary.

Counsel: We value cases led by experienced legal counsel with successful track records and a strategic approach. During initial review, we confirm that counsel has been retained and has preformed an analysis of the factual background and legal issues of the case.

Jurisdiction: We invest in matters filed or expected to be filed in domestic courts in a common law jurisdiction or in an internationally recognized arbitration center.

Capital requirement: Most of our investments are between \$4 and \$10 million, and some are significantly larger.

Damages: Damages must be supported by solid evidence of loss, and large enough to support our investment and returns with the client keeping most of the litigation proceeds if the case goes well. While the ratio of investment to expected recovery varies on the case, for an investment of \$2 million, the expected compensatory damages should be around \$20 million.

What do I need to do to secure financing?

At Burford, we work hard to provide the best expertise and client experience in addition to the largest pool of available capital. Ultimately, we approach the investment diligence process as a collaboration, not a transaction.

INITIAL REVIEW

Confidentiality agreement, background documents reviewed.

ACTIVE DILIGENCE

Discussion of merits and economics, usually culminating in term sheet for matters in which we wish to invest.

INVESTMENT

Definitive documentation and execution of deal. Law firms seeking financing can aid the process in four important ways:

- **Prepare a realistic budget:** Matters in which we invest must have sufficient funding to get to the finish line. That requires a realistic, conservative budget through trial. The most frequent reason we reject good cases is that the ratio of necessary investment to expected return is too narrow. To confirm that the economics of the litigation investment are workable, we rely on our counterparties to provide clear budgets that do not assume early settlement.
- **Organize documents:** Active diligence requires our review of the key documents underlying the dispute as well as financial information about the businesses involved. We can work more efficiently when our counterparties provide documentation quickly.
- **Be responsive:** The most important way that lawyers can aid the process is to

Some of the characteristics we look for include:

- Case does not turn on a “he-said-she-said” credibility determination
- There is more than one viable legal theory that could lead to recovery
- Legal theory is tested and has good support in statutory or case law
- Case theory makes sense in the commercial context of the transaction or course of dealing

- Damages theory can be reasonably extrapolated from past performance of the damaged company or there is an established contract, statutory or royalty rate
- Investment economics do not depend of the case settling early or on obtaining treble damages

| How long will it take?

The time frame to secure legal finance depends on a variety of factors. Although we have financed cases in a matter of a few days, as a general rule, if cases are well worked up and information is provided in a timely fashion, commercial matters typically take about a month from initial case review to investment.

A variety of factors influence how long the overall process takes, including:

How Burford's diligence adds value

Law firm lawyers receive an economic analysis that includes the risk/reward of taking on the case—insights that can make the firm's practice more profitable

- **Client and firm:** Again, the responsiveness of clients and law firms in answering questions and providing documents is among the most significant factors
- **Stage:** Matters with fewer unknowns (e.g. matters on appeal) require the least time (as little as a week to 10 days); yet-to-be-filed matter require more time
- **Case type:** International arbitration and patent matters typically require more time

Is the process different for portfolio finance?

When a portfolio is in place, the diligence process for new matters can be completed extremely quickly. This greatly benefits law firms that must be responsive to urgent client needs, and helps legal teams stay aligned with the commercial imperatives of the businesses they represent.

Questions to ask when diligencing funders

- How much available capital does the financier have to invest?
- Does the fund have a defined exit period or sunset date?
- What are its sources of capital, and how reliable are those sources of capital?
- How quickly can it provide a final term sheet? (Pre-diligence term sheets are almost always revised.)
- Does it conduct its diligence in-house?

“We approach the investment diligence process as a collaboration, not a transaction.”



Portfolio finance in practice

CASE STUDIES

The following are examples of Burford success stories with law firms and companies.

| International law firm portfolio

LAW FIRM CHALLENGE

A leading law firm wanted to expand its arbitration practice, offer more compelling terms to clients and receive the additional upside, but could not take additional alternative fee risk onto its balance sheet.

BURFORD LEGAL FINANCE SOLUTION

Burford worked with the firm's head of global disputes to create a \$50 million going-forward portfolio of potential matters that would each be placed into the portfolio as new case opportunities arose.

LEGAL FINANCE IMPACT

The assurance of having financing available for future matters gave the firm a competitive advantage over other top firms offering alternative fee options and ensured the firm would not have to turn down a strong case or a new client simply because it could not absorb additional risk. As a result of this flexible portfolio arrangement, the firm was able to expand its practice and increase its opportunity to earn highly profitable success fees, while limiting its exposure to a loss of its time and out-of-pocket cash investment.

CLIENT

Global law firm

AMOUNT

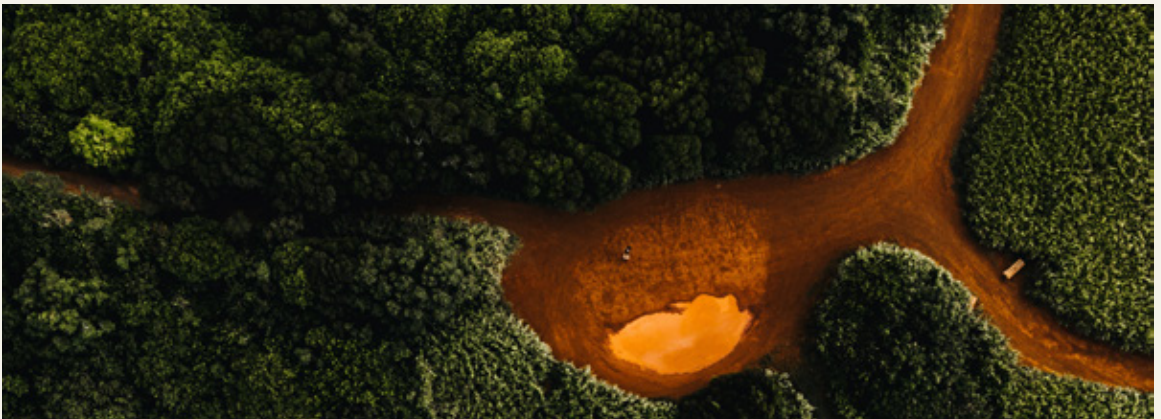
\$50 million

DISPUTE

Arbitration matters

FINANCING

Portfolio facility



Credit facility for bankruptcy estate costs

COMPANY CHALLENGE

Insolvent estates are regularly in the position of needing to secure financing to manage and maximize the value of their claims, but complex insolvencies are not always a good fit for simple case financing. Grant Thornton, a leading professional services company, needed financing across a portfolio of insolvency case in which its partners were trustees.

BURFORD LEGAL FINANCE SOLUTION

Burford developed an innovative financing arrangement with Grant Thornton to provide a £9 million facility against one insolvent estate's litigation portfolio.

LEGAL FINANCE IMPACT

The arrangement permitted Grant Thornton the flexibility to administer all of the claims by and against the estate instead of being limited to funding legal fees for claims, as is the case in standard insolvency arrangements. The portfolio design accommodated defense costs, declaratory matters and administration costs. The portfolio structure also obviated the need to deal with financing cases on a one-by-one basis and marked a shift from traditional third-party funding of legal fees to the financing of the whole estate.

CLIENT

Grant Thornton

AMOUNT

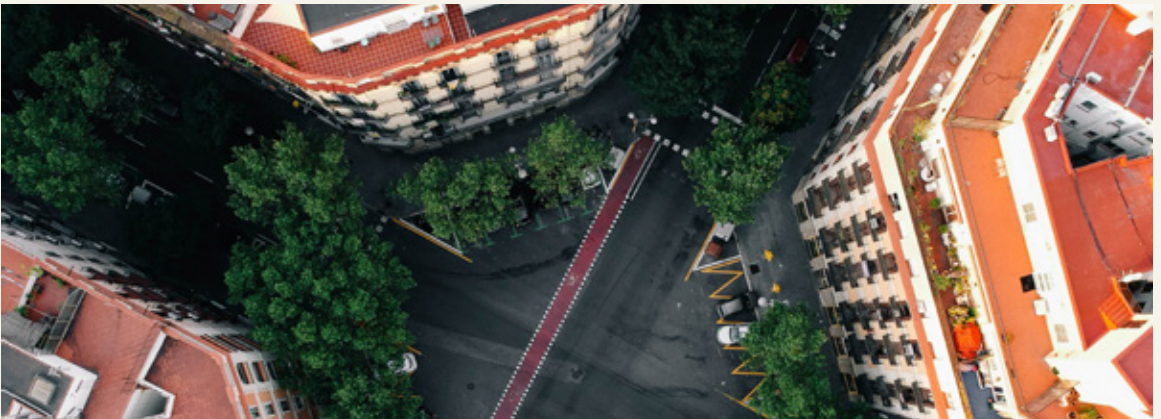
£9 million

DISPUTE

Insolvency

FINANCING

Portfolio finance



“

We wanted the entire range of matters funded, and we needed an innovative solution to the challenging situation we were presented with. It required forward-thinking and flexibility—and Burford delivered that in providing a solution that addresses the entire portfolio.

”

The economics behind portfolio finance

WORKED EXAMPLES

The following hypothetical examples address some common questions about how legal finance works in portfolio structures.



| Contingency firm seek efficiency

LAW FIRM CHALLENGE

A leading IP boutique has historically represented its clients on full contingency. But recent developments in the space have resulted in a heightened risk environment, making the firm reconsider its willingness to absorb pure contingency risk. Concerned that the firm may soon have to choose between taking on too much risk or turning down good clients, a partner requests a proposal from a third-party legal finance provider.

BURFORD LEGAL FINANCE SOLUTION

The legal financier will provide \$15 million in non-recourse portfolio financing—which is half of the expected \$30 million needed to pursue a portfolio of three IP claims with different clients, each with a total budget of \$10 million and expected proceeds in excess of \$150 million across the cases.

With the IP boutique having secured a 40% interest in the proceeds of each case in

exchange for full contingency arrangements, the legal finance provider will receive 50% of the law firm's contingent proceeds generated by the three cases.

LEGAL FINANCE IMPACT

The firm does the math and determines that financing enables the firm to mitigate 50% of its downside risk and generate \$15 million in fees as the cases are litigated, all while giving up only 25% of its proceeds if the claim is successful (\$15 million). Financing enables the boutique to fund legal fees and expenses for new IP matters, ensuring that the firm can balance its risk without sacrificing opportunities to continue growing its practice. The financing arrangement also supports new business: With less of its risk tied up in these cases, the firm can pursue new business with competitive terms and further diversify its book of cases.

Risk share portfolio: 50/50 fees & expenses

An advantage of a portfolio facility is that because risk is diversified across multiple matters, a loss in a single matter may be offset by a better outcome in another. The following demonstrates how that might work in practice in a portfolio in which Burford and a law firm share risk equally. Regardless of case outcome, firm is guaranteed Step 1: Burford's non-recourse investment.

Firm budget per case	
FEES	\$8,000,000
EXPENSES	\$2,000,000
TOTAL BUDGET	\$10,000,000
DISCOUNTED FEES (fees discounted to 75% to remove profit margin and reflect "cost")	\$6,000,000
EXPENSES (no change)	\$2,000,000
TOTAL LITIGATION COST FOR FUNDING	\$8,000,000

Risk share split	
BURFORD INVESTMENT (50% of litigation cost per case)	\$4,000,000
LAW FIRM INVESTMENT (50% of litigation cost per case)	\$4,000,000

Hypothetical assumptions	
BURFORD COMMITMENT (for portfolio of 4 ongoing litigation matters and new potential matters going forward)	Up to \$20M
CLIENT RETAINER (firm agrees to incur all fees and expenses related to each case)	Full 30% contingency

Proceeds waterfall by case

		CASE 1	CASE 2	CASE 3	CASE 4
CASE BUDGET / INVESTMENT	Case budget	\$10M	\$10M	\$10M	\$10M
	Case litigation cost <i>(fees discounted, expenses not)</i>	\$8M	\$8M	\$8M	\$8M
	Step 1: Burford investment with firm <i>(50% of litigation cost)</i>	\$4M	\$4M	\$4M	\$4M
	Step 2: Law firm investment in case <i>(50% of litigation cost)</i>	\$4M	\$4M	\$4M	\$4M
RECOVERY PROCEEDS	Case outcome	Win	Loss	Settlement	Win
	Total award recovery	\$200M	\$0	\$100M	\$50M
	Step 3: Contingency fee proceeds to law firm <i>(30% of contingency)</i>	\$60M	\$0	\$30M	\$15M
PROCEEDS WATERFALL	Step 4: Burford investment back	\$4M	\$0	\$4M	\$4M
	Step 5: Law firm investment back	\$4M	\$0	\$4M	\$4M
	Step 6: Burford loss recovery	\$0	\$0	\$4M	\$0
	Step 7: Law firm loss recovery	\$0	\$0	\$4M	\$0
	Step 8: Burford 50% of net proceeds	\$26M	\$0	\$7M	\$3.5M
	Step 9: Law firm 50% of net proceeds	\$26M	\$0	\$7M	\$3.5M
GROSS CASE RETURN	Burford total case return <i>(steps 4+6+8)</i>	\$30M	\$0	\$15M	\$7.5M
	Law firm total case return <i>(steps 1+5+7+9)</i>	\$34M	\$4M	\$19M	\$11.5M
CUMULATIVE GROSS	Burford cumulative total	\$30M	\$30M	\$45M	\$52.5M
	Law firm cumulative total	\$34M	\$38M	\$57M	\$68.5M

Regardless of case outcome, firm is guaranteed Burford's \$16 million non-recourse investment.

Risk share portfolio: 50% fees, 100% expenses

The following illustrates a portfolio in which Burford and a law firm share risk equally on fees but where Burford assumes 100% risk on expenses.

Firm budget per case	
FEES	\$8,000,000
EXPENSES	\$2,000,000
TOTAL BUDGET	\$10,000,000
DISCOUNTED FEES (fees discounted to 75% to remove profit margin and reflect "cost")	\$6,000,000
EXPENSES (no change)	\$2,000,000
TOTAL LITIGATION COST FOR FUNDING	\$8,000,000

Risk share split	
BURFORD INVESTMENT (50% of discounted fees or 100% of expenses or 62.5% of litigation cost per case)	\$5,000,000
LAW FIRM INVESTMENT (50% of discounted fees or 37.5% of litigation cost per case)	\$3,000,000

Hypothetical assumptions	
BURFORD COMMITMENT (for portfolio of 4 ongoing litigation matters and new potential matters going forward)	Up to \$20M
CLIENT RETAINER (firm agrees to incur all fees and expenses related to each case)	Full 30% contingency

Proceeds waterfall by case

		CASE 1	CASE 2	CASE 3	CASE 4
CASE BUDGET / INVESTMENT	Case budget	\$10M	\$10M	\$10M	\$10M
	Case litigation cost <i>(fees discounted, expenses not)</i>	\$8M	\$8M	\$8M	\$8M
	Step 1: Burford investment with firm <i>(50% of litigation cost)</i>	\$5M	\$5M	\$5M	\$5M
	Step 2: Law firm investment in case <i>(50% of litigation cost)</i>	\$3M	\$3M	\$3M	\$3M
RECOVERY PROCEEDS	Case outcome	Win	Loss	Settlement	Win
	Total award recovery	\$200M	\$0	\$100M	\$50M
	Step 3: Contingency fee proceeds to law firm <i>(30% of contingency)</i>	\$60M	\$0	\$30M	\$15M
PROCEEDS WATERFALL	Step 4: Burford investment back	\$5M	\$0	\$5M	\$5M
	Step 5: Law firm investment back	\$3M	\$0	\$3M	\$3M
	Step 6: Burford loss recovery	\$0	\$0	\$5M	\$0
	Step 7: Law firm loss recovery	\$0	\$0	\$3M	\$0
	Step 8: Burford 50% of net proceeds	\$32.5M	\$0	\$8.75M	\$4.4M
	Step 9: Law firm 50% of net proceeds	\$19.5M	\$0	\$5.25M	\$2.6M
GROSS CASE RETURN	Burford total case return <i>(steps 4+6+8)</i>	\$37.5M	\$0	\$18.75M	\$9.4M
	Law firm total case return <i>(steps 1+5+7+9)</i>	\$27.5M	\$5M	\$16.25M	\$10.6M
CUMULATIVE GROSS	Burford cumulative total	\$37.5M	\$37.5M	\$56.3M	\$65.6M
	Law firm cumulative total	\$27.5M	\$32.5M	\$48.75M	\$59.4M

Regardless of case outcome, firm is guaranteed Burford's \$20 million non-recourse investment.



Pricing risk, structuring agreements & the cost of legal finance capital

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Craig Arnott is Deputy Chief Investment Officer with responsibility for managing its global portfolio. Prior to joining Burford, he was a barrister at Sixth Floor Selborne and Wentworth Chambers in Sydney.

Before being called to the Bar, he was a Partner and Head of Competition/Antitrust Law at Fried Frank in London.

Since joining Burford, one of the most common questions posed to me by lawyers is this: How much does Burford’s capital cost? It’s a sensible and understandable question—but one that lacks a simple or one-size-fits-all answer.

It should be no surprise that answering the question of legal finance capital cost is complicated—of course it is. Lawyers and corporate executives call on Burford to provide capital for commercial litigation and arbitration—which is by definition highly complex, expensive and risky.

In this article I’d like to address three topics that shed light on this question. First, I will provide an overview of the various factors that affect the cost of legal finance capital, and the various ways lawyers and litigants can work with Burford to arrive at the best solution.

Second, I will address head-on the notion that legal finance capital is “expensive”. It’s not quantitatively wrong that legal finance typically costs more than transactional forms of financing—but that is not the whole story. The more fruitful way in which we engage clients around the cost of capital is to explain the various ways in which we can structure agreements to deliver what matters most to them. To that end, I’ll provide an overview of some of the most common structures we offer.

Third, I will provide some guidance on legal finance term sheets—how Burford structures them relative to others in the industry, and how law firm and in-house lawyers should think about them.

| How risk impacts price

Any lawyer who has spoken to a legal financier has heard some version of this simple truth: Legal finance pricing is based on risk. Let's unpack what that means.

When Burford finances matters, we assume an extraordinary degree of risk. Typically, legal finance is provided on a non-recourse basis, meaning that we lose our capital if the underlying matters are unsuccessful—and there are very few capital providers with the expertise needed to assess and assume that risk. We do—and we take on the inherent uncertainty of matters that may take years to resolve. When considering an expensive, protracted legal matter, our clients accept the notion of forgoing a portion of their recoveries or fees once their matters have resolved because they know that Burford's capital not only provided them the means to pursue the matters in the first place, but also because our agreement gave them “downside cover” and shifted risk from their business to ours.

So how do we price risk? In many ways we act just like lawyers considering matters to take on contingency. Lawyers recognize that every case is different; understanding the particular client, the circumstances of the

matter and the jurisdiction is crucial. The cost of our capital ranges, but ultimately it's priced competitively according to the risks of the individual matter.

When assessing and pricing risk, we consider several factors:

TIMING:

If a case is about to be filed or has only recently been filed, we don't have the full story of the case—so the case will be considered higher risk.

DAMAGES:

The damages must be realistic and supported by evidence.

RISK DIVERSIFICATION:

By definition, a single-case investment will have binary risk—as opposed to a matter that is part of a portfolio, where risk is diversified across numerous matters.

In these terms, the highest-risk investment is a single matter financed in the early stages of the case, where Burford is paying all fees and expenses. Because there is only one case, the risk is binary (meaning the finance provider would lose its entire investment if the case loses); and because the case has not progressed, it's difficult to

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Legal finance pricing is based on risk.

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understand the entire story and fully assess the potential risk. Such a case represents the upper limits of Burford's pricing, at about 30-40% of the recoveries.

Burford can also work with our counterparties to finance multi-case portfolios, which have significantly less risk than single-case investments. Portfolios—which can include as few as two matters—are cross-collateralized so that if we invest in case A, but case B returns proceeds, we can return our investment dollars for case A from case B. Because portfolio financing arrangements diversify risk of loss for both Burford and our counterparties, they create better economic structures where claimants can have better pricing than our single cases would ordinarily have.

Most lawyers first work with Burford to finance a single case. Under the right circumstances, we work hard to offer them opportunities to transition to larger financing arrangements that can result in additional savings down the road.

Creating economic structures to match client needs

Setting aside the question of cost, we can also structure deals to reflect specific client needs. For example, some clients value certainty and so we structure deals accordingly. The starting point for any engagement is listening to our clients to understand their needs so that we can offer the right economic structure. An assumption for any deal we structure is that the litigant should receive the bulk of the damages in the event of a successful resolution to the case.

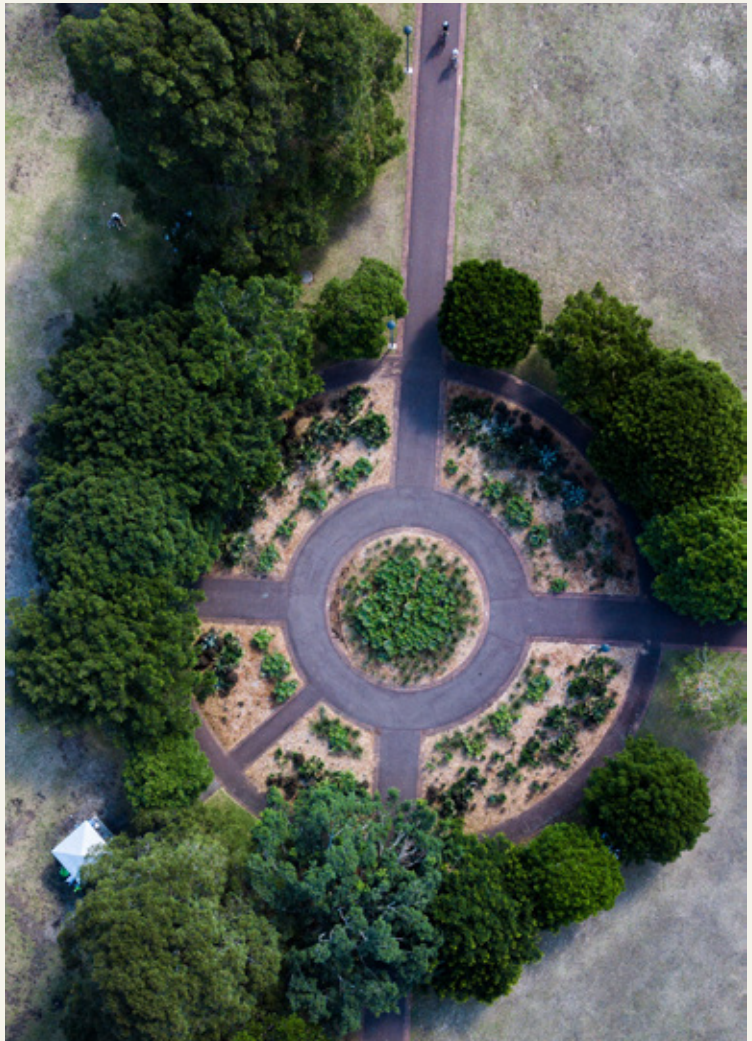
We frequently gravitate to a few consistent structures. These structures exist on a spectrum, with variable returns on one end, and fixed returns on the other.

Variable returns: A variable return is comparable to a contingency fee arrangement, where a law firm will advance the cost of litigation out of pocket, and then recoup those costs “first-dollar” out of the return, in addition to taking a percentage such as 30-40% of the net remaining proceeds. In other words, the firm's repayment will vary depending on the ultimate recoveries. In such an arrangement, that percentage of damages recouped represents the risk the firm takes in forgoing all of its fees and advancing costs.

Burford can similarly structure a variable return consisting of our investment back, plus a percentage of the settlement or award. This structure is most attractive to our clients (whether law firms or litigants) when the potential for recovery isn't inordinately large in relation to Burford's investment commitment. That's understandable: If the expected recovery is especially large, you would be less happy to give up a percentage of the upside and would prefer instead a fixed return structure.

Fixed returns: At the opposite end of the spectrum is a fixed return structure, where the finance provider's return consists of an investment back, plus a multiple (or fixed) return of that investment, as opposed to a percent of the net proceeds.

Hybrid structures: In most cases, the needs of our counterparties are such that the return structure falls somewhere in the middle of the spectrum, resulting in a hybrid structure. Burford will get its investment back, then some fixed return—albeit a smaller multiple than if we were relying on that entirely—and then also a percent of the net proceeds—again, likely a lesser amount, given that we have both a fixed return and a variable return element.



Return waterfall: In addition to working with clients to find structures that meet their needs and match our view of the risk, we also work to structure an appropriate return waterfall—in other words, to lay out the order in which and the increments by which we and our counterparties earn returns from matters in which we invest. Again, each matter is unique and we work hard to adjust waterfalls to clients’ needs—but the important point to appreciate is that while Burford may earn its investment back on a first-dollar basis, further recoveries are often split on an incremental basis. In essence, Burford and its counterparties “take turns” earning returns.

Understanding term sheets

A critical step in the process of finalizing a legal finance investment is the term sheet, which is the medium in which Burford expresses our proposed structure and terms. We have a unique view on term sheets which bears some explanation.

After a decade in business, Burford’s team has reviewed thousands of cases, and we’ve concluded that we can best meet the needs of our counterparties if we complete a substantial amount of diligence before we provide term sheets. This gives us an opportunity to listen to our counterparties’

needs and offer realistic terms informed by our understanding of the risk. During this initial period, we do not seek exclusivity, meaning that we allow counterparties to explore other financing options unencumbered.

Some other finance providers take a different approach, preferring to propose term sheets along with a 60-day exclusivity period at the beginning of the process, before they've invested in a significant amount of diligence. While other funders' intentions may be good, we caution (and it will not be a surprise) that often their initial proposed terms ultimately change during the diligence process to something that is more appropriate for the case. This often causes law firms and companies to lose precious time waiting for terms they will not accept, forcing them to begin the process anew at the end of the exclusivity period.

Meeting our clients' needs

In the end, how we price an investment is flexible to meet the needs of our counterparties. The cost depends on the risk appetite of the claimant and the law firm, in addition to all the circumstances of the merits of the case. When we make an investment decision, we're not just investing in the underlying merits of the litigation, we're investing in and trusting the litigation counsel the claimant has chosen to execute a strong legal strategy. We're investing in the entire potential of that case and the people who are going to run it. It's crucial that we have discussions with the claimant's legal team to understand what they think is likely to happen, what they want to happen, and what they don't want to happen so that we can price our capital accordingly.



Burford Capital has earned a reputation as the leading provider of commercial legal finance in the world. Since its founding in 2009, hundreds of corporations from startups to the Fortune 500 have worked with Burford.

Award-winning team

Band 1

ranked for litigation funding, asset tracing & recovery and international arbitration by *Chambers*

9

Lawdragon 100 global leaders in legal finance

1

Financial Times top 10 innovator

Three

New York Law Journal trailblazers

Industry-leading expertise

96%

In 2021, Burford predicted returns on concluded matters in its portfolio with 96% accuracy

160+

employees drawn from top firms and corporations

55+
Lawyers

Institutional-quality finance partner

NYSE-listed

the only finance provider to be publicly listed in New York and London

93 & 89

AmLaw 100 firms Global 100 firms
have sought our funding for their clients or firms

Unmatched scale

\$1.1B


committed in 2021

\$5.5B

current investment portfolio

Multiples larger than next largest publicly traded competitor¹

¹ Based on reporting of combined litigation finance investments, unfunded core litigation finance investments and other investments as of March 28, 2022.

An aerial photograph showing a dark asphalt road with white lane markings curving through a landscape. To the left of the road is a large body of dark blue water with visible ripples. To the right of the road is a dense forest of trees with autumn foliage in shades of brown, orange, and red. The road is bordered by a thin strip of grass and some bare trees.

“Portfolio finance is on the rise both in old and new markets.”