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## HOW PRIVATE INVESTIGATORS AND FUNDERS WORK TOGETHER TO DELIVER VALUE TO CLIENTS

In this edition of Vannin Capital's In Conversation Series, Managing Directors Alexandra Dosman and Alan Guy from Vannin Capital speak to Mintz Group Partner Ian Casewell to unearth the true efficiencies that both private investigators and third party funders bring to the dispute resolution process.

**Alan Guy (AG):** Because we've all seen too many movies, we have visions of private investigators as looking something like Humphrey Bogart from the Big Sleep. What is it like in reality?

**Ian Casewell (IC):** We get that a lot, but cloak and dagger isn't what we do. We don't provide bodyguards, we don't rescue the kidnapped, and we don't audit financial results. We specialize in one thing: digging into questions that concern our clients and helping them find clarity in a complex world.

In disputes we help lawyers—across all practice areas—to prevail in court, in arbitration proceedings, and at the negotiating table. We find admissible evidence and useable information that is often hidden along obscure paper trails or in the memories of witnesses who may not be eager to chat. Long before a court judgment or arbitration award is obtained, we give our clients a clear picture of how deep an adversary's pockets are, helping them make sound business decisions throughout the dispute.

**Alexandra Dosman (AD):** What is your initial strategy when you are asked to trace an opposing party's assets?

**IC:** Our strategy is to reconstruct a party's world from when they were riding high and accumulating assets. Then we figure out where all those people or companies have scattered to in the intervening years, and where the assets might be now. The early steps we take are "under the radar," to preserve the element of surprise. Without attracting the opposing party's attention, we undertake a variety of research projects. We are not only looking for the most obvious assets – like real estate – we are also identifying an opposing party's friends and enemies. One of our mottos is "lawyers make appointments, investigators knock on doors."

Later, when we do start to knock on doors, we want witnesses to react by saying "You guys have really done your homework."



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IAN CASEWELL

**AG:** How do investigators deal with the challenges of tracing assets in the offshore world?

**IC:** When we start the public phase of an investigation, we believe in sending someone to the local companies house in each relevant jurisdiction, no matter how secretive. Experience has taught us to physically copy every page we can get our hands on, rather than just to rely on the snippets of info in desktop databases.

At every stage of an investigation, we "sweat the small stuff". Once we cracked an asset trace by following up on a fax-tell-tale at the top of the document we found in a local corporate registry. It revealed the beneficial owner of a shell company who was otherwise completely hidden.

Offshore corporate structures and trusts are often used to conceal assets and beneficial ownership; and these can have local vulnerabilities when it comes to veil piercing and getting behind intended opacity. Money has to move through structures and wants to come out to play – the trimmings of wealth such as property, art and vehicles provides opportunities for investigators. Working together with experienced offshore lawyers we can target such structures with freezing and disclosure tools to peel back anonymity to identify assets and beneficiaries.

**AD:** As a global organization you are competing with other multi-national groups and local players. What distinguishes Mintz from the other options out there?

**IC:** We specialize in evidence gathering for litigators, and we view our role quite differently than many of our competitors do. Other firms view themselves as being in the "intelligence business" and picking up whispers of information that may or may not be useable. We, on the other hand, have been trained over decades by top law firms to help them bring forward documents and witnesses that can be used in front of a court or arbitration panel.



**AD:** The United States is obviously a popular forum for enforcing awards and judgments, but are there other hot-spots that you see emerging in your work?

**IC:** As you know, the Netherlands is a key enforcement jurisdiction, as attaching assets can be easier there than elsewhere due to a more liberal approach and their hosting a number of international courts and tribunals. The United Arab Emirates often features when we're "following the money" and the Dubai International Financial Centre's court is evolving quickly, which is helping the enforcement landscape there.

Today the financial system is global and every region has its hubs for banking and commerce. We see a lot of activity in well known "off-shore" jurisdictions, but we also find ourselves tracking things like commodities through a supply chain or ships at sea.

**AG:** Have you seen dispute resolution finance playing a bigger role in this space recently?

**IC:** In recent years we have carried out a substantial number of assignments for funders and litigants that are using funders, and almost all of those have been related to asset tracing. Funders often call us while they're considering getting involved in a matter, and they want our help in assessing whether a successful litigant will actually be able to collect damages. Litigants using funders will call us to develop an enforcement campaign that is scaled to the size of the possible recovery and not just the resources that they have on hand at a particular moment.

**AD:** Are there particular challenges you see when seeking assets to recover from a state entity or a state-owned enterprise?

**IC:** Sovereigns generally hold a variety of assets outside of their domestic territories. This can be real estate, foreign currency reserves, property of state-owned entities, airplanes and vessels, commodities in transit, or any number of other tangibles and intangibles. All of these can be viable targets for recovery as long as a judgment creditor can overcome a series of challenges, which often includes showing the commercial use of particular assets to defeat sovereign immunity claims and showing a sufficient degree of control over state-owned business operations and financing to pierce the corporate veil.

Particularly in the United States, courts expect a party to present a significant amount of evidence, not just allegations. That's why it is so important to work with an investigator who can deliver evidence a court will actually consider.





**IC:** So let me ask you, at what point in the funding process does Vannin turn to investigators?

**AD:** Every case is different. When we are considering a case, we are looking for a clear path to enforcing a resulting arbitral award or court judgment. Investigators can be helpful at that initial assessment stage. As a case progresses, we will work with counsel to develop an enforcement strategy that is ready to go when an award or judgment is issued. Investigators can play an important role in helping parties, counsel, and funders work through that process by developing a clear and detailed picture of the opposing party's assets.

**IC:** When you are working with investigators, what qualities are important to you?

**AD:** We want to see a well-coordinated process in which the investigator sets clear and attainable objectives. The ethical component is also very important to us and we take care to work with investigators who will take the time necessary to understand the legal environment in each jurisdiction in which they operate.



OUR MANAGING DIRECTORS ARE ALL EXPERIENCED DISPUTE RESOLUTION LAWYERS AND WE THINK THIS ALLOWS US TO ADD VALUE FROM THE POINT AT WHICH WE FIRST BEGIN REVIEWING A CASE, THROUGH TO THE COLLECTION OF A JUDGMENT.

ALAN GUY

**IC:** To follow-up on an earlier question, when do litigants turn to funders?

**AG:** Like Alexandra said, every case is different. Sometimes – particularly in Europe and Australia – we are the first call a party makes about a dispute. Other times we become involved when a litigant has found counsel and is trying to figure out how to finance what may be a very significant investment in relation to their overall business. As a general rule, the earlier we see a case in the process the better. We often find that the funding process allows a litigant's counsel to test the strengths and weaknesses of a case and to sharpen their arguments regarding the law and the facts. The diligence process may also be the first point in developing a case when the counsel and litigant have had a serious discussion about whether an opposing party can pay an award or judgment and whether the opposing party's assets are in a location where the award or judgment can be enforced.

**IC:** What distinguishes Vannin from other players in the market?

**AG:** Vannin brings a unique combination of international experience and local expertise to the cases we fund. If you have a dispute in any major center for litigation or arbitration, we have a managing director who is familiar with the jurisdiction. Our managing directors are all experienced dispute resolution lawyers and we think this allows us to add value from the point at which we first begin reviewing a case, through to the collection of a judgment. We are not the litigant and we are not the litigant's lawyer – and we respect those distinctions – but we can be partners in the dispute resolution process, even when we don't control the claim. Our goal at every stage of our relationship with a litigant is to add value and to ensure that claims are resolved on their merits, not on the relative economic strength of the parties.

**IC:** When we are talking about enforcement, a party typically has already won at trial or arbitration. Why do parties turn to funders as part of the enforcement process?

**AD:** Funding can provide the winning party in a dispute with additional options. Enforcing an award or judgment, particularly a large one, can be a time consuming and expensive process – and many award creditors just want to get back to business. In the right circumstances, funders can set up a facility that will take the cost of enforcing an award or judgment off a client's balance sheet. This can also help to unlock the value of part of that award or judgment, so that it can be reinvested in core business activities or in new commercial opportunities.





**IC:** So it's not just litigants that can't afford to enforce a judgment who are seeking out funding?

**AG:** No. One of the biggest misconceptions about funding is that it is driven by necessity. That once may have been the case, but today it is just as much about managing risk and P&Ls. There are very few CFOs who wouldn't jump at the chance to move legal costs off balance sheet if given the option. That said, we do also see ourselves as providing less well-resourced litigants with access to justice.

**IC:** So you've talked about the solutions you provide, what do those look like?

**AG:** Nearly everything we do is bespoke. In most cases, though, Vannin pays the fees and costs that come with litigating a case or enforcing the recovery and in return we get either a percentage of the judgment or a multiple of what we put into a case. Because most of our financing is non-recourse, if the litigant gets nothing, we get nothing.

Also, where the relevant laws allow it, we can manage the litigation and enforcement process for a litigant, or purchase a claim or an award outright. In every case, we will work with the litigant and their counsel to understand the strengths and weaknesses of a claim, award or judgment, the obstacles to enforcement

– be they practical or legal – and the time and money that will be required to pursue a litigation or enforcement strategy.

**IC:** Alexandra, you had mentioned that you just joined Vannin, what were you doing prior to this and what drew you to Vannin?

**AD:** I joined Vannin after serving as the first Executive Director of the New York International Arbitration Center (NYIAC) from 2013 to 2017. Before NYIAC, I was with the international arbitration group of Shearman & Sterling LLP for seven years, based in the New York office. As for the draw of Vannin, the world of arbitration funding is growing rapidly and my curiosity

was piqued while organizing programs on the subject for NYIAC. When an opportunity arose at Vannin, I jumped at the chance to apply my legal skills within the company's market-leading international arbitration group. I was also attracted to Vannin's entrepreneurial and solutions-oriented approach.

**AG:** Since we're hosting this discussion, we want to give you the last word, if there was one thought you would like to leave our readers with, what would it be?

**IC:** We have a single-minded focus on investigations. As I said before, decades of working with titans of the legal and financial worlds have taught us to listen closely to each client's needs –and to appreciate our clients' investigative skills and capabilities. One of our primary objectives is to extend the reach of our clients, thereby taking a collaborative approach toward achieving a common goal.

## BIOGRAPHIES



**Ian Casewell**  
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Ian Casewell is a Partner and heads the Mintz Group's London office. He specialises in providing investigative support to large-scale disputes and fraud matters. Ian co-heads the firm's international asset tracing unit which specialises in tracing assets around the world, and has been helping creditors enforce judgments in hundreds of cases over the past 20 years. Working for individuals, companies and governments, his cases are invariably multi-layered, frequently cross-border, and often in offshore jurisdictions. Ian and his team have particular expertise in areas they have found crucial to asset tracing and recovery, including: Banking, Offshore Structures, Shipping, Real Estate, Private Aircraft and Internet Forensics.

Ian has worked in corporate investigations for over a decade. He previously worked at Europol, where he ran international investigations into organised crime. In addition to his operational work, Ian was lead analyst for all computer crime-related activities within the European Union relating to Europol. In this role he was responsible for the establishment of an EU-wide strategic intelligence group comprised of members of the EU's computer crime units, producing the first EU-wide strategic assessment on computer-related crime within the Union. It was published and disseminated to all Member States.

Ian also has experience working at the U.K. Government's Asset Recovery Agency and West Mercia Constabulary, where he was engaged in crime pattern analysis and the support of criminal investigations.

Ian was recognized as a leading practitioner in Who's Who Legal Asset Recovery 2016 Expert Analysis. He was cited as one of five "most highly regarded" practitioners, with his "'impressive' investigations practice, which centers on providing support for large-scale disputes and fraud cases."



**Alan Guy**  
Managing Director  
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Alan Guy works with law firms and claimants to deploy third party funding. Based in New York, his role includes identifying and providing a full appraisal of disputes that Vannin will consider for funding, as well as monitoring disputes that Vannin has committed to fund. Alan is an attorney with experience handling complex and cross-border disputes in US state and federal courts, as well as in non-US jurisdictions.



**Alexandra Dosman**  
Managing Director  
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Alexandra Dosman advises clients on funding options for international arbitration cases (both commercial and investor-state) and for litigation relating to the enforcement of arbitral awards in U.S. courts. She is based in New York as part of the global International Arbitration team. From May 2013 to October 2017, Alexandra was the first Executive Director of the New York International Arbitration Center ("NYIAC"), before which she practiced arbitration and litigation in the New York office of Shearman & Sterling LLP, playing a leading role in international commercial and investment treaty arbitration cases.

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**About Vannin Capital**

Established in 2010, Vannin Capital is the global expert in legal finance, supporting law firms and corporations in the successful resolution of high-value commercial disputes.

From single case funding, to portfolio finance and enforcement arrangements, we offer creative capital solutions that are tailored to our clients' needs.

Our global team of legal and financial experts cover the key commercial litigation and arbitration centres from our offices in London, Jersey, Paris, New York, Washington, Sydney, Melbourne and Bonn. More than just capital, we combine global experience with local knowledge to deliver the highest standard of service and expertise to our clients around the world.

A market leader, we are a member of the Association of Litigation Funders of England and Wales (ALF), conducting our business to the highest standards in line with its code of conduct.

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