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A new “fully regulated” third-party funder opens in Paris

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Former general counsel of disputes and managing director at Vannin Capital **Iain McKenny** has launched a new fund, Profile Investment or “Pi”, which he says will be part of a new breed of "European asset management regulated" third party funders that will be more transparent and comply with European money laundering regulations.

Pi is a “fully regulated asset management fund” – meaning that both the fund itself, which is based in Luxembourg, and its Paris-based management company will be regulated under the laws of Luxembourg.

Pi’s status as a “fully regulated asset management fund” means that each of its investors and investments had to comply with a strict regulatory compliance process, including due diligence on the origin of the equity capital invested. Under European law, the regulation of the fund may also be “passported” to other European regulators, such as the Autorite des Marches Financiers (AMF) in Paris, where Pi’s head office is based.

GAR reported in June that McKenny had left Vannin Capital to set up multiple funding vehicles alongside **Alain Grec,** formerly a director of La Francaise International Claims Collection. Grec and McKenny say that they collectively bring over 15 years of third-party funding experience to Pi and that announcements about their team of legal, quantum and enforcement specialists should be expected shortly.

Grec tells GAR that Pi benefits from the backing of La Francaise’s Asset Management Group, with over €70 billion under management, and the Paris-based investment fund, Acofi, which he says have been “indispensable to help us manage regulatory compliance, conflicts, confidentiality, transparency, certified valuations and adherence to ethical guidelines.”

It will run several regulated third-party funding vehicles “for specific types of disputes” that are to be announced in due course.

McKenny tells GAR he believes the regulation of third-party funders is inevitable. At present, he is not aware of any other regulated asset management third party funder for litigation and arbitration disputes.

Although there are some funders who have management companies or advisories that are regulated in the UK, the funds themselves are registered in jurisdictions like Jersey, Guernsey, the Cayman Islands and the Isle of Man where “oversight is relatively light,” he says.

McKenny says that Pi will differ in that both the fund and the asset manager are regulated, which he says is a crucial distinction. “If the fund manager is regulated in a European country but the fund is registered outside the European Union – such as the Cayman Islands – then the due diligence on the origin of equity capital to be invested is nowhere near the same if it even exists at all.“

As Pi’s fund and asset manager are registered in Europe, a regulator vets and authorises every investor in Pi and “every investor has the comfort of knowing they are invested in a fully regulated fund”, he says. This regulatory status has allowed Pi to attract a broad pool of institutional investors and not just high-risk ones, which allows Pi to offer funding terms based on “the merits of the claim and not the prospects of a windfall”.

The closest third-party funding has to a reviewing body in the UK is the Association of Litigation Funders, which is run and controlled by the members it regulates, McKenny continues. Although the ALF has a code of conduct, McKenny says there are no significant penalties if members fail to comply. One of its previous members, Argentum Capital, resigned from the ALF amid allegations it operated a Ponzi scheme.

Across a number of jurisdictions, there has been a growing trend towards more oversight and control of third-party funders, he says. In the United Arab Emirates, the courts of the Dubai International Financial Centre have recently issued a practice direction which contains rules for funders operating in Dubai, which McKenny worked together with the DIFC to draft.

White papers containing a code of conduct for funders have been issued in Hong Kong and Singapore, the latter of which had seen Grec consulted by the Singaporean government, while in Australia there have been calls for funders to be licensed.

As this trend for more regulation grows, McKenny says it is important to consider the type of regulation we want. “I think regulation comes in two forms: negative or positive,” he says. “If third-party funding is seen as a problem then you’re going to get some heavy-handed negative regulation. If it’s not then you end up with positive regulation that treats third-party funding like an access to justice issue.”

The type of regulation that third-party funding receives will depend on which of two competing models of investment prevails; a “price the risk” model or a “merits” model, McKenny says. A “price the risk” model can even lead funders to invest in unmeritorious claims if the terms are sufficiently high. This is problematic because it “treats disputes like any other financial market” and will give rise to negative regulation.

Pi, by contrast, will follow a “merits-based” model which will mean each case is assessed by the fund on its merits and “not on the potential for a windfall”, McKenny says. Pi’s backers and investors place “access to justice, ethics and equity on an equal footing alongside return on investment”.

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