

INTERNATIONAL WEBINAR

THIRD PARTY FUNDING IN INTERNATIONAL ARBITRATION

Its Permissibility and Correlation with Basic Principles of Arbitration



Third Party Funding In International Arbitration

Irene Röthlisberger



Third Party Funding In International Arbitration:

Third-Party Funding in International Arbitration Lisa Bench Nieuwveld, Victoria Shannon Sahani, 2016-04-24 Since the first edition of this invaluable book in 2012 third party funding has become more mainstream in international arbitration practice. However, even the existence of a third party funding agreement in a dispute is often kept secret; it can be difficult to glean the specifics of successful funding agreements. This welcome book, now updated, expertly reveals the nuances of third party funding in international arbitration, examines the phenomenon in key jurisdictions, and provides a reliable resource for users and potential users that may wish to tap into and make use of this distinctive funding tool. Focusing on Australia, the United Kingdom, the United States, Germany, the Netherlands, Canada, and South Africa, the authors analyze and assess the legal regime based upon legislation, judicial opinions, ethics opinions, and practitioner anecdotes describing the state of third party funding in each jurisdiction. In addition to updating summaries of the law of the various jurisdictions, the second edition includes a new chapter addressing third party funding in investor state arbitration. Among the issues raised and examined are the following: payment of adverse costs; Before the Event (BTE) and After the Event (ATE) insurance; attorney financing; pro bono representation; contingency representation; conditional fee arrangements; loans; ethical doctrines affecting the third party funding industry; possible future bundling, securitization, and trading of legal claims; risk that the funder may put its own interests ahead of the client's interests; and whether the existence of a funding agreement must or should be disclosed to the decision maker. The second edition also includes discussion of recent institutional developments as they relate to third party funding, including the work of the ICCA Queen Mary Task Force on Third Party Funding, and how third party funding is being incorporated into arbitral rules and investment treaties. A book providing a thorough understanding of what third party funding entails and what legal parameters exist, this book will be of compelling interest to parties aiming to take advantage of the high values, speed, reduced evidentiary costs, outcome predictability, industry expertise, and high award enforceability characteristic of the third party funding arrangements available in international arbitration.

Third Party Funding in International Arbitration Mohamed F. Sweify, 2023-02-14 The author of *Third Party Funding in International Arbitration* challenges the structural inconsistencies of the current practices of arbitration funding by arguing that third party funding should be a forum of justice rather than a forum of profit. The author introduces a new methodology with an alternative way of structuring third party funding to solve a set of practical problems generated by the risk of claim control by the funder.

Third-party Funding in International Arbitration ICC Institute of World Business Law. Meeting, International Chamber of Commerce, ICC Institute of World Business Law, 2013 La 4e de couverture indiquée. The last decade has seen an exponential growth in both international commercial arbitration and international investment arbitration. Nevertheless, arbitration proceedings can prove to be very costly, and their funding raises the delicate question of the accessibility of arbitration. The solution offered by third party funding has undoubtedly become a

fact of life in the world of arbitration despite reservations in some quarters Although continental countries continue to regard it with suspicion Anglo Saxon countries have embraced this solution and have already built up a body of experience in the field This publication considers the various funding techniques specific to international arbitration before looking at some of the legal issues raised by such funding and the reactions it may arouse among international arbitration practitioners This publication of the ICC Institute of World Business Law s latest contribution to its Dossiers series on new practices in international arbitration and is inspired by the wish to see those practices develop in a way that is compatible with the basic principles that ensure all parties rights

Third-party Funding in International Arbitration ICC Institute of World Business Law. Meeting, International Chamber of Commerce, ICC Institute of World Business Law, 2013

Third-party Funding in International Arbitration and Its Impact on Procedure Jonas von Goeler, 2016

Introduction The Various Forms of Third Party Funding in International Arbitration Litigation Funding in International Arbitration Disclosure of Third Party Funding in International Arbitration Proceedings Privilege Protection of Documentary Evidence and Third Party Funding Jurisdictional Issues and Third Party Funding Impartiality and Independence of Arbitrators and Third Party Funding Confidentiality in International Arbitration Proceedings and Third Party Funding Security for Costs and Third Party Funding Awarding of Costs and Third Party Funding Summary of Part I and Part II Concluding Remarks

Handbook on Third-party Funding in International Arbitration Nikolaus Pitkowicz, 2018

The Handbook on Third Party Funding in International Arbitration was created through the collaboration of the ABA Section of International Law International Arbitration Committee the International Council for Commercial Arbitration ICCA and the Centre on Regulation Ethics and Rule of Law at Queen Mary University of London Their goal was to study identify and address the central issues and threats specific to the Third Party Funding TPF context and to provide guidance to legal practitioners when confronted with third party funding in international arbitration The Handbook on Third Party Funding in International Arbitration comprises six general chapters and 25 country specific reports providing global coverage and different perspectives

Publisher

Third Party Funding in International Arbitration in Europe Prof Maxi Scherer, 2013

Third party funding has become one of the hot topics in international arbitration More and more parties whether in financial distress or not explore the possibility of using funders to provide the necessary cash to pay for their lawsuit allowing the funder to realise in return a percentage of the proceeds of the case or multiple of costs financed if successful Third party funding thus shows similarities to certain forms of insurance contracts where the insurer pays for the costs of the lawsuit including in certain cases for the opposing party s costs and contingency fee arrangements where the lawyer carries the costs of litigation in exchange for an interest in the proceeds of the case The exact definition of third party funding however remains elusive and its legal and ethical implications in international arbitration mostly unexplored This paper aims at filling the gap focusing in particular on the specificities of third party funding in international arbitration from a pan European perspective The project is organised in two stages This

first paper is based on a round table discussion with representatives from several of the most prominent funds active in the area of international arbitration. It addresses the actual practice and techniques of third party funding. A second follow up paper will consider the legal implications of third party funding in international arbitration particularly from a civil law perspective.

Third Party Funding Gian Marco Solas, 2019-09-26. In *Third Party Funding* Gian Marco Solas for the first time describes third party funding (TPF) as stand alone practice within the wider litigation and legal services markets. The book reports on legal issues related to TPF in both common law and civil law jurisdictions and in the international context. It then discusses the incentives and economics of TPF transactions in different legal contexts while explaining how the practice emerged and how it is likely to develop. In addition, the book offers practical insights into TPF transactions and analyzes a number of regulatory proposals that could affect its use and desirability. This work should be read by scholars, practitioners, policymakers and anyone else interested in how TPF is changing the practice of law.

Third-Party Funding in Investment Arbitration Can Eken, 2024-07-19. This book offers a reference guide that can be consulted by all users of Third Party Funding (TPF): lawyers, students and other interested readers. In addition to analyzing TPF issues holistically with both doctrinal and empirical methods, the book provides important empirical data on funders through interviews conducted with nearly thirty people working for third party funders. It reveals a range of potential problems and lays out how to address them in the form of guidelines. TPF has become a significant element of litigation and arbitration systems around the world for both theoretical and practical reasons. Specifically in the context of investment arbitration, the latest studies suggest that a large percentage of investment arbitration cases are sponsored by funders. Despite its prevalence, TPF has raised procedural and ethical concerns in the investment regime. One of the caveats is that when states lose against an investor, their taxpayers are who pay for the investment arbitration award, essentially transferring the wealth of the states to the investor, and now part of this wealth goes to the funder. Whether or not the funder shares this wealth is anyone's guess and represents an ethical consideration. Apart from ethical challenges, TPF has also raised significant procedural problems in investment arbitration. As funders enter the equation of arbitration proceedings in the investment regime, consideration must be given to this new player and how TPF affects investment arbitration. Overall, the book assesses TPF in its entirety: background information, the main procedural issues and case law, ethical aspects and empirical research on TPF including the funder's perspective. By doing so, it sheds new light on under-researched issues and offers essential guidance to help orient legal policy.

Handbook on Third-party Funding in International Arbitration Nikolaus Pitkowitz, 2025. *Third-Party Funding in International Arbitration* Irene Röthlisberger, 2015. Third party funding (TPF) is a thriving practice in international arbitration and this development is here to stay. Much is written about TPF and opinions diverge about the practice. This thesis analyses the parties' different incentives to engage in TPF and by doing so, their preferences about its design. Focus of this incentive analysis lies on the funder, funded party, non-funded party, lawyer and arbitrator. Conflicts arise between funder and funded

party in regard to control issues relationship to the funder and information sharing Other problems arise between the funded party and the parties which are not directly involved in the funding agreement The thesis evaluates the most pressing issues in this area to be the issues regarding disclosure preferences cost orders potential waiver of legal privilege and concerns about arbitrators and lawyer s conflicts of interest In a second part it is analysed what kind of signals are sent in the different dispute stages and how they affect the other parties The funding industry is mainly unregulated which allows the funder to usually succeed in acting according to his will However none of the parties can really be sure how the case will turn out as many uncertainties exist and arbitrators if they can decide on questions in connection with TPF do not decide unanimously Some of the issues are also not unique to TPF but pose challenges to the actors also in other practice areas The elimination of these conflicts of interest requires deciding which actor s interests should dominate Until now regulators have not acted to improve the situation Many commentators view a disclosure requirement to improve the situation and initial attempts have been made by adapting the IBA Guidelines Also setting up some more stringent rules regarding the behaviour of funders might improve the current status

Third-Party Funding in International Arbitration, Second Edition Victoria Sahani, 2017 This second edition expertly reveals the nuances of third party funding in international arbitration examines the phenomenon in key jurisdictions and provides a reliable resource for users and potential users who may wish to tap into and make use of this distinctive funding tool Since the first edition of this invaluable book in 2012 third party funding has become more mainstream in international arbitration practice The second edition includes discussion of recent institutional developments as they relate to third party funding including the work of the ICCA Queen Mary Task Force on third party funding and how third party funding is being incorporated into arbitral rules and investment treaties This updated book is well written and covers an interesting topical and previously unexplored aspect of international arbitration and it concludes with observations regarding third party funding in international investment arbitration and predictions regarding the future of the third party funding industry worldwide

Third Party Funding in International Investment Arbitration Eric De Brabandere, Julia Lepeltak, 2012 International investment arbitration involves high costs both for the investor and the State appearing in proceedings A relatively recent phenomenon in international investment arbitration is the financing of the proceedings by a third party funder The third party funder as such has no interest in the substantive issues of the arbitral proceedings but instead invests in the proceedings hoping to make a considerable profit upon the settlement of the dispute International arbitrators have in principle no competence to address the third party funding agreement because their competence is limited to the dispute between the foreign investor and the host State The funding agreement is thus alien to the legal relations between the foreign investor and the host State After an analysis of the rationale concept and principles of third party funding this Article will analyse whether tribunals may nevertheless use their discretion to intervene in or take into consideration the relationship between the investor and its third party funder in particular in view of the allocation of

costs in the arbitral proceedings This Article will also investigate whether the existence of a funding agreement is subjected to any rule on transparency and to an obligation of disclosure in essence in order to ensure the respect of the principle of equality of arms **Third Party Funding in International Arbitration** Jeffery Commission, Yasmin

Mohammad, 2018-10-14 Third party funding TPF where specialist companies help finance a client's legal fees in exchange for a share of the final award is becoming increasingly prevalent in international arbitration This work provides a comprehensive practitioner guide to the law and practice of international arbitration where third party funding is involved with detailed reference to existing cases procedural orders and final awards The book is comprised of five parts together covering the life cycle of a funder's involvement in an arbitration background case assessment key terms of the funding agreement the conduct of the arbitration and the award The authors include references to relevant landmark decisions of national courts addressing third party funding issues in arbitrations and an appendix provides a list of all known funded investor state cases with comprehensive details about the identity of the funder the dispute the duration the cost and the result As the discussion of TPF in arbitration continues to be of vital importance in the field it is imperative that all international arbitration practitioners have access to a balanced multi faceted view of the practice and its issues This book provides much needed guidance suitable for all practitioners and students **Third-Party Funding in International Arbitration** William W.

Park, 2014 Third party funding raises a host of ethical and procedural issues for international arbitration perhaps most notably in connection with arbitrator comportment The need for sustained study of these concerns prompted establishment of a Task Force on Third Party Funding in International Arbitration convened by the International Council for Commercial Arbitration ICCA along with Queen Mary College at the University of London The Task Force comprised of stakeholders from a range of viewpoints and backgrounds will assess both real and perceived concerns that this relatively new practice raises as well as what might be done and why This article outlines the Task Force's approach to these issues work to date and future aims **Finances in International Arbitration** Sherlin Tung, Fabricio Fortese, Crina Baltag, 2019-11-26

Finances in International Arbitration Liber Amicorum Patricia Shaughnessy Edited by Sherlin Tung Fabricio Fortese costs of court proceedings versus arbitration proceedings fee arrangements with legal counsel costs of commercial versus investment arbitration how to deal with in house costs in international arbitration impact of tribunal secretaries in international arbitration cost sanctions in international arbitration damages in international arbitration The analysis and views offered by leading scholars and practitioners on current day issues arising out of costs of arbitration will offer readers a unique perspective on various aspects of the finances involved in arbitration This book will provide insightful thoughts and practical guidance for academics and practitioners in the field of international arbitration **Philippine Regulation of Third Party**

Funding in International Arbitration, 2022 **International Commercial Arbitration** Gary B. Born, 2020-11-23

International Commercial Arbitration is an authoritative 4 250 page treatise in three volumes providing the most

comprehensive commentary and analysis on all aspects of the international commercial arbitration process that is available. The Third Edition of International Commercial Arbitration has been comprehensively revised, expanded and updated. To include all legislative, judicial and arbitral authorities and other materials in the field of international arbitration prior to June 2020. It also includes expanded treatment of annulment, recognition of awards, counsel ethics, arbitrator independence and impartiality and applicable law. The revised 4250 page text contains references to more than 20,000 cases, awards and other authorities and will enhance the treatise's position as the world's leading work on international arbitration. The first and second editions of International Commercial Arbitration have been routinely relied on by courts and arbitral tribunals around the world, including the highest courts of the United States, United Kingdom, Singapore, India, Hong Kong, New Zealand, Australia, the Netherlands and Canada, and international arbitral tribunals including ICC, SIAC, LCIA, AAA, ICSID, SCC and PCA. e.g. U.S. Supreme Court *GE Energy Power Conversion France SAS Corp v Outokumpu Stainless USA LLC* 590 U.S. 572 (2020); BG Group plc v Republic of Argentina 572 U.S. 25 (2014); Canadian Supreme Court *Uber v Heller* 2020 SCC 16; Canadian S.Ct. *Yugraneft Corp v Rexx Mgt Corp* 2010 1 R.C.S. 649, 661; Canadian S.Ct. U.K. Supreme Court *Jivraj v Hashwani* 2011 UKSC 40, 78 U.K.S.Ct. Dallah Real Estate & Tourism Commission v Ministry of Religious Affairs of the State of Kuwait, Swiss Federal Tribunal Judgment of 25 September 2014 DFT 5A_165/2014; Swiss Fed. Trib. Indian Supreme Court *Bharat Aluminium v Kaiser Aluminium* C.A. No. 7019, 2005 138 39 142 148 49 Indian S.Ct. 2012; Singapore Court of Appeal *Rakna Arakshaka Lanka Ltd v Avant Garde Maritime Servs Ltd* 2019 2 SLR 131; Singapore Ct. App. *PT Perusahaan Gas Negara Persero TBK v CRW Joint Operation* 2015 SGCA 30; Singapore Ct. App. *Larsen Oil*; Australian Federal Court *Hancock Prospecting Pty Ltd v Rinehart* 2017 FCAFC 170; Australian Fed. Ct. Hague Court of Appeal Judgment of 18 February 2020 Case No. 200 197 079 01; Hague Gerechtshof Arbitral Tribunals *Lao Holdings NV v Lao People's Democratic Republic* I Award in ICSID Case No. ARB/AF/12/6, 6 August 2019; *Gold Reserve Inc v Bolivarian Republic of Venezuela* Decision regarding the Claimant's and the Respondent's Requests for Corrections ICSID Case No. ARB/AF/09/1, 15 December 2014; *Total SA v The Argentine Republic* Decision on Stay of Enforcement of the Award ICSID Case No. ARB/04/01, 4 December 2014; *Millicom Int'l Operations B.V. v Republic of Senegal* Decision on Jurisdiction of the Arbitral Tribunal ICSID Case No. ARB/08/20, 16 July 2010; *Lemire v Ukraine* Dissenting Opinion of Jrgen Voss ICSID Case No. ARB/06/18, 1 March 2011.

Regulation of Third Party Funding in International Commercial Arbitration - Perspective from Hong Kong Haifan HU, 2017. It is perhaps no longer of significance to engage in further debates on whether third party funding in international commercial arbitration is an evil hazard. It may be said that the consensus nowadays is to explore the most appropriate way of regulating such novel creature. This paper seeks to join such exploration by first providing a legal basis for third party funding to be insulated from the effect of the ancient law of champerty. Secondly, it provides a detailed analysis of the locus standi of third party funders in arbitration by reference to Hong Kong law relating to non-signatories. Based on the unique legal status of third party funders, this paper argues that special measures should be taken to maintain

the integrity of the arbitral process and to protect the unfunded party from unjust results 1 the identity of the funder shall be disclosed but the content of the funding agreement will be disclosed only if normal evidentiary burden has been fulfilled 2 arbitral tribunals should consider all relevant circumstances of the case when considering applications for security for costs and it should be made clear that mere existence of funding relationship does not lead to an automatic order for security for costs 3 amending the Arbitration Ordinance is the most direct way to make funders liable for adverse costs orders but the statute should be amended in such a way that the non signatories law is respected funders are not punished and opponents are not getting a windfall **Third-party Funding in International Arbitration** ,2022

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Table of Contents Third Party Funding In International Arbitration

1. Understanding the eBook Third Party Funding In International Arbitration
 - The Rise of Digital Reading Third Party Funding In International Arbitration
 - Advantages of eBooks Over Traditional Books
2. Identifying Third Party Funding In International Arbitration
 - Exploring Different Genres
 - Considering Fiction vs. Non-Fiction
 - Determining Your Reading Goals
3. Choosing the Right eBook Platform
 - Popular eBook Platforms
 - Features to Look for in an Third Party Funding In International Arbitration
 - User-Friendly Interface
4. Exploring eBook Recommendations from Third Party Funding In International Arbitration
 - Personalized Recommendations
 - Third Party Funding In International Arbitration User Reviews and Ratings

- Third Party Funding In International Arbitration and Bestseller Lists
- 5. Accessing Third Party Funding In International Arbitration Free and Paid eBooks
 - Third Party Funding In International Arbitration Public Domain eBooks
 - Third Party Funding In International Arbitration eBook Subscription Services
 - Third Party Funding In International Arbitration Budget-Friendly Options
- 6. Navigating Third Party Funding In International Arbitration eBook Formats
 - ePub, PDF, MOBI, and More
 - Third Party Funding In International Arbitration Compatibility with Devices
 - Third Party Funding In International Arbitration Enhanced eBook Features
- 7. Enhancing Your Reading Experience
 - Adjustable Fonts and Text Sizes of Third Party Funding In International Arbitration
 - Highlighting and Note-Taking Third Party Funding In International Arbitration
 - Interactive Elements Third Party Funding In International Arbitration
- 8. Staying Engaged with Third Party Funding In International Arbitration
 - Joining Online Reading Communities
 - Participating in Virtual Book Clubs
 - Following Authors and Publishers Third Party Funding In International Arbitration
- 9. Balancing eBooks and Physical Books Third Party Funding In International Arbitration
 - Benefits of a Digital Library
 - Creating a Diverse Reading Collection Third Party Funding In International Arbitration
- 10. Overcoming Reading Challenges
 - Dealing with Digital Eye Strain
 - Minimizing Distractions
 - Managing Screen Time
- 11. Cultivating a Reading Routine Third Party Funding In International Arbitration
 - Setting Reading Goals Third Party Funding In International Arbitration
 - Carving Out Dedicated Reading Time
- 12. Sourcing Reliable Information of Third Party Funding In International Arbitration
 - Fact-Checking eBook Content of Third Party Funding In International Arbitration
 - Distinguishing Credible Sources

-
13. Promoting Lifelong Learning
 - Utilizing eBooks for Skill Development
 - Exploring Educational eBooks
 14. Embracing eBook Trends
 - Integration of Multimedia Elements
 - Interactive and Gamified eBooks

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